

RECEIVED
98 APR -8 AM 8:40
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4034

(By Delegates Linch, Hunt, Mahan, Staton,
Tomblin, Riggs and Thomas)



Passed March 14, 1998

In Effect Ninety Days from Passage

RECEIVED

98 APR -9 AM 8:42

OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4034

(BY DELEGATES LINCH, HUNT, MAHAN, STATON,
TOMBLIN, RIGGS AND THOMAS)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-five, relating to the regulation of lead abatement, assessment, and inspection activities and establishing licensing requirements for lead inspectors, risk assessors, supervisors, designers, contractors and workers; establishing legislative findings, providing definitions; establishing the powers and duties of the director of the division of health; authorizing the establishment of fees to; creating lead abatement, inspector and assessor license requirements; providing license application issuance, denial and revocation procedures; providing lead contractor's duties and responsibilities; providing exemptions from the notification and licensure requirements; providing for notification of elevated blood-lead levels; requiring reporting of lead abatement projects; establishing accreditation requirements for lead abatement instructors and training programs; providing for suspension or revocations of licenses and procedures therefore; establishing a special revenue account to administer the

program; providing civil penalties and fees for violation of the certain provisions of this article; and creating a misdemeanor offense for violations of this article.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-five, to read as follows:

ARTICLE 35. LEAD ABATEMENT.

§16-35-1. Short title.

1 This article may be cited as the West Virginia “Lead
2 Abatement Act.”

§16-35-2. Legislative findings.

1 (a) The Legislature hereby finds and declares that:

2 (1) Lead is a toxic substance and harmful to the
3 citizens of this state;

4 (2) Lead poisoning is a devastating health hazard,
5 particularly to young children, and results in serious long
6 term health effects;

7 (3) Children exposed to even low levels of lead exhibit
8 learning disabilities, decreased growth, hyperactivity,
9 impaired hearing, and neurological damage;

10 (4) Workers and others who come into contact with
11 lead when removing or remediating lead based materials
12 are also at risk of lead poisoning;

13 (5) Exposure occurs from contact with materials
14 containing lead, including but not limited to lead-based
15 paint chips, lead dust, and lead-contaminated soil;

16 (6) The most significant source of exposure is lead-
17 based paint, particularly in houses built prior to one
18 thousand nine hundred seventy-eight;

19 (7) The danger posed by lead-based paint hazards can
20 be controlled by abatement or interim controls that limit
21 exposure to lead-based paint hazards; and

22 (8) The public health and safety of this state will be
23 better protected when all persons who handle lead
24 contaminated substances are thoroughly trained and
25 knowledgeable regarding safe methods of handling and
26 disposing of such materials.

27 (b) Therefore, it is the purpose of this article to protect
28 the health of the children of the state and those who
29 undertake remediation of the lead health hazard by
30 establishing guidelines for the assessment and removal of
31 lead hazards from homes and other buildings where
32 children are frequently present and exposed to the danger
33 of lead poisoning.

§16-35-3. Definitions.

1 (a) "Abatement" means any measure or set of
2 measures designed to permanently eliminate lead-based
3 paint hazards. Abatement includes, but is not limited to:

4 (1) The removal of lead-based paint and lead-
5 contaminated dust, the permanent enclosure or
6 encapsulation of lead-based paint, the replacement of
7 lead-painted surfaces or fixtures, and the removal or
8 covering of lead-contaminated soil;

9 (2) All preparation, cleanup, disposal, and post-
10 abatement clearance testing activities associated with such
11 measures;

12 (3) Projects for which there is a written contract to
13 permanently eliminate lead-based paint hazards from a
14 dwelling unit or child-occupied building;

15 (4) Projects involving the permanent elimination of
16 lead-based paint or lead-contaminated soil; and

17 (5) Projects involving the permanent elimination of
18 lead-based paint hazards that are conducted in response to
19 federal, state or local abatement orders.

20 (b) "Child lead poisoning" means that the amount of
21 lead circulating in the blood stream of children is at or
22 exceeds the level defined by the United States center for
23 disease control.

24 (c) "Child-occupied building" means any of the
25 following structures built before one thousand nine
26 hundred seventy-eight: public or private buildings, or
27 portions thereof, or a room in a residential dwelling or
28 unit, any of which structures are currently visited, or
29 intended to be visited, three hours a day twice a week or
30 more often by a child age six or under, including, but not
31 limited to, day care centers, kindergarten classrooms,
32 schools, camps and recreational facilities.

33 (d) "Contained work area" means a designated room
34 or rooms, spaces, or other areas, including a
35 decontamination structure, where lead abatement activities
36 are performed, separated from the uncontaminated
37 environment in accordance with OSHA standards.

38 (e) "Discipline" means any one of the following: lead
39 abatement contractor, lead abatement supervisor, lead
40 inspector, lead risk assessor, lead abatement worker, or
41 lead abatement project designer.

42 (f) "Director" means the director of the West Virginia
43 division of health or his or her representative.

44 (g) "Elevated blood-lead level" means a concentration
45 of lead in the blood stream as defined by the United States
46 center for disease control.

47 (h) "Industrial facility" means any factory, mill, plant,
48 refinery, warehouse, building or complex of buildings or
49 other industrial structures including the land on which it is
50 located.

51 (i) "Inspection" means a surface by surface
52 investigation to determine the presence of lead-based paint
53 or lead hazards and the provision of a report explaining
54 the results of the investigation.

55 (j) "Interim controls" means a set of measures
56 designed to temporarily reduce human exposure or likely
57 exposure to lead-based paint hazards, including
58 specialized cleaning, repairs, maintenance, painting,
59 temporary containment, ongoing monitoring of lead-
60 based paint hazards or potential hazards, and the
61 establishment and operation of management and resident

62 education programs.

63 (k) "Lead" means elemental lead and all inorganic and
64 organic lead compounds.

65 (l) "Lead abatement contractor" means any person
66 who contracts to conduct any lead abatement activity.

67 (m) "Lead abatement designer" means an individual
68 who designs lead abatement projects.

69 (n) "Lead abatement project" means an activity in
70 target housing or child-occupied buildings intended to
71 permanently remove or encapsulate lead-based paint, lead-
72 containing dust, lead-containing soil or other lead-
73 containing materials and decontamination of an area, but
74 does not include interim controls which do not
75 permanently eliminate lead hazards.

76 (o) "Lead abatement worker" means an individual who
77 is employed by a lead abatement contractor for a lead
78 abatement project.

79 (p) "Lead-based paint" means paint or other surface
80 coatings that contains lead at a level defined by the
81 director by legislative rule as provided in section four of
82 this article.

83 (q) "Lead hazard" means any condition that may result
84 in exposure to lead including, but not limited to, lead-
85 contaminated dust, lead-contaminated soil, or lead-based
86 paint present on accessible surfaces, friction surfaces,
87 impact surfaces or other lead sources that could result in
88 adverse effects on human health.

89 (r) "Lead inspector" means an individual who conducts
90 inspections to determine and report the existence, nature,
91 severity and location of lead-based paint or lead hazards.

92 (s) "Lead risk assessment" means an investigation of
93 the potential risk to human health or the environment
94 posed by lead abatement projects or lead hazards,
95 including but not limited to considerations of toxicity,
96 concentration, form, mobility and potential of exposure.

97 (t) "Lead risk assessor" means an individual who is

98 responsible for or conducts lead risk assessments and
99 establishes priorities for a lead abatement project.

100 (u) "Lead Supervisor" means a person employed by a
101 lead abatement contractor to supervise workers on a lead
102 abatement project.

103 (v) "OSHA" means the United States Occupational
104 Safety and Health Administration.

105 (w) "Owner-occupied housing" means a detached
106 single unit residence owned by the individual living within
107 the unit.

108 (x) "Person" means any individual, partnership, firm,
109 society, association, trust, corporation, other business entity
110 or any agency, unit, or instrumentality of federal, state or
111 local government.

112 (y) "Target housing" means residential structures built
113 prior to one thousand nine hundred seventy-eight that
114 could contain lead-based paint or residential structures
115 that are confirmed by inspection to contain lead-based
116 paint.

§16-35-4. Powers and duties of the director.

1 The director shall administer and enforce this article,
2 and has the following powers and duties:

3 (1) To propose rules for legislative approval in
4 accordance with the provisions of article three, chapter
5 twenty-nine-a of this code, necessary to carry out the
6 requirements of this article, including but not limited to
7 abatement personnel training guidelines, procedures for
8 the issuance and renewal of lead discipline licenses,
9 establishment of all fees necessary to pay for the
10 implementation and enforcement of this program, and the
11 regulation of lead abatement projects;

12 (2) To issue, suspend and revoke lead discipline
13 licenses, regulate lead abatement projects, and assess fees
14 and civil penalties pursuant to this article and the rules
15 promulgated hereunder;

16 (3) To promulgate any emergency rules necessary to

17 gain federal approval of the state lead abatement program
18 in accordance with section three, article fifteen, chapter
19 twenty-nine-a of this code;

20 (4) To accredit training providers, training courses,
21 examiners, examinations, and grading systems developed
22 for licensing disciplines pursuant to this article;

23 (5) To order reduction or abatement of identified lead
24 hazards when they may result in child lead poisoning; and

25 (6) To develop a public awareness campaign on the
26 dangers of lead poisoning and to promote public
27 education of the requirements of this article.

§16-35-5. Lead discipline license required.

1 (a) It is unlawful for any individual to carry out any
2 lead risk assessment, inspection or abatement activity for
3 which he or she does not hold an appropriate lead
4 discipline license.

5 (b) To qualify for a lead discipline license an
6 applicant shall:

7 (1) Satisfactorily complete a state-accredited training
8 course for a lead discipline and receive a passing grade on
9 an examination administered by a state-accredited
10 examiner; and

11 (2) Meet the requirements set forth by the director in
12 legislative rule.

13 (c) Applicants for a lead discipline license shall submit
14 to the division an application and certificate that show
15 satisfactory completion of a training course for a lead
16 discipline and pay the applicable fee to the division.

17 (d) The director may deny a license if the applicant
18 fails to comply with the application procedures or to
19 satisfy the licensure criteria or to pay the fee. The director
20 shall provide written notice of such denial and an
21 opportunity for reapplication.

22 (e) The director may grant lead discipline licenses to
23 individuals licensed or certified in another jurisdiction if

24 its requirements are at least as stringent as West Virginia's
25 requirements.

§16-35-6. Lead abatement contractor's duties.

1 A lead abatement contractor shall:

2 (1) Ensure that each of his or her employees or
3 agents who will come in contact with lead or who will be
4 responsible for a lead abatement project is licensed as
5 required by this article;

6 (2) Ensure that each lead abatement project is
7 supervised by a licensed lead abatement supervisor;

8 (3) Maintain sampling records for each contained
9 work area of a lead abatement project until it meets the
10 minimum clearance standards established by the director
11 before allowing reoccupancy; and

12 (4) Keep a record of each lead abatement project and
13 make the record available to the division and the divisions
14 of commerce, labor, and environmental protection upon
15 request. Records required by this subsection shall be kept
16 for at least three years and shall include at a minimum:

17 (A) The name, address and license number of the
18 individual who supervised the lead abatement project and
19 each employee or agent who worked on the project;

20 (B) The location and design of the project, if
21 applicable, and the amount of lead-containing material
22 that was removed;

23 (C) The starting and completion date of each project
24 and a summary of the procedures that were used to
25 comply with all federal and state standards; and

26 (D) The name and address of each disposal site where
27 lead-contaminated waste was deposited and the disposal
28 site receipts.

§16-35-7. Exemptions from notification and licensure.

1 (a) Homeowners performing lead abatement or
2 interim abatement controls on their single unit owner-
3 occupied housing are exempt from the requirements of

4 this article.

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

16 (c) The provisions of this article do not apply to lead
17 hazard reduction activities or to persons performing such
18 activities when such activities are performed wholly within
19 or on an industrial facility and are performed by persons
20 who are subject to the training requirements of OSHA:
21 *Provided*, That the provisions of this article do apply to
22 any child occupied building or area such as a child day
23 care center located at a industrial facility.

§16-35-8. Notification of elevated blood-lead levels required.

1 The director may, by legislative rule, establish
2 requirements for laboratories and lead abatement
3 contractors for mandatory reporting of any persons
4 medically confirmed elevated blood-lead level.

§16-35-9. Notification of lead abatement projects required.

1 Each owner or other person responsible for the
2 operation of a building, facility, residence or structure
3 where a lead abatement project is to occur shall notify the
4 division in the time specified by the director prior to
5 commencement of each lead abatement project, and
6 comply with all applicable state and federal regulatory
7 requirements for a lead abatement project.

§16-35-10. Accreditation of lead abatement training courses.

1 (a) The director shall propose legislative rules
2 establishing criteria and procedures for certification of
3 training course curricula and examinations that shall

4 ensure the qualifications of applications for licensure or
5 certification as required in this article. To qualify for
6 certification, a training course shall contain a combination
7 of class instruction, practical application, and public health
8 procedures of a length and content that, to the satisfaction
9 of the director, ensure adequate training for the level and
10 type of responsibility for each named certification
11 category.

12 (b) All courses certified under this section shall be
13 conducted by instructors whose training and experience is
14 determined by the director to be appropriate for the
15 subject matter being taught and the level of licensure
16 category for which the course is designed. An approved
17 initial course for any category of person engaged in lead
18 hazard reduction activities shall include all of the
19 following, but not be limited to:

20 (1) Worker health and safety instruction no less
21 stringent that required under applicable federal law and
22 regulations;

23 (2) Instruction in the importance of safe work
24 practices in promoting public health, and the importance
25 of proper decontamination procedures in eliminating the
26 risk of contaminating individual workers' home
27 environment; and

28 (3) Instruction in the workers' rights and obligations
29 under federal and state law.

30 (c) In addition to developing criteria for classroom
31 instruction pursuant to this section, the director shall
32 develop minimum criteria for hands-on training or on-site
33 instruction. The criteria for certification of training
34 courses shall include minimum trainee competency and
35 proficiency requirements, evidenced through both written
36 examinations and minimum skills demonstration
37 examinations. Upon successful completion of an
38 approved retraining course, the trainee shall be issued a
39 certificate by the director or the accredited training
40 provider under the authority of the director.

41 (d) All training courses must be recertified annually

42 by the director. The director may establish by legislative
43 rule, reasonable application fees for the accreditation of
44 training courses and discipline examiners, and establish
45 criteria for renewals of training course certification.

**§16-35-11. Suspension or revocation of license; violations;
hearings.**

1 (a) The director may suspend or revoke a lead
2 abatement discipline license if the licensee:

3 (1) Fraudulently or deceptively obtains or attempts to
4 obtain a license or knowingly aids another in such fraud
5 or deception;

6 (2) Fails at any time to meet the qualifications for the
7 license or to comply with the requirements of this article
8 or any applicable legislative rules;

9 (3) Fails to comply with applicable federal or state
10 standards for lead abatement projects;

11 (4) Employs or permits an individual not licensed as
12 required by this article to work on a lead abatement
13 project; or

14 (5) Falsifies or attempts to falsify any document
15 related to a lead abatement project.

16 (b) The director may investigate all suspected
17 violations of this article or any rule promulgated
18 hereunder. Upon the finding of a violation in connection
19 with any lead abatement project, the director shall issue a
20 cease and desist order directing that all work on the
21 project is halted forthwith or a notice of violation directing
22 compliance with this article or any rule promulgated
23 hereunder. Posting of cease and desist orders or notice of
24 violations on project sites shall constitute notice of its
25 contents to the property owner and all persons working on
26 the lead abatement project. The director may also deliver
27 a copy of such order or notice by certified mail, return
28 receipt requested, to the property owner and to the
29 contractor.

30 (c) Hearings regarding violations of this article and
31 any rules promulgated hereunder shall be conducted in

32 accordance with the division's rules of procedure for
33 contested case hearings and declaratory rulings and the
34 administrative procedures act of chapter twenty-nine-a of
35 this code.

§16-35-12. Special revenue account.

1 The director shall deposit all monies collected as fees
2 and civil penalties under the provisions of this article a
3 special account in the state treasury to be known as the
4 "lead abatement account". Expenditures from said fund
5 shall be for the purposes set forth in this article and are
6 not authorized from collections but are to be made only in
7 accordance with appropriation by the Legislature and in
8 accordance with the provisions of article three, chapter
9 twelve of this code and upon the fulfillment of the
10 provisions set forth in article two, chapter five-a of this
11 code: *Provided*, That for the fiscal year ending the
12 thirtieth day of June, one thousand nine hundred ninety-
13 nine, expenditures are authorized from collections rather
14 than pursuant to an appropriation of the Legislature.

§16-35-13. Penalties and fines.

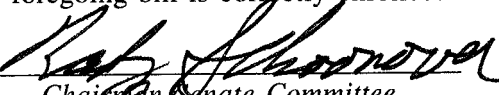
1 (a) The director may impose a civil penalty of not less
2 than two hundred fifty dollars and not more than five
3 thousand dollars for each separate violation of this article
4 or any rules promulgated hereunder. In any case where a
5 person fails to halt work following the issuance of a cease
6 and desist order by the director, the violation shall be
7 presumed to be willful and the person shall be assessed a
8 civil penalty by the director of not less than ten thousand
9 dollars nor more than twenty-five thousand dollars for an
10 initial violation and not less than twenty-five thousand
11 dollars nor more than fifty thousand dollars for each
12 subsequent violation. Failure to pay a civil penalty
13 imposed by the director within thirty days of receipt of
14 notification constitutes a separate violation.

15 (b) Notwithstanding any other provision of this code,
16 any person who violates any provision of this article or
17 any rule promulgated hereunder is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined
19 not less than two hundred fifty dollars, nor more than fifty

13 [Enr. Com. Sub. for H. B. 4034

20 thousand dollars, or confined in the county or regional jail
21 not more than one year, or both fined and confined.

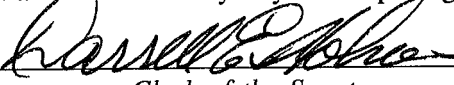
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

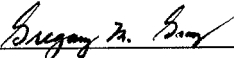

Chairman Senate Committee

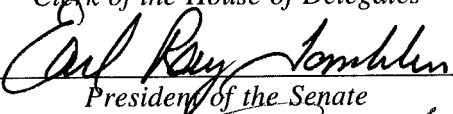

Chairman House Committee

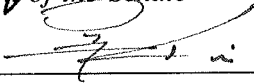
Originating in the House.

Takes effect ninety days from passage.

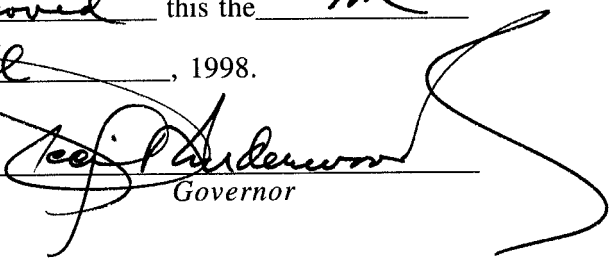

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 7th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date: 4/16/98

Time: 11:49a