

SECOND REGULAR SESSION

# HOUSE BILL NO. 1536

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHAAF (Sponsor) AND HUBBARD (Co-sponsor).

Read 1st time January 25, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4679L.01I

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### AN ACT

To repeal sections 701.304, 701.317, and 701.337, RSMo, and to enact in lieu thereof three new sections relating to lead abatement and prevention of lead poisoning.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 701.304, 701.317, and 701.337, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 701.304, 701.317, and 701.337, to read  
3 as follows:

701.304. 1. A representative of the department, or a representative of a unit of local  
2 government or health department licensed by the department for this purpose, may conduct an  
3 inspection or a risk assessment at a dwelling or a child-occupied facility for the purpose of  
4 ascertaining the existence of a lead hazard under the following conditions:

5 (1) The department, owner of the dwelling, and an adult occupant of a dwelling which  
6 is rented or leased have been notified that an occupant of the dwelling or a child six or fewer  
7 years of age who regularly visits the child-occupied facility has been identified as having an  
8 elevated blood lead level as defined by rule; and

9 (2) The inspection or risk assessment occurs at a reasonable time; and

10 (3) The representative of the department or local government presents appropriate  
11 credentials to the owner or occupant; and

12 (4) Either the dwelling's owner or adult occupant or the child-occupied facility's owner  
13 or agent grants consent to enter the premises to conduct an inspection or risk assessment; or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           (5) If consent to enter is not granted, the representative of the department, local  
15 government, or local health department may petition the circuit court for an order to enter the  
16 premises and conduct an inspection or risk assessment after notifying the dwelling's owner or  
17 adult occupant in writing of the time and purpose of the inspection or risk assessment at least  
18 forty-eight hours in advance. The court shall grant the order upon a showing that an occupant  
19 of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility  
20 has been identified as having an elevated blood lead level as defined by rule.

21           2. In conducting such an inspection or risk assessment, a representative of the  
22 department, or representative of a unit of local government or health department licensed by the  
23 department for this purpose, may remove samples necessary for laboratory analysis in the  
24 determination of the presence of a lead-bearing substance or lead hazard in the designated  
25 dwelling or child-occupied facility.

26           3. The director shall assess fees for licenses and accreditation and impose administrative  
27 penalties in accordance with rules promulgated pursuant to sections 701.300 to 701.338. All  
28 such fees [and fines] shall be deposited into the state treasury to the credit of the public health  
29 services fund established in section 192.900, RSMo.

701.317. 1. In addition to any other remedy provided by law, upon a determination by  
2 the director that a provision of sections 701.300 to 701.338, or a standard, limitation, order, rule  
3 or regulation promulgated pursuant thereto, or a term or condition of any license has been  
4 violated, the director may issue an order assessing an administrative penalty upon the violator  
5 under this section. An administrative penalty shall not be imposed until the director has issued  
6 a notice of violation pursuant to section 701.311 to the violator regarding the same type of  
7 violation within the calendar year. Any order assessing an administrative penalty shall state that  
8 an administrative penalty is being assessed under this section and that the person subject to the  
9 penalty may appeal as provided by this section. Any such order that fails to state the statute  
10 under which the penalty is being sought, the manner of collection or rights of appeal shall result  
11 in the state's waiving any right to collection of the penalty.

12           2. The director shall promulgate rules and regulations for the assessment of  
13 administrative penalties. Such rules shall take into consideration the harm or potential harm  
14 which the violation causes, or may cause, the violator's previous compliance record, and any  
15 other factors which the department may reasonably deem relevant.

16           3. An administrative penalty shall be paid within sixty days from the date of issuance of  
17 the order assessing the penalty. Any person subject to an administrative penalty may appeal to  
18 the department within ten days after receipt of the imposition of penalty. Upon receipt of a  
19 request for hearing, the department shall schedule the hearing to be held within thirty days. Any  
20 appeal will stay the due date of such administrative penalty until the appeal is resolved. Any

21 person who fails to pay an administrative penalty by the final due date shall be liable to the state  
22 for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts  
23 owed. An action may be brought in the appropriate circuit court to collect any unpaid  
24 administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

25 4. An administrative penalty shall not be increased in those instances where department  
26 action, or failure to act, has caused a continuation of the violation that was a basis for the penalty.  
27 Any administrative penalty must be assessed within two years following the department's initial  
28 discovery of such alleged violation, or from the date of the department in the exercise of ordinary  
29 diligence should have discovered such alleged violation.

30 5. Any final order imposing an administrative penalty is subject to judicial review on the  
31 record upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject  
32 to the administrative penalty. The appeal shall be filed in the circuit court of the county where  
33 the violation occurred.

34 6. The director may elect to assess an administrative penalty, or, in lieu thereof, to  
35 request that the attorney general or prosecutor file an appropriate legal action seeking a civil  
36 penalty in the appropriate circuit court.

37 7. The penalties collected pursuant to this section shall be [deposited in the Missouri lead  
38 abatement loan fund as established in section 701.337] **distributed annually to the schools of**  
39 **the several counties**. Such penalties shall not be considered charitable contributions for tax  
40 purposes.

701.337. 1. The department shall have the authority to develop a plan for implementing  
2 a program that provides financial assistance via loans or grants to owners of dwellings or  
3 child-occupied facilities for performing lead abatement projects. In developing the plan, the  
4 department shall consult with the department of natural resources and the department of  
5 economic development.

6 2. The program shall accept applications from local entities for implementing at the local  
7 level of lead abatement projects that conform with the requirements of sections 701.300 to  
8 701.338, and any rules promulgated thereunder. For purposes of this section, "local entities"  
9 shall include any municipality or county, any local not-for-profit community or housing  
10 organization or any community assistance project agency.

11 3. There is hereby established in the state treasury the "Missouri Lead Abatement Loan  
12 Fund". The state treasurer shall receive and deposit to the credit of the fund moneys from  
13 appropriations by the general assembly, [penalties paid because of violations of sections 701.301  
14 to 701.338 and those rules promulgated thereto,] repayments by applicants of loans made  
15 pursuant to this section, including interest on such loans, and gifts, bequests, donations or any  
16 other payments made by any public or private entity for use in carrying out the provisions of this

17 section. The state treasurer shall deposit all moneys in the fund in any of the qualified  
18 depositories of the state. All such deposits shall be secured in such a manner and shall be made  
19 upon such terms and conditions as are now or may hereafter be provided by law relative to state  
20 deposits. Interest accrued by the fund shall be credited to the fund. Notwithstanding the  
21 provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the  
22 credit of the general revenue fund at the end of the biennium. The fund shall be used solely for  
23 the purposes of this section and for no other purpose.

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