
SECOND SUBSTITUTE HOUSE BILL 1913

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Darneille, Mastin, Schual-Berke, Campbell, Cody, Moeller, Grant, Edwards and Santos)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to granting authority to the department of
2 community, trade, and economic development to address concerns with
3 lead-based paint activities; adding a new chapter to Title 70 RCW; and
4 prescribing penalties.

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

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

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

1 education. The irreversible damage to children and subsequent
2 expenditures could be avoided if exposure to lead is reduced.

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

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

6 (ii) The lead contamination control act;

7 (iii) The safe drinking water act;

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

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

10 and

11 (b) Implementing regulations of:

12 (i) The environmental protection agency;

13 (ii) The department of housing and urban development;

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

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

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

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

1 accreditation, training, and certification program shall be established
2 in accordance with this chapter. The lead-based paint activities
3 accreditation, training, and certification program shall be
4 administered by the department of community, trade, and economic
5 development and shall be used as a means to assure the protection of
6 the general public from exposure to lead hazards.

7 (5) For the welfare of the people of the state of Washington, this
8 chapter establishes a lead-based paint activities program within the
9 department of community, trade, and economic development to protect the
10 general public from exposure to lead hazards and to ensure the
11 availability of a trained and qualified work force to identify and
12 address lead-based paint hazards.

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

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

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

18 (i) The removal of paint and dust, the permanent enclosure or
19 encapsulation of lead-based paint, the replacement of painted surfaces
20 or fixtures, or the removal or permanent covering of soil, when lead-
21 based paint hazards are present in such paint, dust, or soil; and

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

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

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

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

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

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

36 (iii) Projects resulting in the permanent elimination of lead-based
37 paint hazards, conducted by firms or individuals who, through their

1 company name or promotional literature, represent, advertise, or hold
2 themselves out to be in the business of performing lead-based paint
3 activities as identified and defined by this section, unless such
4 projects are covered by (c) of this subsection; or

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

8 (c) Abatement does not include renovation, remodeling, landscaping,
9 or other activities, when such activities are not designed to
10 permanently eliminate lead-based paint hazards, but, instead, are
11 designed to repair, restore, or remodel a given structure or dwelling,
12 even though these activities may incidentally result in a reduction or
13 elimination of lead-based paint hazards. Furthermore, abatement does
14 not include interim controls, operations and maintenance activities, or
15 other measures and activities designed to temporarily, but not
16 permanently, reduce lead-based paint hazards.

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

20 (3) "Certified inspector" means an individual who has been trained
21 by an accredited training program, meets all the qualifications
22 established by the department, and is certified by the department to
23 conduct inspections.

24 (4) "Certified abatement worker" 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 perform abatements.

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

33 (6) "Certified project designer" 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 prepare abatement project designs, occupant protection plans, and
37 abatement reports.

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

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

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

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

15 (11) "Federal laws and rules" means:

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

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

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

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

27 (13) "Lead-based paint activity" includes inspection, testing, risk
28 assessment, lead-based paint hazard reduction project design or
29 planning, or abatement of lead-based paint hazards.

30 (14) "Lead-based paint hazard" means any condition that causes
31 exposure to lead from lead-contaminated dust, lead-contaminated soil,
32 or lead-contaminated paint that is deteriorated or present in
33 accessible surfaces, friction surfaces, or impact surfaces that would
34 result in adverse human health effects as identified by the
35 administrator of the United States environmental protection agency
36 under the toxic substances control act, section 403.

37 (15) "State program" means a state administered lead-based paint

1 activities certification and training program that meets the federal
2 environmental protection agency requirements.

3 (16) "Person" includes an individual, corporation, firm,
4 partnership, or association, an Indian tribe, state, or political
5 subdivision of a state, and a state department or agency.

6 (17) "Risk assessment" means:

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

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

12 NEW SECTION. **Sec. 3.** (1) The department shall administer and
13 enforce a state program for worker training and certification, and
14 training program accreditation, which shall include those program
15 elements necessary to assume responsibility for federal requirements
16 for a program as set forth in Title IV of the toxic substances control
17 act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint
18 hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R.
19 Part 745, Subparts L and Q (1996), and Title X of the housing and
20 community development act of 1992 (P.L. 102-550).

21 (2) The department is authorized to adopt rules that are consistent
22 with federal requirements to implement a state program. Rules adopted
23 under this section shall:

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

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

28 (c) Establish certification requirements for individuals and firms
29 engaged in lead-based paint activities including provisions for
30 recognizing certifications accomplished under existing certification
31 programs;

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

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 4.** (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 including provisions for
34 recognizing certifications accomplished under existing certification
35 programs;

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

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

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

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

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

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

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

24 (5) The department may accept federal funds for the administration
25 of the program.

26 NEW SECTION. **Sec. 5.** The department shall adopt rules to:

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

30 (a) Training curriculum;

31 (b) Training hours;

32 (c) Hands-on training;

33 (d) Trainee competency and proficiency;

34 (e) Training program quality control;

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

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

1 (h) Procedures for the suspension, revocation, or modification of
2 training program accreditations, or acceptance of training offered by
3 an accredited training provider in another state or Indian tribe
4 authorized by the environmental protection agency;

5 (2) Establish procedures for the purposes of certification, for the
6 acceptance of training offered by an accredited training provider in a
7 state or Indian tribe authorized by the environmental protection
8 agency;

9 (3) Certify individuals involved in lead-based paint activities to
10 ensure that certified individuals are trained by an accredited training
11 program and possess appropriate educational or experience
12 qualifications for certification;

13 (4) Establish procedures for recertification;

14 (5) Require the conduct of lead-based paint activities in
15 accordance with work practice standards;

16 (6) Establish procedures for the suspension, revocation, or
17 modification of certifications;

18 (7) Establish requirements for the administration of third-party
19 certification exams;

20 (8) Use laboratories accredited under the environmental protection
21 agency's national lead laboratory accreditation program;

22 (9) Establish work practice standards for the conduct of lead-based
23 paint activities for:

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

25 (b) Risk assessment; and

26 (c) Abatement; and

27 (10) Establish an enforcement response policy that shall include:

28 (a) Warning letters, notices of noncompliance, notices of
29 violation, or the equivalent;

30 (b) Administrative or civil actions, including penalty authority,
31 including accreditation or certification suspension, revocation, or
32 modification; and

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

35 The department shall also prepare and submit a biennial report to
36 the legislature regarding the program's status, its costs, and the
37 number of persons certified by the program.

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

6 NEW SECTION. **Sec. 7.** (1) The department shall collect a fee in
7 the amount of twenty-five dollars for certification and recertification
8 of lead paint firms, inspectors, project developers, risk assessors,
9 supervisors, and abatement workers.

10 (2) The department shall collect a fee in the amount of two hundred
11 dollars for the accreditation of lead paint training programs.

12 NEW SECTION. **Sec. 8.** In order to receive federal funds, the
13 director or his or her designee is authorized to enter and inspect
14 premises or facilities where lead-based paint removal activities have
15 occurred, or where those engaged in training for lead-based paint
16 activities conduct business. The director is authorized to take
17 samples and review records as part of the lead-based paint activities
18 inspection process.

19 NEW SECTION. **Sec. 9.** Prior to receipt of federal lead-based paint
20 abatement funding, all premise or facility owners shall be notified by
21 the department of community, trade, and economic development that an
22 inspection may be conducted. If a premise or facility owner does not
23 wish to have an inspection conducted, that owner will not be eligible
24 to receive lead-based paint abatement funding.

25 NEW SECTION. **Sec. 10.** (1) The department is designated as the
26 official agency of this state for purposes of cooperating with, and
27 implementing the state lead-based paint activities program under the
28 jurisdiction of the United States environmental protection agency.

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

32 (3) The department may deny, suspend, or revoke a certificate for
33 failure to comply with the requirements of this chapter or any rule
34 adopted under this chapter. No person whose certificate is revoked

1 under this chapter shall be eligible to apply for a certificate for one
2 year from the effective date of the final order of revocation. A
3 certificate may be denied, suspended, or revoked on any of the
4 following grounds:

5 (a) A risk assessor, inspector, contractor, project designer, or
6 worker violates work practice standards established by the United
7 States environmental protection agency or the United States department
8 of housing and urban development governing work practices and
9 procedures; or

10 (b) The certificate was obtained by error, misrepresentation, or
11 fraud.

12 (4) Any person convicted of violating any of the provisions of this
13 chapter is guilty of a misdemeanor. A conviction is an unvacated
14 forfeiture of bail or collateral deposited to secure the defendant's
15 appearance in court, the payment of a fine, a plea of guilty, or a
16 finding of guilt on a violation of this chapter, regardless of whether
17 imposition of sentence is deferred or the penalty is suspended, and
18 shall be treated as a violation conviction for purposes of
19 certification forfeiture under this chapter. Violations of this
20 chapter include:

- 21 (a) Failure to comply with any requirement of this chapter;
- 22 (b) Failure or refusal to establish, maintain, provide, copy, or
23 permit access to records or reports as required;
- 24 (c) Obtaining certification through fraud or misrepresentation;
- 25 (d) Failure to obtain certification from the department and
26 performing work requiring certification at a job site; or
- 27 (e) Fraudulently obtaining certification and engaging in any lead-
28 based paint activities requiring certification.

29 NEW SECTION. **Sec. 11.** The department shall appoint a lead-based
30 paint activities advisory board for the purposes of advising the
31 department. The board shall:

- 32 (1) Provide scientific input to ensure that this program continues
33 to be in synchronism with scientifically substantiated needs for either
34 abatement or monitoring activities; and
- 35 (2) Provide the opportunity for involvement of state research
36 facilities in the preparation, conduct, and evaluation of the specific
37 training programs and the certification process.

1 The board shall consist of at least five volunteer members who are
2 residents of the state and skilled and experienced in one or more of
3 the following activities: Environmental health, medical or
4 environmental science, industrial hygiene, construction, real estate,
5 environmental regulatory oversight, property owners, parents of leaded
6 children, or lead hazard identification. In addition to the five
7 volunteer members, the following persons, or their designees, may serve
8 as ex officio members of the board: The director of the department of
9 labor and industries; the director of the department of ecology; the
10 secretary of the department of health; and the director of the
11 department of agriculture. At least one member shall serve as a
12 representative of the medical community. Members of the board shall be
13 reimbursed for travel expenses as provided in RCW 43.03.050 and
14 43.03.060. Members of the board may be reimbursed for customary
15 expenses as set out in RCW 43.03.220. The board shall meet no more
16 often than quarterly.

17 NEW SECTION. **Sec. 12.** The department's duties under this act are
18 subject to the availability of sufficient funding from the federal
19 government for this purpose. The director or his or her designee shall
20 seek funding of the department's efforts under this chapter from the
21 federal government. By October 15th of each year, the director shall
22 determine if sufficient federal funding has been provided or guaranteed
23 by the federal government. If the director determines sufficient
24 funding has not been provided, the department shall cease efforts under
25 this chapter due to the lack of federal funding.

26 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
27 constitute a new chapter in Title 70 RCW.

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