House Bill No. 4321

(By Delegates Perdue, Hatfield, Staton, Browning, Rick Thompson and Stemple)

Passed March 10, 2006

In Effect Ninety Days from Passage
ENROLLED

H. B. 4321

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[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, all relating to definitions and modifications of exemptions from notification and licensure with respect to lead abatement.

Be it enacted by the Legislature of West Virginia:

That §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 35. LEAD ABATEMENT.


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

2 (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 perma­
nently 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, includ­
ing, but not limited to, day care centers, kindergarten class­
rooms, 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 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.
(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.

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

Randy White  
Chairman Senate Committee

Vincent S. Buza  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Russell Coleman  
Clerk of the Senate

Beverly M.芍  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

A. celino  
Speaker of the House of Delegates

The within is approved this the 44th day of April, 2006.  

Bob Wise  
Governor
PRESENTED TO THE GOVERNOR

MAR 22 2006

Time 3:55