WEST VIRGINIA CODE CHAPTER 16 ARTICLE 35

WV Legislature

§16-35-1. Short title.

This article may be cited as the West Virginia "Lead Abatement Act."

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§16-35-2. Legislative findings.

(a) The Legislature hereby finds and declares that:

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

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

(3) Children exposed to even low levels of lead exhibit learning disabilities, decreased growth, hyperactivity, deafness or hearing difficulties, and neurological damage;

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

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

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

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

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

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

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§16-35-3. Definitions.

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

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure 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 post-abatement clearance testing activities associated with such measures;

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

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

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

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

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

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

(e) "Commissioner" means the Commissioner of the West Virginia Bureau for Public Health or his or her representative.

(f) "Discipline" means any one of the following: Lead abatement contractor, lead abatement supervisor, lead inspector, lead risk assessor, lead abatement worker, or lead abatement project designer.

(g) "Elevated blood-lead level" means a concentration of lead in the blood stream as defined by the United States Center for Disease Control.

(h) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building or

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complex of buildings or other industrial structures including the land on which it is located.

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

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

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

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

(m) "Lead abatement designer" means an individual who designs lead abatement projects and occupant protection plans.

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

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

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

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

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

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

(t) "Lead risk assessor" means an individual who is responsible for or conducts lead risk assessments and establishes priorities for a lead abatement project.

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(u) "Lead supervisor" means a person employed by a lead abatement contractor to supervise workers on a lead abatement project, to develop occupant protection plans and to develop abatement reports.

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

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

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

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

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

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

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

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

(3) To promulgate any emergency rules necessary to gain federal approval of the state lead abatement program in accordance with section three, article fifteen, chapter twenty-nine-a of this code;

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

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

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

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§16-35-4a. Duty of director to establish program for early identification of lead poisoning in children.

(a) The director shall establish a program for early identification of cases of lead poisoning. The program shall include a systematic screening of all children under six years of age for the presence of lead poisoning. The director shall, after consultation with recognized professional medical groups and such other sources as he deems appropriate, propose legislative rules establishing: (1) The means by which and the intervals at which children under six years of age shall be screened for lead poisoning; and (2) guidelines for the medical follow-up of children found to be lead poisoned. Such identification program shall, to the extent that all children residing in this state are not systematically screened, give priority in screening to children residing, or who have recently resided, in areas where significant numbers of lead poisoning cases have recently been reported or where other reliable evidence indicates that significant numbers of lead poisoning cases may be found. If the director is informed of any person having a medically confirmed elevated blood-lead level, the director shall cause to have screened all other children under six years of age, and such other children as he or she finds advisable to screen, residing or recently residing in the household of the victim, unless the parents of such child object to the screening because it conflicts with their religious beliefs and practices. The results of the screenings shall be reported to the director, to the person or agency reporting the original case and to such other persons or agencies as the director deems advisable.

(b) The director shall maintain comprehensive records of all screenings conducted pursuant to this section. The records shall be geographically indexed in order to determine the location of areas of relatively high incidence of lead poisoning. The records shall be public records, except that the names of screened individuals may not be public. A summary of the results of all screenings conducted pursuant to this section shall be released quarterly, or more frequently if the director so determines, to all interested parties.

(c) All cases or probable cases of lead poisoning, as defined by legislative rule proposed by the director, found in the course of screenings conducted pursuant to this section shall be reported immediately to the affected individual, to a child's parent or legal guardian if the child is a minor, and to the director. The director shall inform such persons or agencies as the director determines is advisable of the existence of the case or probable case of lead poisoning.

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

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

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

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

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

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

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

(e) The director may grant lead discipline licenses to individuals licensed or certified in another jurisdiction if its requirements are at least as stringent as West Virginia's requirements.

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

A lead abatement contractor shall:

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

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

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

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

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

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

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

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

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

(a) Homeowners performing lead abatement or interim abatement controls on their single unit owner-occupied housing are exempt from the requirements of this article: Provided, That the provisions of this section do not apply to any residential dwelling occupied by a person or persons other than the owner or the owner's immediate family as well as to any residential dwelling where a child with a documented elevated blood lead level resides.

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

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

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

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

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

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

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

(a) The director shall propose legislative rules establishing criteria and procedures for certification of training course curricula and examinations that shall ensure the qualifications of applications for licensure or certification as required in this article. To qualify for certification, a training course shall contain a combination of class instruction, practical application, and public health procedures of a length and content that, to the satisfaction of the director, ensure adequate training for the level and type of responsibility for each named certification category.

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

(1) Worker health and safety instruction no less stringent than required under applicable federal law and regulations;

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

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

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

(d) All training courses must be recertified annually by the director. The director may establish by legislative rule, reasonable application fees for the accreditation of training courses and discipline examiners, and establish criteria for renewals of training course certification.

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

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

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

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

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

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

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

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

(c) Hearings regarding violations of this article and any rules promulgated hereunder shall be conducted in accordance with the division's rules of procedure for contested case hearings and declaratory rulings and the administrative procedures act of chapter twenty-nine-a of this code.

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§16-35-12. Special revenue account.

The director shall deposit all moneys collected as fees and civil penalties under the provisions of this article a special account in the State Treasury to be known as the "lead abatement account". Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, that for the fiscal year ending June 30, 1999, expenditures are authorized from collections rather than pursuant to an appropriation of the Legislature.

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§16-35-13. Penalties and fines.

(a) The director may impose a civil penalty of not less than $250 and not more than $5,000 for each separate violation of this article or any rules promulgated hereunder. In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation shall be presumed to be willful and the person shall be assessed a civil penalty by the director of not less than $10,000 nor more than $25,000 for an initial violation and not less than $25,000 nor more than $50,000 for each subsequent violation. Failure to pay a civil penalty imposed by the director within thirty days of receipt of notification constitutes a separate violation.

(b) Notwithstanding any other provision of this code, any person who violates any provision of this article or any rule promulgated hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250, nor more than $50,000, or confined in the county or regional jail not more than one year, or both fined and confined.

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