

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2745

61st Legislature
2010 Regular Session

Passed by the House January 1, 0001
Yeas 0 Nays 0

Speaker of the House of Representatives

Passed by the Senate January 1, 0001
Yeas 0 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2745** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2745

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Environmental Health (originally sponsored by Representatives Hudgins, Campbell, and Upthegrove; by request of Washington State Department of Commerce)

READ FIRST TIME 01/29/10.

1 AN ACT Relating to including renovation activities as defined in
2 the environmental protection agency's renovation, repair, and painting
3 rule in the lead-based paint program; and amending RCW 70.103.010,
4 70.103.020, 70.103.030, 70.103.040, 70.103.050, 70.103.080, and
5 70.103.090.

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

7 **Sec. 1.** RCW 70.103.010 and 2003 c 322 s 1 are each amended to read
8 as follows:

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

17 Lead negatively affects every system of the body. It is harmful to
18 individuals of all ages and is especially harmful to children, fetuses,
19 and adults of childbearing age. The effects of lead on a child's

1 cognitive, behavioral, and developmental abilities may necessitate
2 large expenditures of public funds for health care and special
3 education. The irreversible damage to children and subsequent
4 expenditures could be avoided if exposure to lead is reduced.

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

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

8 (ii) The lead contamination control act;

9 (iii) The safe drinking water act;

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

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

12 and

13 (b) Implementing regulations of:

14 (i) The environmental protection agency;

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

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

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

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

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

1 and that all lead-based paint activities meet minimum work practice
2 standards established by the department of (~~community, trade, and~~
3 ~~economic development~~) commerce. Therefore, the lead-based paint
4 activities accreditation, training, and certification program shall be
5 established in accordance with this chapter. The lead-based paint
6 activities accreditation, training, and certification program shall be
7 administered by the department of (~~community, trade, and economic~~
8 ~~development~~) commerce and shall be used as a means to assure the
9 protection of the general public from exposure to lead hazards.

10 (5) For the welfare of the people of the state of Washington, this
11 chapter establishes a lead-based paint activities program within the
12 department of (~~community, trade, and economic development~~) commerce
13 to protect the general public from exposure to lead hazards and to
14 ensure the availability of a trained and qualified workforce to
15 identify and address lead-based paint hazards. The legislature
16 recognizes the department of (~~community, trade, and economic~~
17 ~~development~~) commerce is not a regulatory agency and may delegate
18 enforcement responsibilities under chapter 322, Laws of 2003 to local
19 governments or private entities.

20 **Sec. 2.** RCW 70.103.020 and 2009 c 565 s 49 are each amended to read
21 as follows:

22 The definitions in this section apply throughout this chapter
23 unless the context clearly requires otherwise.

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

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

27 (i) The removal of paint and dust, the permanent enclosure or
28 encapsulation of lead-based paint, the replacement of painted surfaces
29 or fixtures, or the removal or permanent covering of soil, when lead-
30 based paint hazards are present in such paint, dust, or soil; and

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

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

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

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

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

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

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

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

17 (c) Abatement does not include renovation, remodeling, landscaping,
18 or other activities, when such activities are not designed to
19 permanently eliminate lead-based paint hazards, but, instead, are
20 designed to repair, restore, or remodel a given structure or dwelling,
21 even though these activities may incidentally result in a reduction or
22 elimination of lead-based paint hazards. Furthermore, abatement does
23 not include interim controls, operations and maintenance activities, or
24 other measures and activities designed to temporarily, but not
25 permanently, reduce lead-based paint hazards.

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

29 (3) "Certified abatement worker" 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 perform abatements.

33 (4) "Certified dust sampling technician" means an individual who
34 has been trained by an accredited training program, meets all the
35 qualifications established by the department, and is certified by the
36 department to conduct dust sampling for renovation projects.

37 (5) "Certified firm" includes a company, partnership, corporation,
38 sole proprietorship, association, agency, or other business entity that

1 meets all the qualifications established by the department and performs
2 lead-based paint activities to which the department has issued a
3 certificate.

4 ~~((+5))~~ (6) "Certified inspector" means an individual who has been
5 trained by an accredited training program, meets all the qualifications
6 established by the department, and is certified by the department to
7 conduct inspections.

8 ~~((+6))~~ (7) "Certified project designer" means an individual who
9 has been trained by an accredited training program, meets all the
10 qualifications established by the department, and is certified by the
11 department to prepare abatement project designs, occupant protection
12 plans, and abatement reports.

13 ~~((+7))~~ (8) "Certified renovator" means an individual who has been
14 trained by an accredited training program, meets all the qualifications
15 established by the department, and is certified by the department to
16 perform renovations or direct workers in the performance of renovation
17 work.

18 (9) "Certified risk assessor" means an individual who has been
19 trained by an accredited training program, meets all the qualifications
20 established by the department, and is certified by the department to
21 conduct risk assessments and sample for the presence of lead in dust
22 and soil for the purposes of abatement clearance testing.

23 ~~((+8))~~ (10) "Certified supervisor" means an individual who has
24 been trained by an accredited training program, meets all the
25 qualifications established by the department, and is certified by the
26 department to supervise and conduct abatements, and to prepare occupant
27 protection plans and abatement reports.

28 ~~((+9))~~ (11) "Department" means the Washington state department of
29 commerce.

30 ~~((+10))~~ (12) "Director" means the director of the Washington state
31 department of commerce.

32 ~~((+11))~~ (13) "Federal laws and rules" means:

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

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

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

3 ~~((+12))~~ (14) "Lead-based paint" means paint or other surface
4 coatings that contain lead equal to or in excess of 1.0 milligrams per
5 square centimeter or more than 0.5 percent by weight.

6 ~~((+13))~~ (15) "Lead-based paint activity" includes inspection,
7 testing, risk assessment, lead-based paint hazard reduction project
8 design or planning, ~~((+))~~ abatement, or renovation of lead-based paint
9 hazards.

10 ~~((+14))~~ (16) "Lead-based paint hazard" means any condition that
11 causes exposure to lead from lead-contaminated dust, lead-contaminated
12 soil, or lead-contaminated paint that is deteriorated or present in
13 accessible surfaces, friction surfaces, or impact surfaces that would
14 result in adverse human health effects as identified by the
15 administrator of the United States environmental protection agency
16 under the toxic substances control act, section 403.

17 ~~((+15))~~ (17) "Person" includes an individual, corporation, firm,
18 partnership, or association, an Indian tribe, state, or political
19 subdivision of a state, and a state department or agency.

20 ~~((+16))~~ (18) "Renovation" means the modification of any existing
21 structure, or portion thereof, that results in the disturbance of
22 painted surfaces, unless that activity is performed as part of an
23 abatement as defined in this section. The term includes but is not
24 limited to:

25 (a) The removal, modification, or repair of painted surface or
26 painted components;

27 (b) Modification of painted doors;

28 (c) Surface restoration;

29 (d) Window repair;

30 (e) Surface preparation, such as sanding, scraping, or activities
31 that generates paint dust;

32 (f) Removal of building components, such as walls, windows, or
33 other like structures;

34 (g) Weatherization projects, such as cutting holes in painted
35 surfaces to install blown-in insulation;

36 (h) Interim controls that disturb painted surfaces; or

37 (i) A renovation performed for the purposes of converting a

1 building or part of a building in target housing or a child-occupied
2 facility.

3 The term renovation as defined in this subsection (18) does not
4 include minor repair and maintenance activities.

5 (19) "Risk assessment" means:

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

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

11 ~~((17))~~ (20) "State program" means a state administered lead-based
12 paint activities certification and training program that meets the
13 federal environmental protection agency requirements.

14 **Sec. 3.** RCW 70.103.030 and 2003 c 322 s 3 are each amended to read
15 as follows:

16 (1) The department shall administer and enforce a state program for
17 worker training and certification, and training program accreditation,
18 which shall include those program elements necessary to assume
19 responsibility for federal requirements for a program as set forth in
20 Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et
21 seq.), the residential lead-based paint hazard reduction act of 1992
22 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q
23 (1996), and Title X of the housing and community development act of
24 1992 (P.L. 102-550). The department may delegate or enter into a
25 memorandum of understanding with local governments or private entities
26 for implementation of components of the state program.

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

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

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

34 (c) Establish certification requirements for individuals and firms
35 engaged in lead-based paint activities including provisions for
36 recognizing certifications accomplished under existing certification
37 programs;

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

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

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

7 (g) Provide for decertification, deaccreditation, and financial
8 assurance for a person certified by or a training provider accredited
9 by the department; and

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

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

14 (4) 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.), and Title X of the housing and community development act of 1992
19 (P.L. 102-550).

20 (5) 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 (6) The department shall collect a fee in the amount of twenty-five
30 dollars for certification and recertification of lead paint firms,
31 inspectors, project developers, risk assessors, supervisors, ~~((and))~~
32 abatement workers, renovators, and dust sampling technicians.

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

35 **Sec. 4.** RCW 70.103.040 and 2003 c 322 s 4 are each amended to read
36 as follows:

1 (1) The department shall establish a program for certification of
2 persons involved in lead-based paint activities and for accreditation
3 of training providers in compliance with federal laws and rules.

4 (2) Rules adopted under this section shall:

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

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

9 (c) Establish certification requirements for individuals and firms
10 engaged in lead-based paint activities including provisions for
11 recognizing certifications accomplished under existing certification
12 programs;

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

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

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

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

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

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

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

1 (5) The department may accept federal funds for the administration
2 of the program.

3 (6) For the purposes of certification under the federal
4 requirements as set forth in section 2682 of the toxic substances
5 control act (15 U.S.C. Sec. 2682), the department may require
6 renovators and dust sampling technicians to apply for a certification
7 badge issued by the department. The department may impose a fee on the
8 applicant for processing the application. The application shall
9 include a photograph of the applicant and a fee in the amount imposed
10 by the department.

11 **Sec. 5.** RCW 70.103.050 and 2003 c 322 s 5 are each amended to read
12 as follows:

13 The department shall adopt rules to:

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

17 (a) Training curriculum;

18 (b) Training hours;

19 (c) Hands-on training;

20 (d) Trainee competency and proficiency;

21 (e) Training program quality control;

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

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

24 (h) Procedures for the suspension, revocation, or modification of
25 training program accreditations, or acceptance of training offered by
26 an accredited training provider in another state or Indian tribe
27 authorized by the environmental protection agency;

28 (2) Establish procedures for the purposes of certification, for the
29 acceptance of training offered by an accredited training provider in a
30 state or Indian tribe authorized by the environmental protection
31 agency;

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

36 (4) Establish procedures for recertification;

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

3 (6) Establish procedures for the suspension, revocation, or
4 modification of certifications;

5 (7) Establish requirements for the administration of third-party
6 certification exams;

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

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

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

12 ~~(b) Risk assessment; and~~

13 ~~(c) Abatement)), as defined in RCW 70.103.020;~~

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

15 (a) Warning letters, notices of noncompliance, notices of
16 violation, or the equivalent;

17 (b) Administrative or civil actions, including penalty authority,
18 including accreditation or certification suspension, revocation, or
19 modification; and

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

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

25 **Sec. 6.** RCW 70.103.080 and 2003 c 322 s 8 are each amended to read
26 as follows:

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

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

34 (3) The department may deny, suspend, or revoke a certificate for
35 failure to comply with the requirements of this chapter or any rule
36 adopted under this chapter. No person whose certificate is revoked
37 under this chapter shall be eligible to apply for a certificate for one

1 year from the effective date of the final order of revocation. A
2 certificate may be denied, suspended, or revoked on any of the
3 following grounds:

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

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

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

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

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

23 (c) Obtaining certification through fraud or misrepresentation;

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

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

28 **Sec. 7.** RCW 70.103.090 and 2003 c 322 s 9 are each amended to read
29 as follows:

30 (1) The department's duties under chapter 322, Laws of 2003 are
31 subject to authorization of the state program from the federal
32 government within two years of July 27, 2003. Chapter 322, Laws of
33 2003 expires if the federal environmental protection agency does not
34 authorize a state program within two years of July 27, 2003.

35 (2) The department's duties under chapter 322, Laws of 2003, as
36 amended, are subject to the availability of sufficient funding from the
37 federal government for this purpose. The director or his or her

1 designee shall seek funding of the department's efforts under this
2 chapter from the federal government. By October 15th of each year, the
3 director shall determine if sufficient federal funding has been
4 provided or guaranteed by the federal government. If the director
5 determines sufficient funding has not been provided, the department
6 shall:

7 (a) Cease efforts under this chapter due to the lack of federal
8 funding; and

9 (b) Inform the code reviser that it has ceased its efforts due to
10 the lack of federal funding.

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