

Chapter A New Hampshire

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CHAPTER 130-A LEAD PAINT POISONING PREVENTION AND CONTROL

Section 130-A:1

130-A:1 Definitions. – As used in this chapter:

- I. "Child" or "children" means a person or persons 72 months of age or less.
- II. "Child care facility" means a facility required to be licensed under the provisions of RSA 170-E:4.
- III. "Commissioner" means the commissioner of the department of health and human services.
- IV. "Department" means the department of health and human services.
- V. " Dwelling" means a structure used or intended for human habitation, including interior and exterior surfaces, and may include common areas and all other property, including land and other structures, located within the same lot.
- VI. " Dwelling unit" means any room, group of rooms or other interior area of a dwelling or other structure, all or part of which is offered or made available for human habitation, and may include all common areas of the unit and exterior surfaces.
- VII. "Encapsulation" means resurfacing or covering surfaces with such substances, including paints as are approved as encapsulants, and sealing or caulking with durable materials, to prevent or control the creation of lead exposure hazards. Approved encapsulants under this chapter are:
 - (a) Paints or other substances approved under section 402(a) of Title IV of the Toxic Substances Control Act, 15 U.S.C. section 2601, et seq.;
 - (b) Paints or other substances approved as encapsulants by public health authorities in any other state, and approved by the commissioner;
 - (c) Paints or other substances set forth in rules adopted by the commissioner pursuant to RSA 130-A:10, XIV.
- VIII. "Health authority" means any health officer appointed under RSA 47:12 and RSA 128:1.
- VIII-a. "Health care provider" means any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, and any officer, employee or agent of such provider acting in the course and scope of employment or agency related to or supportive of health care services.
- IX. "Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead exposure hazards, including regular cleaning, repairs, maintenance, painting, or temporary containment, and the establishment and operation of management and resident education programs. "Interim controls" may include in-place management.
- X. "Lead abatement worker" means an employee of a lead abatement contractor or of the owner or manager of a leased or rented dwelling or dwelling unit, or of a child care facility, engaged in lead base substance abatement or who supervises such abatement.
- XI. "Lead base substance" means:
 - (a) When present in a dried film of paint or other coating on walls, woodwork or other surfaces, or in plaster, putty or other substances:
 - (1) The presence of lead equal to or greater than 1.0 milligram of lead per square centimeter of surface area as measured on site by a portable x-ray fluorescence analyzer; or
 - (2) The presence of lead equal to or greater than 0.5 percent lead by weight as determined by laboratory analysis.
 - (b) When present in soil, the presence of lead equal to or greater than 400 parts per million of lead in bare soil in children's play areas or 1,200 parts per million average for bare soil in the rest of the yard.
 - (c) When present in surface dust and quantified as an area or mass concentration:
 - (1) The presence of lead on floors, equal to or greater than 40 micrograms of lead per square foot;
 - (2) The presence of lead on windowsills, equal to or greater than 250 micrograms of lead per square foot;
 - (3) The presence of lead in window wells, equal to or greater than 400 micrograms of lead per square foot; or
 - (4) As established by the United States Environmental Protection Agency, in which case the federal standard shall prevail.

XII. "In-place management" means the use of maintenance or administrative controls, including specialized cleaning and periodic monitoring, to prevent lead base substances from becoming lead exposure hazards.

XIII. "Lead base substance abatement" means any set of measures designed to permanently eliminate a lead exposure hazard, including removal, containment, encapsulation, or replacement of surfaces or fixtures that present a lead exposure hazard and all preparation, cleanup, and post abatement clearance testing associated with such measures.

XIV. "Lead abatement contractor" means any person or entity engaged in lead base substance abatement.

XV. "Lead inspector" means any person or entity engaged in inspections for the presence of lead base substances.

XVI. "Lead exposure hazard" means:

(a) The presence of lead base substances on chewable, accessible, horizontal surfaces that protrude more than 1/2 inch and are located more than 6 inches but less than 4 feet from the floor or ground;

(b) Lead base substances which are peeling, chipping, chalking, or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated and is likely to become accessible to a child;

(c) Lead base substances on interior or exterior surfaces that are subject to abrasion or friction or subject to damage by repeated impact; or

(d) Bare soil in play areas or the rest of the yard that contains lead in concentrations equal to or greater than the limits defined in RSA 130-A:1, XI(b).

XVI-a. "Lead hazard reduction" means a set of measures designed to reduce a lead exposure hazard, including abatement, interim controls, or a combination of them.

XVI-b. "Lead risk assessor" means an individual who conducts risk assessments, as defined in He-P 1602.44, develops lead hazard reduction plans, as defined in paragraph XVI-a, and issues final risk assessment reports.

XVI-c. "Lead clearance testing technician" means an individual who conducts tests for the presence of surface dust, as defined in subparagraph XI(c), or lead in soil, as defined in subparagraph XI(b).

XVII. "Occupant" means any person who legally resides in a dwelling or dwelling unit.

XVIII. "Owner" means any person who, alone or jointly or severally with others, has legal title to any dwelling, dwelling unit, or child care facility, or a person who has charge, care or control of a dwelling, dwelling unit, or child care facility as an agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. An agent of the owner excludes real estate, property management, and other entities which do not have authority to fund capital or major property rehabilitation on behalf of the owner. The term "owner" does not include a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at a dwelling, dwelling unit or child care facility and who does not participate in the management of a dwelling, dwelling unit or child care facility. For the purpose of this definition, the owner of publicly owned dwellings, dwelling units or child care facilities shall be the chief administrative officer of the responsible town, city, county or state agency.

XIX. "Participating" or "participate" "in the management of a dwelling, dwelling unit or child care facility" means the actual participation by a holder in the management or operational affairs of a dwelling, dwelling unit or child care facility, including without limitation where a holder exercises control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decision-making with respect to all or substantially all of the operations (as opposed to financial or administrative) aspects of the dwelling, dwelling unit or child care facility. The following types of activities, in and of themselves, shall not constitute participation in the management of a dwelling, dwelling unit or child care facility:

(a) Taking title to a dwelling, dwelling unit or child care facility by foreclosure, by accepting a deed to such dwelling, dwelling unit or child care facility in lieu of foreclosure, by taking title to such dwelling, dwelling unit or child care facility by other similar means or the transfer or sale of such dwelling, dwelling unit or child care facility.

(b) Conducting, or requiring the borrower to conduct, an environmental assessment or audit of the dwelling, dwelling unit or child care facility.

(c) Withholding funds under an existing obligation or restructuring or renegotiating the terms of a borrower's obligations, including, but not limited to, requiring the payment of interest, the extension of payment

periods or the issuance of additional funds.

(d) Providing financial advice to the borrower.

(e) Requiring or advising the borrower to comply with federal, state and local laws, rules, regulations, orders and permits.

(f) Collecting rents, maintaining utility services and securing the dwelling, dwelling unit or child care facility from unauthorized entry.

(g) Undertaking a lead base substance abatement.

XX. "'Person" means any individual, corporation, company, association, partnership or other entity and includes town, city, county and state governmental agencies.

XXI. "'Primarily to protect a mortgage interest or security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

Source. 1993, 325:2. 1995, 213:1; 310:175, 181-183. 1997, 165:1, 19. 2000, 96:1, 2. 2002, 63:1, 2, eff. Jan. 1, 2003.

Section 130-A:2

130-A:2 Duties of the Commissioner. –

I. The commissioner shall:

(a) License in accordance with RSA 130-A:12, I, or deny or revoke the licensure of, any lead inspector, lead risk assessor, or lead abatement contractor advertising, offering or otherwise making available services in the state of New Hampshire, whether or not the inspector, contractor, or lead risk assessor is incorporated in the state.

(b) Certify employees of owners or managers of dwellings, dwelling units, or child care facilities, and of lead abatement contractors, who are engaged in lead base substance abatement, or refuse to provide or revoke such certification. Separate certificates shall be issued to workers who supervise other certified workers and to lead clearance testing technicians.

(c) Collect fees for the issuance of licenses and certificates under RSA 130-A:2, I(a), (b), and (h).

(d) Adopt rules required under this chapter.

(e) Implement public education programs for the general public, for owners, managers and occupants of dwelling and dwelling units, for owners and operators of child care facilities, and for physicians and other health care workers providing services to children concerning the prevention and treatment of lead poisoning and relative to the provisions of this chapter and the reporting of lead poisoning under RSA 141-A.

(f) Implement comprehensive case management for cases of lead poisoning when a child's blood lead level meets or exceeds 15 micrograms per deciliter. Case management shall include the coordination of medical services appropriate for the treatment of the reported lead poisoning.

(g) Provide training for and maintain an active program of coordination with health authorities relative to the control of lead base substances in owner-occupied and renter-occupied housing, with specific regard to the conduct of inspections, lead base substance abatement, in-place management, and enforcement activities carried out under this chapter. The commissioner shall make reasonable efforts to ensure that such training programs are held in areas with high incidence of lead exposure hazards, and that property owners are educated about methods to prevent lead exposure hazards before they arise and how hazards can be addressed once identified.

(h) Certify training programs for lead abatement contractors, lead inspectors, lead risk assessors, lead clearance testing technicians, and lead abatement workers.

(i) Develop and implement, in accordance with RSA 130-A:7, an investigation and enforcement program for lead base substances and the reduction of lead exposure hazards.

(j) Develop and maintain a data base on the incidence of lead poisoning in children. This data base shall be established using data supplied under RSA 130-A:3.

(k) Repealed

(l) Develop educational materials in accordance with RSA 130-A:5.

II. The commissioner may establish, in accordance with rules adopted under RSA 541-A, a notification program relative to lead base substance inspection and abatement activities.

Source. 1993, 325:2. 1995, 310:183. 1997, 165:2, 3. 2000, 96:3, 4. 2002, 63:3, eff. Jan. 1, 2003. 2006, 314:1, 6, eff. Jan. 1, 2007.

Section 130-A:3

130-A:3 Laboratory Reporting. – Any laboratory performing blood lead analysis on adults or children residing in New Hampshire shall report, in accordance with rules adopted under RSA 130-A:10, test results of such analysis.

Source. 1993, 325:2, eff. July 1, 1994.

Section 130-A:4

130-A:4 Prohibited Use of Lead Paint. – It shall be unlawful for any person to use or apply, or cause to be used or applied, in any child care facility, dwelling or dwelling unit any paint containing more than 0.06 percent lead.

Source. 1993, 325:2, eff. July 1, 1994.

Section 130-A:5

130-A:5 Investigations. –

I. The commissioner shall investigate cases of lead poisoning in children reported under RSA 141-A whose blood lead level meets or exceeds 10 micrograms per deciliter of whole venous blood, as reported on 2 separate tests except that a blood lead level may be designated as elevated by the health care provider when the level reported meets or exceeds 10 micrograms per deciliter on the first venous test. With such a declaration, a second test shall not be required. The commissioner may also conduct investigations when there is reason to believe that a lead exposure hazard, as defined in RSA 130-A:1, XVI(b) and (d), for a child exists. Such investigations shall include, but not be limited to:

(a) Requiring additional information and periodic reports from the child's health care provider, the owner or owner's agent of a leased or rented dwelling or dwelling unit occupied by a child, the owner or operator of any child care facility attended by the child, and any lead inspector, lead risk assessor, or lead abatement contractor involved in lead hazard reduction at the child's dwelling, dwelling unit, or child care facility.

(b) Inspections of dwellings or dwelling units or of any child care facility, and testing environmental samples.

(c) Issuing orders requiring the reduction of lead exposure hazards from a leased or rented dwelling or dwelling unit and from a child care facility, or issuing a notice to the owner of a dwelling or dwelling unit.

II. [Repealed.]

III. The commissioner may request health authorities to assist in such investigations.

Source. 1993, 325:2. 1995, 310:183. 1997, 165:4. 2000, 96:5. 2002, 63:4, eff. Jan. 1, 2003. 2007, 293:1, 15(I), eff. Jan. 1, 2008.

Section 130-A:6

130-A:6 Inspections. –

I. The commissioner may, as part of an investigation conducted under RSA 130-A:5, conduct an inspection of any leased or rented dwelling or dwelling unit during business hours, or at a time mutually agreed upon with the owner or the owner's agent, for the purposes of identifying the presence of lead base substances. The findings of the inspection shall be provided to the occupant, the health authority, the child's health care provider and to the owner or the owner's agent. If the leased or rented dwelling has multiple units, and if a lead exposure hazard is determined to exist during an investigation conducted under RSA 130-A:5, the commissioner shall conduct inspections of all other dwelling units of the leased or rented dwelling with the owner or owner's agent for the purposes of identifying the presence of lead base substances. The findings of these inspections shall be provided to the occupant, the health authority, and the owner or the owner's agent. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(a), (b) or (c), the commissioner shall issue an order requiring lead hazard reduction to the owner and, if appropriate, to the owner's agent. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(d), the commissioner may issue an order requiring lead hazard reduction to the owner and, if appropriate, to the owner's agent. A copy of the order shall be provided to the occupants of the dwellings or dwelling unit, to the occupants of any adjacent or attached dwellings or

dwelling units having the same owner and where a child resides, and to the health authority. An order shall be issued in accordance with RSA 130-A:7.

II. The commissioner may, as part of an investigation conducted under RSA 130-A:5, if the lead-poisoned child spends 10 hours or more a week at the facility, and after making reasonable efforts at notification of the owner of a child care facility and the license holder if other than the owner, conduct an inspection of a child care facility constructed prior to 1978 during business hours, or at a time mutually agreed to, for the purposes of identifying the presence of lead base substances. The findings of the inspection shall be provided to the owner, to the license holder if other than the owner, the child's health care provider, and the health authority. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(a), (b) or (c), the commissioner shall issue an order requiring lead hazard reduction to the owner and to the license holder, if other than the owner. When a lead exposure hazard is determined to exist per RSA 130-A:1, XVI(d), the commissioner may issue an order requiring lead hazard reduction to the owner and to the license holder, if other than the owner. A copy of the order shall be provided to the health authority and to the parents or guardians of children who use the child care facility. An order shall be issued in accordance with RSA 130-A:7.

III. The commissioner may, as part of an investigation conducted under RSA 130-A:5 and when the child reported under RSA 141-A resides in a dwelling or dwelling unit owned by the child's parents or guardians, conduct an inspection with the consent of the owner at a time convenient to the owner and provide to the owner the result of the inspection. When a lead exposure hazard is determined to exist, the commissioner shall provide a notice to the owner and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

IV. The commissioner may, as part of an investigation carried out under RSA 130-A:5, conduct an inspection of structures other than the dwelling or dwelling unit of the child and child care facilities used by the child. The inspection shall be conducted with the consent of the owner, manager, or other person in charge of the facility or structure at a time convenient to the owner, manager or other person in charge. Such inspections shall be made only when there are reasonable grounds to suspect that a lead exposure hazard may exist. The commissioner shall provide to the owner, manager or other person in charge the result of the inspection. When a lead exposure hazard is determined to exist, the commissioner shall provide to the owner, manager or other person in charge, the child's health care provider and the health authority a notice and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

V. The commissioner, or designee, may conduct inspections during lead hazard reduction activity to assure that the activity is conducted in accordance with rules adopted under this chapter.

VI. Inspections shall be carried out in accordance with rules adopted under RSA 130-A:10.

Source. 1993, 325:2. 1995, 213:4; 310:183. 1997, 165:5, 6, eff. Aug. 8, 1997, 293:2, eff. Jan. 1, 2008.

Section 130-A:6-a

130-A:6-a Property Owner Notification. –

I. The department shall make reasonable efforts to notify in writing the owner of a dwelling or dwelling unit where the child resides if lead levels of 7.5 to 9.9 micrograms per deciliter are found in the child's blood. Such notice to the property owner shall specify that it is neither a finding that a lead exposure hazard exists in the property nor is it an order for lead hazard reduction.

II. Eviction of a tenant based on the presence in the dwelling or dwelling unit of a child with a blood level of 7.5 to 9.9 micrograms per deciliter shall be unlawful. There shall be a rebuttable presumption that any eviction action, instituted by the owner within 6 months of receipt of the notice sent by the department pursuant to paragraph I, is based on the child's elevated blood lead level. If a court finds that an eviction is based on the child's elevated blood lead level, it shall deny the eviction and award damages to the tenant pursuant to RSA 540:14, II. However, if an owner in response to the notice from the department discovers a lead exposure hazard in the dwelling or dwelling unit, the owner may proceed with relocation of the tenants, provided that the owner meets the requirements of RSA 130-A:8-a, I or II.

III. Refusal of a tenant to permit the owner to have access to the dwelling or dwelling unit in order to inspect for lead exposure hazards shall be good cause for eviction pursuant to RSA 540:2, II(e); provided, however,

that the owner gives the tenant at least 48 hours' prior written notice, and that the inspection is to be conducted at a reasonable time.

Source. 1995, 145:2; 310:175. 1997, 165:7. 2002, 63:5, eff. Jan. 1, 2003. 2007, 293:3, eff. Jan. 1, 2008.

Section 130-A:7

130-A:7 Enforcement. –

I. Whenever the commissioner has reason to believe that the provisions of RSA 130-A:9, or any rule adopted by the commissioner under this chapter has been violated, the commissioner shall issue a notice of violation. The commissioner may also impose administrative fines under RSA 130-A:14 and may also request injunctive relief under RSA 130-A:17.

II. The commissioner, in requiring lead hazard reduction under RSA 130-A:6, I or II, shall do so by written order. The order shall include, as appropriate, the following information:

(a) The findings of the inspection, including the specific locations determined to constitute a lead exposure hazard.

(b) The methods appropriate for lead hazard reduction and copies of rules pertaining to lead hazard reduction adopted under the provisions of this chapter.

(c) The period of time within which lead hazard reduction shall be completed. The time period for lead hazard reduction of an occupied dwelling or dwelling unit shall not exceed 90 days except that the period may be extended at the discretion of the commissioner for the period of time determined to be reasonable by the commissioner under the circumstances of the case.

(d) The standards for reoccupancy of a dwelling or dwelling unit by a child, or the resumption of operations of a child care facility, after the conduct of lead hazard reduction.

(e) Responsibility for verification by a lead inspector or lead risk assessor of lead hazard reduction to the commissioner.

III. Any person subject to an order issued under this section may petition the superior court to review such order. The commissioner may also impose administrative fines under RSA 130-A:14 and may request injunctive relief under RSA 130-A:17 in the event that an order, served by the commissioner, is not followed or a fine imposed by the commissioner is not paid.

IV. Any order issued by the commissioner that requires lead hazard reduction shall be binding upon and enforceable against the person to whom the order was issued and any other individual or entity that may acquire ownership of, or an interest in, the property that is subject to the order.

V. Interim controls, as defined in this chapter, may be used as an acceptable alternative to lead hazard abatement only with the prior written approval of the commissioner and for a period not to exceed 2 years. Within that 2-year period the person subject to the order shall either take the steps necessary to eliminate or enclose the lead exposure hazards or remove the dwelling or dwelling unit from the rental market.

Source. 1993, 325:2. 1995, 310:183. 1997, 165:8. 2000, 96:6, eff. June 26, 2000. 2006, 314:2-4, eff. Jan. 1, 2007.

Section 130-A:8

130-A:8 Occupants 6 Years of Age or Less. – [Repealed 1997, 165:20, eff. Aug. 8, 1997.]

Section 130-A:8-a

130-A:8-a Relocation of Tenants. –

I. In circumstances where the presence of a lead exposure hazard is unsuspected and becomes known when the dwelling or dwelling unit is already rented to a family with a child, the owner may temporarily relocate the family during the lead hazard reduction activity. The temporary relocation shall meet all of the following conditions:

(a) The tenant must be offered an available replacement dwelling which is safe, sanitary, and does not contain an interior lead exposure hazard defined in RSA 130-A:1, XVI(b). If a child in the tenant family has been found to have a blood lead level which exceeds 30 micrograms per deciliter, the dwelling shall not contain any lead exposure hazard.

(b) The owner shall make reasonable efforts to locate a replacement dwelling in the same elementary school district as the unit from which the family is being relocated.

(c) The rent for the replacement unit shall not exceed the rent for the unit from which the family is being displaced. The tenant has the duty to pay rent for the replacement dwelling unit provided, however, that any rent paid by the tenant for the unit from which the tenant has been displaced which covers the time period that the tenant occupies the replacement dwelling shall be paid to the owner of the replacement dwelling by the owner of the original unit. The owner may relocate the family to a dwelling unit that is more expensive than the original unit, provided that the owner pays the difference in rent between the 2 units.

(d) The owner shall agree in writing to permit the family to reoccupy the original dwelling unit as soon as the lead exposure hazard has been reduced.

(e) The owner shall pay the reasonable and actual costs of relocation from and back to the original dwelling unit. The owner may, at such owner's sole option, personally move the tenant's household furnishings and personal property or move them by using agents or employees, rather than pay the tenant to have such tenant's possessions moved. The payment of moving expenses authorized under this subparagraph shall not exceed the amount of the tenant's security deposit plus the prepaid rent.

II. Eviction of a family based on the presence of a lead exposure hazard shall not be permitted when the method of lead hazard reduction chosen by the owner is interim controls or encapsulation. When the owner has been given a written order for lead hazard reduction by the commissioner pursuant to RSA 130-A:7, the owner may bring an action to evict the family when all of the following conditions have been met:

(a) The method of lead hazard reduction can reasonably be expected to require more than 30 days to perform.

(b) The tenant shall be offered an available replacement dwelling which is safe, sanitary, and does not contain a lead exposure hazard.

(c) The replacement unit shall be comparable in size to the unit from which the family is being relocated.

(d) The owner shall make reasonable efforts to locate a replacement dwelling in the same elementary school district as the unit from which the family is being relocated.

(e) The rent shall be comparable to the rent for the unit from which the family is being displaced.

(f) The owner shall agree in writing to permit the tenant to reoccupy the original dwelling unit when the lead exposure hazard has been reduced, provided that:

(1) The lead hazard reduction occurs within 6 months of the date the tenant moved out of the original dwelling.

(2) The tenant provides the owner with written notice of the address where such tenant can be contacted when the lead exposure hazard has been reduced.

(3) Within 10 days of receiving the offer to reoccupy the original unit, the tenant agrees to do so.

(4) The tenant agrees to resume the tenancy within 30 days of accepting the owner's offer.

(g) Prior to the time the family vacates the unit, the owner shall return the tenant's security deposit, regardless of any rental arrears owed by the tenant or the condition of the unit, plus all prepaid rent. Prior to the reoccupancy of the unit under the provisions set forth in RSA 130-A:8-a, II(f), the tenant shall pay any rental arrears which shall have been demanded under RSA 540:4, prior to the relocation of the tenant. The rental arrears shall be paid at least 10 days prior to reoccupancy. The tenant shall return the security deposit to the owner within 45 days after reoccupancy pursuant to RSA 540-A:6.

(h) The landlord provides the tenant with a 30-day eviction notice pursuant to RSA 540:2, II(f). Such notice shall inform the tenant of the tenant's right to the return of the security deposit and prepaid rent and the right to reoccupy the premises as set forth in RSA 540:2, II(f).

III. When an owner has been given a written order for lead hazard reduction by the commissioner, pursuant to RSA 130-A:7, the owner may withdraw the dwelling unit from the residential rental market in lieu of undertaking reduction of the lead exposure hazard. In such a case, the owner may bring an action to evict the family if the owner fulfills all of the conditions set forth under paragraph II. The dwelling unit shall not be subsequently rented for residential purposes without the reduction of all of the lead exposure hazards associated with the unit.

IV. Any owner who violates paragraph III by re-renting the dwelling unit for residential purposes without first reducing the lead exposure hazard shall be subject to the remedies set forth in RSA 130-A:14 and 16, and

liable to the family who was evicted due to the lead exposure hazard in the amount of \$1,000 plus costs and reasonable attorney's fees. Each dwelling unit re-rented without reduction of lead exposure hazards shall constitute a separate violation.

V. Any owner who conveys, sells, or transfers an interest in a dwelling unit which has been withdrawn from the residential rental market pursuant to paragraph IV without disclosing in writing the existence of the commissioner's order shall be subject to the penalties set forth in RSA 130-A:14 and 16. The conveyance of each dwelling unit so transferred shall constitute a separate violation. No buyer or transferee who has notice of the commissioner's order may rent the dwelling unit without first reducing the lead exposure hazards referenced in the order.

VI. Any owner who fails to comply with subparagraph II(f) shall be liable to the displaced tenant in the amount of \$500 plus costs and reasonable attorney's fees.

VII. The refusal of a family to temporarily relocate after the owner has met all of the requirements of paragraph I shall constitute grounds for eviction pursuant to RSA 540:2, II(d).

VIII. Any tenant who is party to a written lease and who is forced to relocate due to a lead exposure hazard may, at his sole option, terminate the lease as of the day the tenant relocates from the dwelling unit. The tenant wishing to terminate shall provide written notice to the owner or the owner's agent within 7 days of the date of relocation. Once the tenant provides such notice, the owner shall no longer be liable for a rent supplement, if any, paid pursuant to subparagraph I(c).

Source. 1993, 325:2. 1995, 306:6; 310:183. 1997, 165:9, eff. Aug. 8, 1997. 2006, 192:1, eff. Jan. 1, 2007.

Section 130-A:9

130-A:9 Prohibitions. –

I. No person shall perform or cause to be performed lead base substance abatement, in-place management, or interim controls in a dwelling or dwelling unit, or in any child care facility, in any manner other than as provided for in rules adopted under RSA 130-A:10.

II. No person shall perform or cause to be performed a lead inspection or lead risk assessment, as defined in HE-P 1600, in a dwelling or dwelling unit or in a child care facility in any manner other than as provided for in rules adopted under RSA 130-A:10.

III. No child or pregnant woman shall be present in a leased or rented dwelling or dwelling unit, or in a child care facility, during the period of lead hazard reduction when the method of reduction causes the release of lead base substances which may be inhaled or ingested. The dwelling or dwelling unit or the child care facility shall not be reoccupied until an inspection is performed which indicates the lead exposure hazard has been reduced. The commissioner shall include this prohibition in any order issued under RSA 130-A:7.

IV. No person performing inspections or lead risk assessments, as defined in HE-P 1600, for the presence of lead base substances as a lead inspector or lead risk assessor after lead hazard reduction shall perform or have performed the lead hazard reduction.

V. No person shall advertise or otherwise offer or make available services as a lead inspector, lead risk assessor, or lead abatement contractor without being licensed under RSA 130-A:12.

VI. No person shall engage any individual for lead base substance abatement who has not been tested and certified under RSA 130-A:12. However, individuals not certified under RSA 130-A:12, II, may engage in activities related to a lead exposure hazard reduction plan, such as, but not limited to, installation of exterior siding, carpet or paving, or application of encapsulants, provided that the individual does not engage directly in lead based substance abatement and the plan is reviewed and approved by a contractor licensed under RSA 130-A:12, I.

VII. No training program shall be offered in this state for the purposes of training lead inspectors, lead risk assessors, lead abatement contractors, lead clearance testing technicians, or lead abatement workers that has not been certified under RSA 130-A:12.

Source. 1993, 325:2. 1995, 310:183. 1997, 165:10, 11. 2000, 96:7, eff. June 26, 2000. 2007, 293:5, eff. Jan. 1, 2008.

Section 130-A:10

130-A:10 Rulemaking. – The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. Qualifications and procedures for licensure of lead inspectors, lead risk assessors, and lead abatement contractors, in accordance with RSA 130-A:12. The rules shall provide for reciprocity with other states having similar standards.

II. Standards and procedures for the testing and certification of lead abatement workers and lead clearance testing technicians, in accordance with RSA 130-A:12. The rules shall provide for reciprocity with other states having similar standards.

III. The conduct of inspections and inspection standards for lead inspectors and lead risk assessors, including procedures for issuing certificates of inspection, certifications of compliance, and certifications when a dwelling or dwelling unit is found to be lead free, certifications when a dwelling unit is found to be lead safe and for the review and validation of such certificates or certifications by the department for any person who so requests.

IV. Fees to be collected for the issuance of licenses to lead inspectors, lead risk assessors, lead abatement contractors, for certification of lead abatement workers and lead clearance testing technicians, for testing resulting from investigations, for certifications of training programs, and for notifications under RSA 130-A. Property owners who own more than 4 but fewer than 7 dwelling units shall pay a fee for licensure which is 1/2 of that paid by other lead abatement contractor licensees. Such reduced fee license shall only be valid for work on dwellings or dwelling units owned by such license holder.

V. Procedures for the conduct of investigations carried out under RSA 130-A:5, including the conduct of inspections and establishment of a blood lead level requiring an inspection.

VI. Procedures for issuing orders under RSA 130-A:7, including procedures for extending the time available for lead hazard reduction and interim controls for leased or rented dwellings where no child resides or frequents regularly at the time of inspection and issuance of the order.

VII. Procedures for notification activities carried out under RSA 130-A:14.

VIII. Procedures for lead hazard reduction, in-place management, and interim controls for interior and exterior surfaces. The procedures shall include methods of abatement and the measures necessary to protect the health and safety of lead abatement workers and to control the release of lead base substances to the environment. The commissioner shall allow for the use of alternate procedures that result in the same level of protection as otherwise provided by the rules adopted under this chapter.

IX. A schedule of administrative fines which may be imposed under RSA 130-A:14 for a violation of this chapter or the rules adopted pursuant to it.

X. Procedures for notice and hearing prior to the imposition of an administrative fine imposed under RSA 130-A:14.

XI. Standards for training programs for lead inspectors, lead risk assessors, lead abatement contractors, lead clearance testing technicians, or lead abatement workers.

XII. Procedures for reporting of laboratory test results under RSA 130-A:3.

XIII. Standards and procedures for certifying laboratories performing tests to detect or measure lead in human body fluids or tissues.

XIV. Paints and other substances which may be approved as encapsulants.

XV. Standards and procedures for granting a variance from compliance with one or more provisions of RSA 130-A.

Source. 1993, 325:2. 1995, 213:2, 3; 310:175, 183. 1997, 165:12-15. 2000, 96:8, eff. June 26, 2000. 2007, 293:6, 7, eff. Jan. 1, 2008.

Section 130-A:11

130-A:11 Application. –

I. The department shall implement and enforce the provisions of this chapter throughout the state.

II. Notwithstanding the provisions of paragraph I, any municipality which adopts this chapter by a majority vote of its local governing body, as defined in RSA 672:6, may assume full and sole legal authority to enforce the provisions of this chapter by any means lawfully delegated to the municipality by any statute, except for matters pertaining to licensure and certification under RSA 130-A:12 which shall rest solely with the

department.

III. Health authorities in municipalities other than those adopting this chapter under RSA 130-A:11, II, may, upon request to and approval by the commissioner, carry out investigations under RSA 130-A:5. The issuance of orders shall remain the sole responsibility of the commissioner.

Source. 1993, 325:2. 1995, 310:175, 183, eff. Nov. 1, 1995.

Section 130-A:12

130-A:12 Licensure; Certification. –

I. (a) A license to perform as a lead abatement contractor, lead inspector, or lead risk assessor, shall be issued in writing by the department in accordance with rules adopted under RSA 130-A:10, I. The license shall be valid for 12 months from the date of issuance, shall contain the expiration date, and shall contain the official signature of the commissioner or designee. The license or a certified copy of the license shall be available for inspection at any worksite during the period of work of the lead abatement contractor, lead inspector, or lead risk assessor.

(b) Any owner who owns 4 or fewer dwelling units shall not be required to obtain a lead abatement contractor license to perform lead abatement on such owner's dwellings or dwelling units, provided that such owner shall comply with all rules adopted under RSA 130-A:10, I.

II. Lead abatement workers and lead clearance testing technicians shall first obtain a certification from the department. The certification shall be issued in accordance with rules adopted under RSA 130-A:10, II. The certificate shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall contain the official signature of the commissioner or designee. The certificate or a certified copy of the certificate shall be available for inspection at any worksite where the individual is performing lead base substance abatement or conducting clearance testing.

III. Training programs offered in New Hampshire for lead abatement contractors, lead inspectors, lead risk assessors, and individuals seeking certification as lead abatement workers or lead clearance testing technicians shall first be certified by the department in accordance with rules adopted under RSA 130-A:10, XI. Such certification shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall contain the official signature of the commissioner or designee. The certification or a certified copy of the certificate shall be available for inspection during any period of training.

IV. [Repealed.]

Source. 1993, 325:2. 1995, 310:175, 183. 1997, 165:16. 2000, 96:9, eff. June 26, 2000. 2007, 293:15(II), eff. Jan. 1, 2008.

Section 130-A:13

130-A:13 Notification Program. – The commissioner may, if necessary, institute a program requiring the notification to the department of all inspections for lead base substances carried out by lead inspectors, risk assessments carried out by lead risk assessors, and of all lead hazard reduction activities conducted on child care facilities and on leased or rented dwelling and dwelling units, carried out by lead abatement contractors or by lead abatement workers. The program shall be conducted in accordance with rules adopted under RSA 130-A:10, VII, and the commissioner shall collect fees for notifications. The commissioner may conduct inspections of such activities as necessary to assure that the provisions of this chapter and rules adopted under it are carried out.

Source. 1993, 325:2. 1995, 310:175, 183. 1997, 165:17. 2000, 96:10, eff. June 26, 2000.

Section 130-A:14

130-A:14 Administrative Fines. – The commissioner, after notice and hearing and pursuant to rules adopted under RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The

commissioner shall adopt rules, under RSA 541-A, relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the lead poisoning prevention fund established in RSA 130-A:15.

Source. 1993, 325:2. 1995, 310:183, eff. Nov. 1, 1995. 2007, 293:8, eff. Jan. 1, 2008.

Section 130-A:15

130-A:15 Lead Poisoning Prevention Fund. – There is hereby established the lead poisoning prevention fund to be used to carry out the provisions of this chapter. The fund shall be composed of fees, fines, gifts, grants, donations, bequests, or other moneys from any public or private source and shall be used to implement and encourage lead paint removal and education. The fund shall be nonlapsing and shall be continually appropriated to the commissioner of the department of health and human services for the purposes of this chapter.

Source. 1993, 325:2. 1995, 310:182, eff. Nov. 1, 1995. 2007, 293:9, eff. Jan. 1, 2008.

Section 130-A:16

130-A:16 Penalty. – Any person who violates any provision of this chapter shall be guilty of a misdemeanor for each day that a violation exists. When lead hazard reduction has been ordered, the period of violation shall be calculated from the last date for reduction stated in the order issued under RSA 130-A:7 or in any extension of the order.

Source. 1993, 325:2. 1997, 165:18, eff. Aug. 8, 1997.

Section 130-A:17

130-A:17 Injunctive Relief. – Either the attorney general or the commissioner may bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of this chapter, rules adopted under this chapter, or orders issued pursuant to this chapter, including but not limited to, orders of lead hazard abatement and orders imposing administrative fines.

Source. 1993, 325:2. 1995, 310:183, eff. Nov. 1, 1995. 2006, 314:5, eff. Jan. 1, 2007.

Section 130-A:18

130-A:18 Civil Suits. – Notwithstanding any provision of law to the contrary, the mere presence of a lead base substance shall not constitute negligence on the part of an owner of any dwelling. To establish negligence on the part of an owner, the plaintiff in a civil suit shall demonstrate actual injury caused by the lead base substance. In addition, the mere presence of a lead base substance in a dwelling shall not by itself violate any warranty of habitability.

Source. 1995, 169:1, eff. Jan. 1, 1996.