
HOUSE BILL 2966

State of Washington 55th Legislature 1998 Regular Session

By Representatives McMorris, Cole, Conway, Smith, Boldt and Clements

Read first time . Referred to Committee on .

1 AN ACT Relating to lead-based paint activities; adding a new
2 chapter to Title 70 RCW; creating new sections; prescribing penalties;
3 and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that lead hazards
6 associated with lead-based paint represent a significant and
7 preventable environmental health problem. Lead-based paint is the most
8 widespread of the various environmental sources of lead. Census data
9 shows that one million five hundred sixty thousand homes in Washington
10 state were built prior to 1978 when the sale of residential lead-based
11 paint was banned. These are homes that are believed to contain some
12 lead-based paint.

13 Lead negatively effects every system of the body. It is harmful to
14 individuals of all ages and is especially harmful to children, fetuses,
15 and adults of childbearing age. The effects of lead on a child's
16 cognitive, behavioral, and developmental abilities may necessitate
17 large expenditures of public funds for health care and special
18 education. The irreversible damage to children and subsequent
19 expenditures could be avoided if exposure to lead is reduced.

1 (2) The federal government regulates lead poisoning and lead hazard
2 reduction through:

3 (a)(i) The lead-based paint poisoning prevention act;

4 (ii) The lead contamination control act;

5 (iii) The safe drinking water act;

6 (iv) The resource conservation and recovery act of 1976; and

7 (v) The residential lead-based paint hazard reduction act of 1992;

8 and

9 (b) Implementing regulations of:

10 (i) The department of housing and urban development;

11 (ii) The environmental protection agency;

12 (iii) The occupational safety and health administration; and

13 (iv) The centers for disease control and prevention.

14 (3) In 1992, congress passed the federal residential lead-based
15 paint hazard reduction act, which allows states to provide for the
16 accreditation of lead-based paint activities programs, the
17 certification of persons completing such training programs, and the
18 licensing of lead-based paint activities contractors under standards
19 developed by the United States environmental protection agency.

20 (4) The legislature recognizes the state's need to protect the
21 public from exposure to lead hazards. A qualified and properly trained
22 work force is needed to assist in the prevention, detection, reduction,
23 and elimination of hazards associated with lead-based paint. The
24 purpose of training workers, supervisors, inspectors, risk assessors,
25 and project designers engaged in lead-based paint activities is to
26 protect building occupants, particularly children ages six years and
27 younger from potential lead-based paint hazards and exposures both
28 during and after lead-based paint activities. Qualified and properly
29 trained individuals and firms will help to ensure lead-based paint
30 activities are conducted in a way that protects the health of the
31 citizens of Washington state and safeguards the environment. The state
32 lead-based paint activities program requires that all lead-based paint
33 activities be performed by certified personnel trained by an accredited
34 program, and that all lead-based paint activities meet minimum work
35 practice standards established by the department of health. Therefore,
36 the lead-based paint activities accreditation, training, and
37 certification program shall be established in accordance with this act.
38 The lead-based paint activities accreditation, training, and
39 certification program shall be administered by the department of health

1 and shall be used as a means to assure the protection of the general
2 public from exposure to lead hazards.

3 (5) For the welfare of the people of the state of Washington, this
4 act establishes a lead-based paint activities program within the
5 department of health to protect the general public from exposure to
6 lead hazards and to ensure the availability of a trained and qualified
7 work force to identify and address lead-based paint hazards.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires otherwise.

10 (1) "Abatement" has the same meaning as set forth in 40 C.F.R. Sec.
11 745.223 (1996) as now existing or hereafter amended.

12 (2) "Accredited training program" means a training program that has
13 been accredited by the department to provide training for individuals
14 engaged in lead-based paint activities.

15 (3) "Certified inspector" means an individual who has been trained
16 by an accredited training program, meets all the qualifications
17 established by the department, and is certified by the department to
18 conduct inspections.

19 (4) "Certified abatement worker" means an individual who has been
20 trained by an accredited training program, meets all the qualifications
21 established by the department, and is certified by the department to
22 perform abatements.

23 (5) "Certified firm" includes a company, partnership, corporation,
24 sole proprietorship, association, agency, or other business entity that
25 meets all the qualifications established by the department and performs
26 lead-based paint activities to which the department has issued a
27 certificate.

28 (6) "Certified project designer" means an individual who has been
29 trained by an accredited training program, meets all the qualifications
30 established by the department, and is certified by the department to
31 prepare abatement project designs, occupant protection plans, and
32 abatement reports.

33 (7) "Certified risk assessor" means an individual who has been
34 trained by an accredited training program, meets all the qualifications
35 established by the department, and is certified by the department to
36 conduct risk assessments and sample for the presence of lead in dust
37 and soil for the purposes of abatement clearance testing.

1 (8) "Certified supervisor" means an individual who has been trained
2 by an accredited training program, meets all the qualifications
3 established by the department, and is certified by the department to
4 supervise and conduct abatements, and to prepare occupant protection
5 plans and abatement reports.

6 (9) "Department" means the Washington state department of health.

7 (10) "Federal laws and rules" means:

8 (a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et
9 seq.) and the rules adopted by the United States environmental
10 protection agency under that law for authorization of state programs;

11 (b) Any regulations or requirements adopted by the United States
12 department of housing and urban development regarding eligibility for
13 grants to states and local governments; and

14 (c) Any other requirements adopted by a federal agency with
15 jurisdiction over lead-based paint hazards.

16 (11) "Lead-based paint" means paint or other surface coatings that
17 contain lead equal to or in excess of 1.0 milligrams per square
18 centimeter or more than 0.5 percent by weight.

19 (12) "Lead-based paint activity" includes inspection, testing, risk
20 assessment, risk reduction, lead-based paint hazard reduction project
21 design or planning, or abatement of lead-based paint hazards.

22 (13) "Lead-based paint hazard" means any condition that causes
23 exposure to lead from lead-contaminated dust, lead-contaminated soil,
24 or lead-contaminated paint that is deteriorated or present in
25 accessible surfaces, friction surfaces, or impact surfaces that would
26 result in adverse human health effects as identified by the
27 administrator of the United States environmental protection agency
28 under the toxic substances control act, section 403.

29 (14) "State program" means a state administered lead-based paint
30 activities certification and training program that meets the federal
31 environmental protection agency requirements.

32 (15) "Person" includes an individual, corporation, firm,
33 partnership, or association, an Indian tribe, state, or political
34 subdivision of a state, and a state department or agency.

35 (16) "Risk assessment" means:

36 (a) An on-site investigation to determine the existence, nature,
37 severity, and location of lead-based paint hazards; and

1 (b) The provision of a report by the individual or the firm
2 conducting the risk assessment, explaining the results of the
3 investigation and options for reducing lead-based paint hazards.

4 (17) "Secretary" means the secretary of the Washington state
5 department of health.

6 NEW SECTION. **Sec. 3.** The department shall administer and enforce
7 a state program for worker training and certification, and training
8 program accreditation, which shall include those program elements
9 necessary to assume responsibility for federal requirements for a
10 program as set forth in the residential lead-based paint hazard
11 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part
12 745, Subparts L and Q (1996), Title X of the housing and community
13 development act of 1992 (P.L. 102-550), and Title IV of the toxic
14 substances control act (15 U.S.C. Sec. 2601 et seq.).

15 (2) The department is authorized to adopt rules under the authority
16 of the secretary as referenced in RCW 43.70.040 that are consistent
17 with federal requirements to implement a state program. Rules adopted
18 under this section shall:

19 (a) Establish minimum accreditation requirements for lead-based
20 paint activities for training providers;

21 (b) Establish work practice standards for conduct of lead-based
22 paint activities;

23 (c) Establish certification requirements for individuals and firms
24 engaged in lead-based paint activities;

25 (d) Require the use of certified personnel in all lead-based paint
26 activities;

27 (e) Be revised as necessary to comply with federal law and rules
28 and to maintain eligibility for federal funding;

29 (f) Facilitate reciprocity and communication with other states
30 having a certification program;

31 (g) Provide for decertification, deaccreditation, and financial
32 assurance for a person certified by or a training provider accredited
33 by the department; and

34 (h) Be issued in accordance with the administrative procedure act,
35 chapter 34.05 RCW.

36 (3) The department may accept federal funds for the administration
37 and enforcement of the program in accordance with RCW 43.70.120.

1 (4) To the extent that program costs are not covered by federal
2 grant moneys, the department shall assess fees to cover all program
3 costs, including, but not limited to, certification and accreditation
4 as provided for in RCW 43.70.250 for the issuance and renewal of
5 certificates and for the review of training courses, and compliance and
6 enforcement.

7 (5) This program shall equal, but not exceed, legislative authority
8 under federal requirements as set forth in the residential lead-based
9 paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), Title
10 X of the housing and community development act of 1992 (P.L. 102-550),
11 and Title IV of the toxic substances control act (15 U.S.C. Sec. 2601
12 et seq.).

13 (6) Any rules adopted by the department shall be consistent with
14 federal laws, regulations, and requirements relating to lead-based
15 paint activities specified by the residential lead-based paint hazard
16 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
17 housing and community development act of 1992 (P.L. 102-550), to ensure
18 consistency in regulatory action. The rules may not be more
19 restrictive than corresponding federal regulations unless such
20 stringency is specifically authorized by this chapter.

21 NEW SECTION. **Sec. 4.** The secretary has rule-making authority in
22 accordance with criteria specified in RCW 43.70.040.

23 NEW SECTION. **Sec. 5.** (1) The department shall establish a program
24 for certification of persons involved in lead-based paint activities
25 and for accreditation of training providers in compliance with federal
26 laws and rules.

27 (2) Rules adopted under this section shall:

28 (a) Establish minimum accreditation requirements for lead-based
29 paint activities for training providers;

30 (b) Establish work practice standards for conduct of lead-based
31 paint activities;

32 (c) Establish certification requirements for individuals and firms
33 engaged in lead-based paint activities;

34 (d) Require the use of certified personnel in any lead-based paint
35 hazard reduction activity;

36 (e) Be revised as necessary to comply with federal law and rules
37 and to maintain eligibility for federal funding;

1 (f) Facilitate reciprocity and communication with other states
2 having a certification program;

3 (g) Provide for decertification, deaccreditation, and financial
4 assurance for a person certified or accredited by the department; and

5 (h) Be issued in accordance with the administrative procedure act,
6 chapter 34.05 RCW.

7 (3) This program shall equal, but not exceed, legislative authority
8 under federal requirements as set forth in the residential lead-based
9 paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40
10 C.F.R. Part 745 (1996), Subparts L and Q, Title X of the housing and
11 community development act of 1992 (P.L. 102-550), and Title IV of the
12 toxic substances control act (15 U.S.C. Sec. 2601 et seq.).

13 (4) Any rules adopted by the department shall be consistent with
14 federal laws, regulations, and requirements relating to lead-based
15 paint activities specified by the residential lead-based paint hazard
16 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
17 housing and community development act of 1992 (P.L. 102-550), to ensure
18 consistency in regulatory action. The rules may not be more
19 restrictive than corresponding federal regulations unless such
20 stringency is specifically authorized by this chapter.

21 (5) The department shall assess fees to cover the costs of
22 administering and enforcing the standards and rules that are applicable
23 to such programs and contractors. The department shall prescribe fees
24 as provided in RCW 43.70.250 for the issuance and renewal of
25 certificates, the administration of examinations, and for the review
26 and accreditation of training courses.

27 (6) The department may accept federal funds for the administration
28 of the program. To the extent that program costs are not covered by
29 the federal grant moneys, the department shall assess fees to cover all
30 program costs.

31 NEW SECTION. **Sec. 6.** The department shall adopt rules to:

32 (1) Establish procedures and requirements for the accreditation of
33 lead-based paint activities training programs including, but not
34 limited to, the following:

35 (a) Training curriculum;

36 (b) Training hours;

37 (c) Hands-on training;

38 (d) Trainee competency and proficiency;

1 (e) Training program quality control;

2 (f) Procedures for the reaccreditation of training programs;

3 (g) Procedures for the oversight of training programs; and

4 (h) Procedures for the suspension, revocation, or modification of

5 training program accreditations, or acceptance of training offered by

6 an accredited training provider in another state or Indian tribe

7 authorized by the environmental protection agency;

8 (2) Establish procedures for the purposes of certification, for the

9 acceptance of training offered by an accredited training provider in a

10 state or Indian tribe authorized by the environmental protection

11 agency;

12 (3) Certify individuals involved in lead-based paint activities

13 that:

14 (a) Ensure certified individuals:

15 (i) Are trained by an accredited training program; and

16 (ii) Possess appropriate educational or experience qualifications

17 for certification;

18 (b) Establish procedures for recertification;

19 (c) Require the conduct of lead-based paint activities in

20 accordance with work practice standards;

21 (d) Establish procedures for the suspension, revocation, or

22 modification of certifications; and

23 (e) Establish requirements for the administration of third-party

24 certification exams;

25 (4) Use laboratories accredited under the environmental protection

26 agency's national lead laboratory accreditation program;

27 (5) Establish work practice standards for the conduct of lead-based

28 paint activities for:

29 (a) Inspection for presence of lead-based paint;

30 (b) Risk assessment; and

31 (c) Abatement;

32 (6) Establish an enforcement response policy that shall include:

33 (a) Warning letters, notices of noncompliance, notices of

34 violation, or the equivalent;

35 (b) Administrative or civil actions, including penalty authority,

36 including accreditation or certification suspension, revocation, or

37 modification; and

38 (c) Authority to apply criminal sanctions or other criminal

39 authority using existing state laws as applicable; and

1 (7) Prepare and submit an annual report to the legislature
2 regarding the program's status, its costs, and the number of persons
3 certified by the program.

4 NEW SECTION. **Sec. 7.** (1) The department is designated as the
5 official agency of this state for purposes of cooperating with, and
6 implementing the state lead-based paint activities program under the
7 jurisdiction of the United States environmental protection agency.

8 (2) No individual or firm can perform, offer, or claim to perform
9 lead-based paint activities without certification from the department
10 to conduct these activities.

11 (3) The department may deny, suspend, or revoke a certificate for
12 failure to comply with the requirements of this chapter or any rule
13 adopted under this chapter. No person whose certificate is revoked
14 under this chapter shall be eligible to apply for a certificate for one
15 year from the effective date of the final order of revocation. A
16 certificate may be denied, suspended, or revoked on any of the
17 following grounds:

18 (a) A risk assessor, inspector, contractor, project designer, or
19 worker violates work practice standards established by the United
20 States environmental protection agency or the United States department
21 of housing and urban development governing work practices and
22 procedures; or

23 (b) The certificate was obtained by error, misrepresentation, or
24 fraud.

25 (4) Any person convicted of violating any of the provisions of this
26 chapter is guilty of a misdemeanor. A conviction is an unvacated
27 forfeiture of bail or collateral deposited to secure the defendant's
28 appearance in court, the payment of a fine, a plea of guilty, or a
29 finding of guilt on a violation of this chapter, regardless of whether
30 imposition of sentence is deferred or the penalty is suspended, and
31 shall be treated as a violation conviction for purposes of
32 certification forfeiture under this chapter. Violations of this
33 chapter include:

34 (a) Failure to comply with any requirement of this chapter;

35 (b) Failure or refusal to establish, maintain, provide, copy, or
36 permit access to records or reports as required;

37 (c) Failure or refusal to permit entry or inspection as required;

38 (d) Obtaining certification through fraud or misrepresentation;

1 (e) Failure to obtain certification from the department and
2 performing work requiring certification at a job site; or

3 (f) Fraudulently obtaining certification and engaging in any lead-
4 based paint activities requiring certification.

5 NEW SECTION. **Sec. 8.** The lead-based paint activities account is
6 created in the state treasury. All receipts from this chapter, except
7 for those moneys received due to penalties, which shall be deposited in
8 the general fund, must be deposited into the account. Moneys in the
9 account may be spent only after appropriation. Expenditures from the
10 account may be used only for costs incurred by the department in the
11 administration and enforcement of this chapter.

12 NEW SECTION. **Sec. 9.** The department shall prescribe fees as
13 provided for in RCW 43.70.250 for certification and accreditation, for
14 the issuance and renewal of certificates, and for the review of
15 training courses under this chapter. All receipts from this chapter
16 shall be deposited in the lead-based paint activities account, created
17 in section 8 of this act.

18 NEW SECTION. **Sec. 10.** The department shall appoint a lead-based
19 paint activities advisory board for the purposes of advising the
20 department. The board shall:

21 (1) Provide scientific input to ensure that this program continues
22 to be in synchronism with scientifically substantiated needs for either
23 abatement or monitoring activities; and

24 (2) Provide the opportunity for involvement of state research
25 facilities in the preparation, conduct, and evaluation of the specific
26 training programs and the certification process.

27 The board shall consist of at least five volunteer members who are
28 residents of the state and skilled and experienced in one or more of
29 the following activities: Public health, medical or environmental
30 science, industrial hygiene, construction, real estate, environmental
31 regulatory oversight, property owners, parents of leaded children, or
32 lead hazard identification. In addition to the five volunteer members,
33 the following persons may serve as ex officio members of the board:
34 The director of the department of labor and industries, or his or her
35 designee; the director of the department of community, trade, and
36 economic development, or his or her designee; the secretary of the

1 department of transportation, or his or her designee; and the director
2 of the department of agriculture, or his or her designee. At least one
3 member shall serve as a representative of the medical community.
4 Members of the board shall be reimbursed for travel expenses as
5 provided in RCW 43.03.050 and 43.03.060. Members of the board may be
6 reimbursed for customary expenses as set out in RCW 43.03.220. The
7 board shall meet no more often than quarterly.

8 NEW SECTION. **Sec. 11.** Department officials shall adopt a rule
9 providing for the right to enter and inspect premises or facilities for
10 the purposes of this chapter. This rule shall be in accordance with
11 federal law.

12 NEW SECTION. **Sec. 12.** Enforcement action taken by the secretary
13 or department shall be in accordance with RCW 43.05.100 and 43.05.110.

14 NEW SECTION. **Sec. 13.** Any contractor or firm that violates the
15 provisions of this chapter may be punished by a fine not to exceed two
16 thousand dollars for the first violation. For the second or subsequent
17 violations, violators are subject to either a fine of not more than ten
18 thousand dollars or not more than six months imprisonment, or both.
19 The department may assess an administrative penalty of not more than
20 five thousand dollars for each day a person is not in compliance with
21 this chapter. Moneys from these penalties shall be deposited in the
22 state general fund.

23 NEW SECTION. **Sec. 14.** A denial, suspension, revocation order,
24 penalty, or violation issued by the department may be appealed to the
25 department within fifteen working days after the denial, suspension,
26 revocation order, penalty, or violation is entered. The department
27 shall hold the hearing in accordance with procedures established in
28 chapter 34.05 RCW. Any party aggrieved by an order of the department
29 may obtain superior court review in the manner provided in chapter
30 34.05 RCW.

31 NEW SECTION. **Sec. 15.** If specific funding for the purposes of
32 this act, referencing this act by bill or chapter number, is not
33 provided by June 30, 1998, in the omnibus appropriations act, this act
34 is null and void.

1 NEW SECTION. **Sec. 16.** Sections 2 through 14 of this act
2 constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

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