

No. 1995-44

AN ACT

HB 1335

Regulating lead-based paint activities.

TABLE OF CONTENTS

- Section 1. Short title.
- Section 2. Legislative findings and intent.
- Section 3. Definitions.
- Section 4. Regulations.
- Section 5. Accreditation of training programs.
- Section 6. Certification standards and procedures.
- Section 7. Reciprocity.
- Section 8. Account.
- Section 9. Fees.
- Section 10. Enforcement and penalties.
- Section 11. Notification requirements.
- Section 12. Administrative agency law.
- Section 13. Work practice standards.
- Section 14. Data collection program.
- Section 15. Preemption.
- Section 16. Severability.
- Section 17. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Lead Certification Act.

Section 2. Legislative findings and intent.

(a) Findings.—The General Assembly finds as follows:

(1) Lead poisoning is a significant health hazard to the citizens of this Commonwealth. Lead poisoning is particularly a hazard to children who typically are exposed to lead through environmental sources such as lead-based paint in housing and lead-contaminated dust and soil. It is the policy of this Commonwealth to protect the health and welfare of its citizens through reduction of lead in the environment.

(2) Improper abatement of lead-based paint within this Commonwealth constitutes a serious threat to the public health and safety and to the environment. The handling of lead-containing substances by inadequately trained employers, employees and other persons subjects the citizens of

this Commonwealth to the risk of further release of lead into the environment.

(b) Intent.—The General Assembly declares the following to be the intent of this act:

(1) To protect the public health by preventing exposure to lead through regulation of lead-based paint activities.

(2) To establish a program to train individuals engaged in lead-based paint activities to insure they have the necessary skill, training, experience and competence to perform these activities.

(3) To monitor the work practices of those persons performing lead-based paint activities to insure the work is performed in accordance with required standards.

(4) To insure that the cleanup, disposal and postabatement clearance testing activities of persons performing lead-based paint activities are performed in accordance with required standards.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abatement.” Any set of measures designed to eliminate or reduce lead-based paint hazards in accordance with standards established by the Environmental Protection Agency. The term includes all of the following:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil.

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

(3) Less-than-full abatement whereby the sources of lead contamination are reduced sufficiently to create a “lead-safe” environment rather than a “lead-free” environment.

(4) Abatement does not include renovation and remodeling or landscaping activities by contractors whose primary intent is not to permanently eliminate or reduce lead-based paint hazards, but is instead to repair, restore or remodel a given structure or dwelling, nor does it include renovation and remodeling activities conducted by homeowners in their homes.

“Accessible surface.” An interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

“CDC.” The United States Centers for Disease Control and Prevention.

“Certified contractor.” A person, firm, company or institution which has been approved by the Department of Labor and Industry to perform lead-based paint activities in this Commonwealth.

“Children.” Individuals who are under six years of age.

“Commercial building.” A building constructed for the purpose of commercial or industrial activity and not primarily intended for use by the general public, including, but not limited to, office complexes, industrial buildings, warehouses, factories and storage facilities.

“Deleading.” Activities conducted by a person who offers to eliminate or reduce lead-based paint or lead-based paint hazards or to plan such activities.

“Demolition.” Pulling down or completely destroying a building or structure or substantial removal of building elements.

“Department.” The Department of Labor and Industry of the Commonwealth.

“Discipline.” A classification for a specific lead hazard activity.

“EPA.” The Environmental Protection Agency.

“Friction surface.” An interior or exterior surface that is subject to abrasion or friction. The term includes, but is not limited to, certain window, floor and stair surfaces.

“Hazard activities.” Any set of measures designed to eliminate or reduce lead hazards in accordance with standards established by the Environmental Protection Agency and other Federal agencies.

“Hazardous condition.” Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or a lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the administrator of the Environmental Protection Agency under section 403 of the Toxic Substances Control Act (Public Law 94-469, 15 U.S.C. § 2683).

“HUD.” The Department of Housing and Urban Development.

“Impact surface.” An interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

“Inspection.”

(1) A surface-by-surface investigation to determine the presence of lead-based paint, as provided in section 302(c) of the Lead-Based Paint Poisoning Prevention Act (Public Law 91-695, 42 U.S.C. § 4822(c)).

(2) The provision of a written report explaining the results of the investigation.

“Inspector-risk assessor.” A person trained and certified to perform all activities of the inspector-technician, as well as to identify the presence of lead-based paint and to collect additional information designed to assess the level of risk to residents of target housing.

“Inspector-technician.” A person trained and certified to perform inspections solely for the purpose of determining the presence of lead-based paint through the use of onsite testing, such as XRF analysis, and the collection of samples for laboratory analysis.

“Lead-based paint.” Paint or other surface coatings that contain lead in excess of the most current Department of Housing and Urban Development standards or, in the case of paint or other surface coatings on target housing,

such lower level as may be established by the Secretary of Housing and Urban Development under the Lead-Based Paint Poisoning Prevention Act (Public Law 91-695, 42 U.S.C. § 4822(c)).

“Lead-based paint activities.”

(1) With respect to target housing, the term includes risk assessment, inspection and abatement.

(2) With respect to a public building constructed before 1978 or any commercial building, bridge or other structure or superstructure, the term includes identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges and demolition.

“Lead-based paint hazard.” A condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces, which exposure would result in adverse human health effects as established by the Department of Labor and Industry.

“OSHA.” The Occupational Safety and Health Administration.

“Person.” Any of the following:

(1) An individual.

(2) Any corporation, partnership or association.

(3) The Commonwealth. This paragraph includes an agency and instrumentality of the Commonwealth.

(4) A political subdivision. This paragraph includes an agency and instrumentality of a political subdivision.

“Planner-project designer.” A person trained and certified to plan and design lead-based paint activities.

“Public building.” Any building constructed prior to 1978 which is generally open to the public or occupied or visited by children. The term includes, but is not limited to, schools, day-care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers and government buildings. The term excludes target housing.

“Renovation and remodeling activities.” Activities whose primary intent is not to permanently eliminate or reduce lead-based paint hazards, but is instead to repair, restore or remodel a given structure or dwelling.

“Residential dwelling.”

(1) A single-family dwelling including attached structures such as porches and stoops; or

(2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more individuals.

“Risk assessment.” Onsite investigation to determine and report the existence, nature, severity and location of lead hazards in residential dwellings, including all of the following:

(1) Information gathering regarding the age and history of the housing and occupancy by children under six years of age.

(2) Visual inspection.

(3) Wipe sampling or other environmental testing and sampling techniques.

(4) Other activity as may be appropriate.

(5) Provision of a report explaining the results of the investigation.

“Secretary.” The Secretary of Labor and Industry of the Commonwealth.

“Superstructure.” A large steel or other industrial structure, such as, but not limited to, a bridge or water tower, which might contain lead-based materials.

“Supervisor.” A person trained and certified to oversee lead-based paint activities on target housing and public and commercial building job sites.

“Target housing.” Any housing constructed prior to 1978 or any zero-bedroom dwelling. The term excludes housing for the elderly or persons with disabilities unless any child who is less than six years of age resides or is expected to reside in such housing.

“XRF analyzer.” A machine that utilizes X-Ray Fluorescence (XRF) to test for the presence of lead-based paint.

Section 4. Regulations.

(a) Adoption by department.—The department shall adopt regulations to carry out the provisions of this act.

(b) Content.—Regulations adopted under this act shall be no more stringent than Federal requirements and be limited to the following:

(1) Requirements for accreditation of training providers.

(2) Requirements for the training of individuals to engage in lead-based paint activities.

(3) Requirements for certification of persons to perform lead-based paint activities.

(4) Requirements for certification of contractors to perform lead-based paint activities.

(5) Reciprocity standards for other states engaged in accreditation and certification.

(6) Standards for performing lead-based paint activities.

Section 5. Accreditation of training programs.

(a) General rule.—The department shall grant accreditation to all lead occupation training programs approved by the EPA and to any other training programs which the department determines to have met the approval standards of the EPA.

(b) Departmental audits.—A person providing lead occupation training shall make available to the department, at no cost to the department and at such times as the department may deem necessary, all course materials and records and access to actual training sessions.

(c) Revocation or suspension of accreditation.—The department may revoke or suspend accreditation if a course audit conducted by the department or its designated representative indicates a training program is not conducting

training or operating its training program in accordance with the requirements of this act and regulations promulgated under this act.

(d) Five-day notification requirement.—Accredited training providers shall submit to the department a written notification of their intent to conduct a training course at least five days prior to the start of the training course, in a manner prescribed by the department. In the case of an emergency, the department has the discretion to waive this notification requirement.

Section 6. Certification standards and procedures.

(a) Occupation certification requirements.—In order to engage in lead-based paint activities, an individual must be certified by the department. The department shall certify an individual who completes a lead-based paint training program accredited by the department under section 5 and passes an examination approved by the department. The department shall certify a partnership, association, corporation or other business entity which has submitted to the department a letter that is signed by a partner or officer, as appropriate, and that states all of the following:

(1) Each employee and subcontractor performing lead-based paint activities has individually received the required training and received certification from the department.

(2) The certified partnership, association, corporation or other business entity and its employees and subcontractors will perform lead-based paint activities in accordance with applicable Federal and State standards, including recordkeeping requirements.

(3) A certified supervisor will be assigned and available to all of the abatement, deleading and demolition projects of the partnership, association, corporation or other business entity.

(b) Refresher training requirement.—In order to qualify for annual certification renewal, a person shall successfully complete a refresher training course approved by the department and provided by an accredited training provider for each category of certification. Renewal of certification requires compliance with Federal work practice standards controlling lead-based paint activities.

(c) Photoidentification requirement.—All persons performing lead-based paint activities must have in their possession or have available at the job site a valid photoidentification certification card issued by the department.

Section 7. Reciprocity.

The department shall designate by notice in the Pennsylvania Bulletin states which it deems to have certification requirements substantially similar to the Commonwealth. The department shall develop reciprocity agreements with other states or jurisdictions which have established accreditation and certification requirements which the department determines to be substantially similar to those set forth in this act.

Section 8. Account.

(a) Deposit of moneys.—The department shall deposit into the restricted revenue account established in the State Treasury under section 7(c) of the

act of December 19, 1990 (P.L.805, No.194), known as the Asbestos Occupations Accreditation and Certification Act, any fees, fines or penalties collected pursuant to this act. Moneys deposited in such account are nonlapsing and hereby appropriated on a continuing basis and upon approval of the Governor to the department to carry out the purposes of this act and the Asbestos Occupations Accreditation and Certification Act. Notwithstanding the provisions of section 7(c) of the Asbestos Occupations Accreditation and Certification Act regarding the deposit and use of fees, moneys in this account shall be used for expenses related to the development, implementation and operation of programs under this act and the Asbestos Occupations Accreditation and Certification Act and of programs, as approved by the secretary, developed in relation to these acts and carried out by other administrative agencies.

(b) Investment of moneys.—Notwithstanding the provisions of section 7(c) of the Asbestos Occupations Accreditation and Certification Act, the moneys in the account shall be invested in an interest-bearing account and the interest earned shall be credited to and become a part of the account.

Section 9. Fees.

(a) Schedules.—The department shall establish schedules of fees for:

(1) Certification of persons in the following disciplines:

(i) inspector technicians, inspector/risk assessors, supervisors, planner/project designers and workers; and

(ii) additional lead occupations identified by the department in regulations.

(2) Accreditation of training courses.

(3) Certification of contractors to perform lead-based paint activities.

(4) Any other reasonable fee the department deems appropriate to carry out the provisions of this act.

(b) Payment of fees.—Both initial and renewal fees shall be paid annually by the person certified. The fees shall be paid upon application to the department.

(c) Waiver of fees.—Accreditation fees shall not be imposed on any state, local government or nonprofit training provider; nor shall certification fees be imposed on any state, local government or nonprofit service provider, as long as employees of the state, local government or nonprofit service provider actually perform the lead-based paint activities.

Section 10. Enforcement and penalties.

(a) General rule.—A person shall not cause, suffer, permit or allow a lead-based paint activity to be performed in violation of any provision of this act or regulations promulgated under this act; nor shall any person cause, suffer, permit or allow the performance of any act or operation in violation of any order issued by the department pursuant to this act or regulations promulgated under this act.

(b) Violations.—The department shall have the power to issue an order requiring compliance with this act or regulations promulgated under this act.

An order shall be served personally or by certified mail at the last known address of the person violating a provision of this act or a regulation promulgated under this act. In the case of a violation of a lead-based paint work practice standard, a copy of the order shall also be served personally or by certified mail at the last known address upon the property owner and a copy shall be posted on the premises.

(c) Hazardous conditions.—If the department determines that a hazardous condition exists due to the failure to comply with a provision of this act or a regulation promulgated under this act, the department, in addition to invoking other sanctions available to it, may invoke any of the following remedies:

(1) Issue an order to those engaged:

(i) to cease immediately all lead-based paint activities until the condition is corrected; and

(ii) to remove any workers except those needed to abate the hazard from the project work area until the condition is corrected in order to prevent further project activity.

(2) Evacuate appropriate portions of the site until the condition is corrected.

(3) Certify the existence of a lead-based paint hazard that exists due to the failure of a contractor or his employee to comply with the provisions of this act, charge the added cost of any corrective cleanup or removal to the contractor responsible for the hazardous condition which exists due to the noncompliance and collect the cost by lien or any other means as may be authorized by law.

(4) Apply to an appropriate court for relief by injunction or restraining order against any person responsible for the hazardous condition.

(d) Penalties.—In addition to the sanctions or remedial orders provided in this section, a person who fails to comply with a requirement of this act or a regulation promulgated under this act or who fails to obey an order issued by the department may be subject to any of the following penalties:

(1) Denial, suspension or revocation of accreditation or certification for a person, training provider or contractor who does any of the following:

(i) Fraudulently or deceptively obtains or attempts to obtain accreditation or certification.

(ii) Fails to meet the requirements of this act or regulations adopted under this act.

(iii) Fails to meet applicable Federal or State standards relating to lead-based paint activities.

(iv) Fails to pay a required fee.

(2) Imposition of an administrative penalty of not more than \$1,000 for the first offense, not more than \$5,000 for the second offense and not more than \$10,000 for the third and each subsequent offense.

(3) Issuance of an order to cease any lead-based paint activity immediately.

(4) Initiation of legal action or proceeding in a court of competent jurisdiction.

(e) Continued violations.—Each day a violation continues to exist shall constitute an additional, separate and distinct violation for which a separate penalty shall be imposed.

Section 11. Notification requirements.

(a) General rule.—Each certified contractor must notify the department of its intention to perform any lead-based paint abatement. The notification shall be *in writing and shall be on a form prescribed by the department.*

(b) Time of notice.—The notification under subsection (a) must be submitted to the department at least five days prior to the start of the abatement activity. The department in its discretion may waive the five-day notification requirement if it determines an emergency exists.

(c) Contents of notice.—The notice shall include at least the following information:

- (1) The name, address and certification number of the contractor.
- (2) The name and address of the lead-based paint abatement project and the political subdivision where it is located.
- (3) The name and address of the building owner.
- (4) The estimated start and completion date of the project.
- (5) The name and address of the landfill where the lead will be sent for disposal.

Section 12. Administrative agency law.

Penalties and other orders of the department under this act are subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 13. Work practice standards.

The department shall promulgate regulations that adopt Federal regulations for performing lead-based paint activities.

Section 14. Data collection program.

(a) Authorization.—The department, in cooperation with the Department of Health and other administrative agencies, may establish a program for the collection and analysis of data on lead-based paint detection and reduction activities in this Commonwealth and on the certification, accreditation and enforcement activities in the department.

(b) Confidentiality.—Data collected under subsection (a) shall be used only for implementation of this act and may not be used for any other purpose.

Section 15. Preemption.

No political subdivision may develop accreditation or certification programs or procedures that deviate from those performed or approved by the Commonwealth.

Section 16. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 17. Effective date.

This act shall take effect as follows:

- (1) Section 10 shall take effect in 270 days.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 180 days.

APPROVED—The 6th day of July, A.D. 1995.

THOMAS J. RIDGE