WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

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ENROLLED

Com. Sub. for
House Bill No. 4034

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

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Passed March 14, 1998

In Effect Ninety Days from Passage
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.

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

§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, impaired hearing, 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.


(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) "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.

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

(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 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.

(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 director 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
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
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.

§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.

§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.

§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
(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 a industrial facility.

§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.


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.

§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 that 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.

§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 it 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 ir
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.

§16-35-12. Special revenue account.

The director shall deposit all monies 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 the thirtieth day of June, one thousand nine hundred ninety-nine, expenditures are authorized from collections rather than pursuant to an appropriation of the Legislature.


(a) The director may impose a civil penalty of not less than two hundred fifty dollars and not more than five thousand dollars 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 ten thousand dollars nor more than twenty-five thousand dollars for an initial violation and not less than twenty-five thousand dollars nor more than fifty thousand dollars 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 two hundred fifty dollars, nor more than fifty
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 ___

day of ____, 1998.

Governor
PRESENTED TO THE
GOVERNOR

Date: 4/16/98
Time: 11:49a