

ESSB 5586 - H COMM AMD

By Committee on Fisheries, Ecology & Parks

ADOPTED AS AMENDED 4/17/03

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

- 20 (a)(i) The lead-based paint poisoning prevention act;
21 (ii) The lead contamination control act;
22 (iii) The safe drinking water act;
23 (iv) The resource conservation and recovery act of 1976; and
24 (v) The residential lead-based paint hazard reduction act of 1992;

25 and

- 26 (b) Implementing regulations of:
27 (i) The environmental protection agency;
28 (ii) The department of housing and urban development;
29 (iii) The occupational safety and health administration; and
30 (iv) The centers for disease control and prevention.

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

7 (4) The legislature recognizes the state's need to protect the
8 public from exposure to lead hazards. A qualified and properly trained
9 work force is needed to assist in the prevention, detection, reduction,
10 and elimination of hazards associated with lead-based paint. The
11 purpose of training workers, supervisors, inspectors, risk assessors,
12 and project designers engaged in lead-based paint activities is to
13 protect building occupants, particularly children ages six years and
14 younger from potential lead-based paint hazards and exposures both
15 during and after lead-based paint activities. Qualified and properly
16 trained individuals and firms will help to ensure lead-based paint
17 activities are conducted in a way that protects the health of the
18 citizens of Washington state and safeguards the environment. The state
19 lead-based paint activities program requires that all lead-based paint
20 activities be performed by certified personnel trained by an accredited
21 program, and that all lead-based paint activities meet minimum work
22 practice standards established by the department of community, trade,
23 and economic development. Therefore, the lead-based paint activities
24 accreditation, training, and certification program shall be established
25 in accordance with this chapter. The lead-based paint activities
26 accreditation, training, and certification program shall be
27 administered by the department of community, trade, and economic
28 development and shall be used as a means to assure the protection of
29 the general public from exposure to lead hazards.

30 (5) For the welfare of the people of the state of Washington, this
31 chapter establishes a lead-based paint activities program within the
32 department of community, trade, and economic development to protect the
33 general public from exposure to lead hazards and to ensure the
34 availability of a trained and qualified work force to identify and
35 address lead-based paint hazards. The legislature recognizes the
36 department of community, trade, and economic development is not a

1 regulatory agency and may delegate enforcement responsibilities under
2 this act to local governments or private entities.

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

5 (1) "Abatement" means any measure or set of measures designed to
6 permanently eliminate lead-based paint hazards.

7 (a) Abatement includes, but is not limited to:

8 (i) The removal of paint and dust, the permanent enclosure or
9 encapsulation of lead-based paint, the replacement of painted surfaces
10 or fixtures, or the removal or permanent covering of soil, when lead-
11 based paint hazards are present in such paint, dust, or soil; and

12 (ii) All preparation, cleanup, disposal, and postabatement
13 clearance testing activities associated with such measures.

14 (b) Specifically, abatement includes, but is not limited to:

15 (i) Projects for which there is a written contract or other
16 documentation, which provides that an individual or firm will be
17 conducting activities in or to a residential dwelling or child-occupied
18 facility that:

19 (A) Shall result in the permanent elimination of lead-based paint
20 hazards; or

21 (B) Are designed to permanently eliminate lead-based paint hazards
22 and are described in (a)(i) and (ii) of this subsection;

23 (ii) Projects resulting in the permanent elimination of lead-based
24 paint hazards, conducted by certified firms or individuals, unless such
25 projects are covered by (c) of this subsection;

26 (iii) Projects resulting in the permanent elimination of lead-based
27 paint hazards, conducted by firms or individuals who, through their
28 company name or promotional literature, represent, advertise, or hold
29 themselves out to be in the business of performing lead-based paint
30 activities as identified and defined by this section, unless such
31 projects are covered by (c) of this subsection; or

32 (iv) Projects resulting in the permanent elimination of lead-based
33 paint hazards, that are conducted in response to state or local
34 abatement orders.

35 (c) Abatement does not include renovation, remodeling, landscaping,
36 or other activities, when such activities are not designed to

1 permanently eliminate lead-based paint hazards, but, instead, are
2 designed to repair, restore, or remodel a given structure or dwelling,
3 even though these activities may incidentally result in a reduction or
4 elimination of lead-based paint hazards. Furthermore, abatement does
5 not include interim controls, operations and maintenance activities, or
6 other measures and activities designed to temporarily, but not
7 permanently, reduce lead-based paint hazards.

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

11 (3) "Certified inspector" means an individual who has been trained
12 by an accredited training program, meets all the qualifications
13 established by the department, and is certified by the department to
14 conduct inspections.

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

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

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

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

34 (8) "Certified supervisor" means an individual who has been trained
35 by an accredited training program, meets all the qualifications
36 established by the department, and is certified by the department to

1 supervise and conduct abatements, and to prepare occupant protection
2 plans and abatement reports.

3 (9) "Department" means the Washington state department of
4 community, trade, and economic development.

5 (10) "Director" means the director of the Washington state
6 department of community, trade, and economic development.

7 (11) "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 (12) "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 (13) "Lead-based paint activity" includes inspection, testing, risk
20 assessment, lead-based paint hazard reduction project design or
21 planning, or abatement of lead-based paint hazards.

22 (14) "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 (15) "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 (16) "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 (17) "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 NEW SECTION. **Sec. 3.** (1) The department shall administer and
5 enforce a state program for worker training and certification, and
6 training program accreditation, which shall include those program
7 elements necessary to assume responsibility for federal requirements
8 for a program as set forth in Title IV of the toxic substances control
9 act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint
10 hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R.
11 Part 745, Subparts L and Q (1996), and Title X of the housing and
12 community development act of 1992 (P.L. 102-550). The department may
13 delegate or enter into a memorandum of understanding with local
14 governments or private entities for implementation of components of the
15 state program.

16 (2) The department is authorized to adopt rules 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 including provisions for
25 recognizing certifications accomplished under existing certification
26 programs;

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

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

31 (f) Facilitate reciprocity and communication with other states
32 having a lead-based paint certification program;

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

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

3 (3) The department may accept federal funds for the administration
4 of the program.

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

11 (5) Any rules adopted by the department shall be consistent with
12 federal laws, regulations, and requirements relating to lead-based
13 paint activities specified by the residential lead-based paint hazard
14 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
15 housing and community development act of 1992 (P.L. 102-550), and rules
16 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
17 regulatory action. The rules may not be more restrictive than
18 corresponding federal and state regulations unless such stringency is
19 specifically authorized by this chapter.

20 (6) The department shall collect a fee in the amount of twenty-five
21 dollars for certification and recertification of lead paint firms,
22 inspectors, project developers, risk assessors, supervisors, and
23 abatement workers.

24 (7) The department shall collect a fee in the amount of two hundred
25 dollars for the accreditation of lead paint training programs.

26 NEW SECTION. **Sec. 4.** (1) The department shall establish a program
27 for certification of persons involved in lead-based paint activities
28 and for accreditation of training providers in compliance with federal
29 laws and rules.

30 (2) Rules adopted under this section shall:

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

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

35 (c) Establish certification requirements for individuals and firms

1 engaged in lead-based paint activities including provisions for
2 recognizing certifications accomplished under existing certification
3 programs;

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

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

8 (f) Facilitate reciprocity and communication with other states
9 having a lead-based paint certification program;

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

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

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

20 (4) Any rules adopted by the department shall be consistent with
21 federal laws, regulations, and requirements relating to lead-based
22 paint activities specified by the residential lead-based paint hazard
23 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
24 housing and community development act of 1992 (P.L. 102-550), and rules
25 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
26 regulatory action. The rules may not be more restrictive than
27 corresponding federal and state regulations unless such stringency is
28 specifically authorized by this chapter.

29 (5) The department may accept federal funds for the administration
30 of the program.

31 NEW SECTION. **Sec. 5.** 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;

- 1 (c) Hands-on training;
- 2 (d) Trainee competency and proficiency;
- 3 (e) Training program quality control;
- 4 (f) Procedures for the reaccreditation of training programs;
- 5 (g) Procedures for the oversight of training programs; and
- 6 (h) Procedures for the suspension, revocation, or modification of
- 7 training program accreditations, or acceptance of training offered by
- 8 an accredited training provider in another state or Indian tribe
- 9 authorized by the environmental protection agency;
- 10 (2) Establish procedures for the purposes of certification, for the
- 11 acceptance of training offered by an accredited training provider in a
- 12 state or Indian tribe authorized by the environmental protection
- 13 agency;
- 14 (3) Certify individuals involved in lead-based paint activities to
- 15 ensure that certified individuals are trained by an accredited training
- 16 program and possess appropriate educational or experience
- 17 qualifications for certification;
- 18 (4) Establish procedures for recertification;
- 19 (5) Require the conduct of lead-based paint activities in
- 20 accordance with work practice standards;
- 21 (6) Establish procedures for the suspension, revocation, or
- 22 modification of certifications; and
- 23 (7) Establish requirements for the administration of third-party
- 24 certification exams;
- 25 (8) Use laboratories accredited under the environmental protection
- 26 agency's national lead laboratory accreditation program;
- 27 (9) 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 (10) 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

1 (c) Authority to apply criminal sanctions or other criminal
2 authority using existing state laws as applicable.

3 The department shall prepare and submit a biennial report to the
4 legislature regarding the program's status, its costs, and the number
5 of persons certified by the program.

6 NEW SECTION. **Sec. 6.** The lead paint account is created in the
7 state treasury. All receipts from section 3 of this act shall be
8 deposited into the account. Moneys in the account may be spent only
9 after appropriation. Expenditures from the account may be used only
10 for the purposes of this chapter.

11 NEW SECTION. **Sec. 7.** (1)(a) The director or the director's
12 designee is authorized to inspect at reasonable times and, when
13 feasible, with at least twenty-four hours prior notification:

14 (i) Premises or facilities where those engaged in training for
15 lead-based paint activities conduct business; and

16 (ii) The business records of, and take samples at, the businesses
17 accredited or certified under this chapter to conduct lead-based paint
18 training or activities.

19 (b) Any accredited training program or any firm or individual
20 certified under this chapter that denies access to the department for
21 the purposes of (a) of this subsection is subject to deaccreditation or
22 decertification under section 4 of this act.

23 (2) The director or the director's designee is authorized to
24 inspect premises or facilities, with the consent of the owner or
25 owner's agent, where violations may occur concerning lead-based paint
26 activities, as defined under section 2 of this act, at reasonable times
27 and, when feasible, with at least forty-eight hours prior notification
28 of the inspection.

29 (3) Prior to receipt of federal lead-based paint abatement funding,
30 all premise or facility owners shall be notified by any entity that
31 receives and disburses the federal funds that an inspection may be
32 conducted. If a premise or facility owner does not wish to have an
33 inspection conducted, that owner is not eligible to receive lead-based
34 paint abatement funding.

1 NEW SECTION. **Sec. 8.** (1) The department is designated as the
2 official agency of this state for purposes of cooperating with, and
3 implementing the state lead-based paint activities program under the
4 jurisdiction of the United States environmental protection agency.

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

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

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

20 (b) The certificate was obtained by error, misrepresentation, or
21 fraud.

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

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

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

34 (c) Obtaining certification through fraud or misrepresentation;

35 (d) Failure to obtain certification from the department and
36 performing work requiring certification at a job site; or

1 (e) Fraudulently obtaining certification and engaging in any lead-
2 based paint activities requiring certification.

3 NEW SECTION. **Sec. 9.** (1) The department's duties under this act
4 are subject to authorization of the state program from the federal
5 government within two years of the effective date of this section.
6 This act expires if the federal environmental protection agency does
7 not authorize a state program within two years of the effective date of
8 this act.

9 (2) The department's duties under this act are subject to the
10 availability of sufficient funding from the federal government for this
11 purpose. The director or his or her designee shall seek funding of the
12 department's efforts under this chapter from the federal government.
13 By October 15th of each year, the director shall determine if
14 sufficient federal funding has been provided or guaranteed by the
15 federal government. If the director determines sufficient funding has
16 not been provided, the department shall cease efforts under this
17 chapter due to the lack of federal funding.

18 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute
19 a new chapter in Title 70 RCW."

--- END ---