
ENGROSSED SUBSTITUTE SENATE BILL 5586

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Hargrove, Hewitt, Carlson, Oke, Fraser, Regala, Keiser and Kline)

READ FIRST TIME 02/24/03.

1 AN ACT Relating to granting authority to address concerns with
2 lead-based paint activities; adding a new chapter to Title 70 RCW; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that lead hazards
6 associated with lead-based paint represent a significant and
7 preventable environmental health problem. Lead-based paint is the most
8 widespread of the various sources of lead exposure to the public.
9 Census data show that one million five hundred sixty thousand homes in
10 Washington state were built prior to 1978 when the sale of residential
11 lead-based paint was banned. These are homes that are believed to
12 contain some lead-based paint.

13 Lead negatively affects every system of the body. It is harmful to
14 individuals of all ages and is especially harmful to children, fetuses,
15 and adults of childbearing age. The effects of lead on a child's
16 cognitive, behavioral, and developmental abilities may necessitate

1 large expenditures of public funds for health care and special
2 education. The irreversible damage to children and subsequent
3 expenditures could be avoided if exposure to lead is reduced.

4 (2) The federal government regulates lead poisoning and lead hazard
5 reduction through:

6 (a)(i) The lead-based paint poisoning prevention act;

7 (ii) The lead contamination control act;

8 (iii) The safe drinking water act;

9 (iv) The resource conservation and recovery act of 1976; and

10 (v) The residential lead-based paint hazard reduction act of 1992;

11 and

12 (b) Implementing regulations of:

13 (i) The environmental protection agency;

14 (ii) The department of housing and urban development;

15 (iii) The occupational safety and health administration; and

16 (iv) The centers for disease control and prevention.

17 (3) In 1992, congress passed the federal residential lead-based
18 paint hazard reduction act, which allows states to provide for the
19 accreditation of lead-based paint activities programs, the
20 certification of persons completing such training programs, and the
21 licensing of lead-based paint activities contractors under standards
22 developed by the United States environmental protection agency.

23 (4) The legislature recognizes the state's need to protect the
24 public from exposure to lead hazards. A qualified and properly trained
25 work force is needed to assist in the prevention, detection, reduction,
26 and elimination of hazards associated with lead-based paint. The
27 purpose of training workers, supervisors, inspectors, risk assessors,
28 and project designers engaged in lead-based paint activities is to
29 protect building occupants, particularly children ages six years and
30 younger from potential lead-based paint hazards and exposures both
31 during and after lead-based paint activities. Qualified and properly
32 trained individuals and firms will help to ensure lead-based paint
33 activities are conducted in a way that protects the health of the
34 citizens of Washington state and safeguards the environment. The state
35 lead-based paint activities program requires that all lead-based paint
36 activities be performed by certified personnel trained by an accredited
37 program, and that all lead-based paint activities meet minimum work
38 practice standards established by the department of community, trade,

1 and economic development. Therefore, the lead-based paint activities
2 accreditation, training, and certification program shall be established
3 in accordance with this chapter. The lead-based paint activities
4 accreditation, training, and certification program shall be
5 administered by the department of community, trade, and economic
6 development and shall be used as a means to assure the protection of
7 the general public from exposure to lead hazards.

8 (5) For the welfare of the people of the state of Washington, this
9 chapter establishes a lead-based paint activities program within the
10 department of community, trade, and economic development to protect the
11 general public from exposure to lead hazards and to ensure the
12 availability of a trained and qualified work force to identify and
13 address lead-based paint hazards.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Abatement" means any measure or set of measures designed to
17 permanently eliminate lead-based paint hazards.

18 (a) Abatement includes, but is not limited to:

19 (i) The removal of paint and dust, the permanent enclosure or
20 encapsulation of lead-based paint, the replacement of painted surfaces
21 or fixtures, or the removal or permanent covering of soil, when lead-
22 based paint hazards are present in such paint, dust, or soil; and

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

25 (b) Specifically, abatement includes, but is not limited to:

26 (i) Projects for which there is a written contract or other
27 documentation, which provides that an individual or firm will be
28 conducting activities in or to a residential dwelling or child-occupied
29 facility that:

30 (A) Shall result in the permanent elimination of lead-based paint
31 hazards; or

32 (B) Are designed to permanently eliminate lead-based paint hazards
33 and are described in (a)(i) and (ii) of this subsection;

34 (ii) Projects resulting in the permanent elimination of lead-based
35 paint hazards, conducted by certified firms or individuals, unless such
36 projects are covered by (c) of this subsection;

1 (iii) Projects resulting in the permanent elimination of lead-based
2 paint hazards, conducted by firms or individuals who, through their
3 company name or promotional literature, represent, advertise, or hold
4 themselves out to be in the business of performing lead-based paint
5 activities as identified and defined by this section, unless such
6 projects are covered by (c) of this subsection; or

7 (iv) Projects resulting in the permanent elimination of lead-based
8 paint hazards, that are conducted in response to state or local
9 abatement orders.

10 (c) Abatement does not include renovation, remodeling, landscaping,
11 or other activities, when such activities are not designed to
12 permanently eliminate lead-based paint hazards, but, instead, are
13 designed to repair, restore, or remodel a given structure or dwelling,
14 even though these activities may incidentally result in a reduction or
15 elimination of lead-based paint hazards. Furthermore, abatement does
16 not include interim controls, operations and maintenance activities, or
17 other measures and activities designed to temporarily, but not
18 permanently, reduce lead-based paint hazards.

19 (2) "Accredited training program" means a training program that has
20 been accredited by the department to provide training for individuals
21 engaged in lead-based paint activities.

22 (3) "Certified inspector" means an individual who has been trained
23 by an accredited training program, meets all the qualifications
24 established by the department, and is certified by the department to
25 conduct inspections.

26 (4) "Certified abatement worker" means an individual who has been
27 trained by an accredited training program, meets all the qualifications
28 established by the department, and is certified by the department to
29 perform abatements.

30 (5) "Certified firm" includes a company, partnership, corporation,
31 sole proprietorship, association, agency, or other business entity that
32 meets all the qualifications established by the department and performs
33 lead-based paint activities to which the department has issued a
34 certificate.

35 (6) "Certified project designer" means an individual who has been
36 trained by an accredited training program, meets all the qualifications
37 established by the department, and is certified by the department to

1 prepare abatement project designs, occupant protection plans, and
2 abatement reports.

3 (7) "Certified risk assessor" means an individual who has been
4 trained by an accredited training program, meets all the qualifications
5 established by the department, and is certified by the department to
6 conduct risk assessments and sample for the presence of lead in dust
7 and soil for the purposes of abatement clearance testing.

8 (8) "Certified supervisor" means an individual who has been trained
9 by an accredited training program, meets all the qualifications
10 established by the department, and is certified by the department to
11 supervise and conduct abatements, and to prepare occupant protection
12 plans and abatement reports.

13 (9) "Department" means the Washington state department of
14 community, trade, and economic development.

15 (10) "Director" means the director of the Washington state
16 department of community, trade, and economic development.

17 (11) "Federal laws and rules" means:

18 (a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et
19 seq.) and the rules adopted by the United States environmental
20 protection agency under that law for authorization of state programs;

21 (b) Any regulations or requirements adopted by the United States
22 department of housing and urban development regarding eligibility for
23 grants to states and local governments; and

24 (c) Any other requirements adopted by a federal agency with
25 jurisdiction over lead-based paint hazards.

26 (12) "Lead-based paint" means paint or other surface coatings that
27 contain lead equal to or in excess of 1.0 milligrams per square
28 centimeter or more than 0.5 percent by weight.

29 (13) "Lead-based paint activity" includes inspection, testing, risk
30 assessment, lead-based paint hazard reduction project design or
31 planning, or abatement of lead-based paint hazards.

32 (14) "Lead-based paint hazard" means any condition that causes
33 exposure to lead from lead-contaminated dust, lead-contaminated soil,
34 or lead-contaminated paint that is deteriorated or present in
35 accessible surfaces, friction surfaces, or impact surfaces that would
36 result in adverse human health effects as identified by the
37 administrator of the United States environmental protection agency
38 under the toxic substances control act, section 403.

1 (15) "State program" means a state administered lead-based paint
2 activities certification and training program that meets the federal
3 environmental protection agency requirements.

4 (16) "Person" includes an individual, corporation, firm,
5 partnership, or association, an Indian tribe, state, or political
6 subdivision of a state, and a state department or agency.

7 (17) "Risk assessment" means:

8 (a) An on-site investigation to determine the existence, nature,
9 severity, and location of lead-based paint hazards; and

10 (b) The provision of a report by the individual or the firm
11 conducting the risk assessment, explaining the results of the
12 investigation and options for reducing lead-based paint hazards.

13 NEW SECTION. **Sec. 3.** (1) The department shall administer and
14 enforce a state program for worker training and certification, and
15 training program accreditation, which shall include those program
16 elements necessary to assume responsibility for federal requirements
17 for a program as set forth in Title IV of the toxic substances control
18 act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint
19 hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R.
20 Part 745, Subparts L and Q (1996), and Title X of the housing and
21 community development act of 1992 (P.L. 102-550).

22 (2) The department is authorized to adopt rules that are consistent
23 with federal requirements to implement a state program. Rules adopted
24 under this section shall:

25 (a) Establish minimum accreditation requirements for lead-based
26 paint activities for training providers;

27 (b) Establish work practice standards for conduct of lead-based
28 paint activities;

29 (c) Establish certification requirements for individuals and firms
30 engaged in lead-based paint activities including provisions for
31 recognizing certifications accomplished under existing certification
32 programs;

33 (d) Require the use of certified personnel in all lead-based paint
34 activities;

35 (e) Be revised as necessary to comply with federal law and rules
36 and to maintain eligibility for federal funding;

1 (f) Facilitate reciprocity and communication with other states
2 having a lead-based paint certification program;

3 (g) Provide for decertification, deaccreditation, and financial
4 assurance for a person certified by or a training provider accredited
5 by the department; and

6 (h) Be issued in accordance with the administrative procedure act,
7 chapter 34.05 RCW.

8 (3) The department may accept federal funds for the administration
9 of the program.

10 (4) This program shall equal, but not exceed, legislative authority
11 under federal requirements as set forth in Title IV of the toxic
12 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential
13 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et
14 seq.), and Title X of the housing and community development act of 1992
15 (P.L. 102-550).

16 (5) Any rules adopted by the department shall be consistent with
17 federal laws, regulations, and requirements relating to lead-based
18 paint activities specified by the residential lead-based paint hazard
19 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
20 housing and community development act of 1992 (P.L. 102-550), and rules
21 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
22 regulatory action. The rules may not be more restrictive than
23 corresponding federal and state regulations unless such stringency is
24 specifically authorized by this chapter.

25 NEW SECTION. **Sec. 4.** (1) The department shall establish a program
26 for certification of persons involved in lead-based paint activities
27 and for accreditation of training providers in compliance with federal
28 laws and rules.

29 (2) Rules adopted under this section shall:

30 (a) Establish minimum accreditation requirements for lead-based
31 paint activities for training providers;

32 (b) Establish work practice standards for conduct of lead-based
33 paint activities;

34 (c) Establish certification requirements for individuals and firms
35 engaged in lead-based paint activities including provisions for
36 recognizing certifications accomplished under existing certification
37 programs;

1 (d) Require the use of certified personnel in any lead-based paint
2 hazard reduction activity;

3 (e) Be revised as necessary to comply with federal law and rules
4 and to maintain eligibility for federal funding;

5 (f) Facilitate reciprocity and communication with other states
6 having a lead-based paint certification program;

7 (g) Provide for decertification, deaccreditation, and financial
8 assurance for a person certified or accredited by the department; and

9 (h) Be issued in accordance with the administrative procedure act,
10 chapter 34.05 RCW.

11 (3) This program shall equal, but not exceed, legislative authority
12 under federal requirements as set forth in Title IV of the toxic
13 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential
14 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et
15 seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the
16 housing and community development act of 1992 (P.L. 102-550).

17 (4) Any rules adopted by the department shall be consistent with
18 federal laws, regulations, and requirements relating to lead-based
19 paint activities specified by the residential lead-based paint hazard
20 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the
21 housing and community development act of 1992 (P.L. 102-550), and rules
22 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
23 regulatory action. The rules may not be more restrictive than
24 corresponding federal and state regulations unless such stringency is
25 specifically authorized by this chapter.

26 (5) The department may accept federal funds for the administration
27 of the program.

28 NEW SECTION. **Sec. 5.** The department shall adopt rules to:

29 (1) Establish procedures and requirements for the accreditation of
30 lead-based paint activities training programs including, but not
31 limited to, the following:

32 (a) Training curriculum;

33 (b) Training hours;

34 (c) Hands-on training;

35 (d) Trainee competency and proficiency;

36 (e) Training program quality control;

37 (f) Procedures for the reaccreditation of training programs;

1 (g) Procedures for the oversight of training programs; and
2 (h) Procedures for the suspension, revocation, or modification of
3 training program accreditations, or acceptance of training offered by
4 an accredited training provider in another state or Indian tribe
5 authorized by the environmental protection agency;

6 (2) Establish procedures for the purposes of certification, for the
7 acceptance of training offered by an accredited training provider in a
8 state or Indian tribe authorized by the environmental protection
9 agency;

10 (3) Certify individuals involved in lead-based paint activities to
11 ensure that certified individuals are trained by an accredited training
12 program and possess appropriate educational or experience
13 qualifications for certification;

14 (4) Establish procedures for recertification;

15 (5) Require the conduct of lead-based paint activities in
16 accordance with work practice standards;

17 (6) Establish procedures for the suspension, revocation, or
18 modification of certifications; and

19 (7) Establish requirements for the administration of third-party
20 certification exams;

21 (8) Use laboratories accredited under the environmental protection
22 agency's national lead laboratory accreditation program;

23 (9) Establish work practice standards for the conduct of lead-based
24 paint activities for:

25 (a) Inspection for presence of lead-based paint;

26 (b) Risk assessment; and

27 (c) Abatement;

28 (10) Establish an enforcement response policy that shall include:

29 (a) Warning letters, notices of noncompliance, notices of
30 violation, or the equivalent;

31 (b) Administrative or civil actions, including penalty authority,
32 including accreditation or certification suspension, revocation, or
33 modification; and

34 (c) Authority to apply criminal sanctions or other criminal
35 authority using existing state laws as applicable.

36 The department shall prepare and submit a biennial report to the
37 legislature regarding the program's status, its costs, and the number
38 of persons certified by the program.

1 NEW SECTION. **Sec. 6.** The lead paint account is created in the
2 state treasury. All receipts from section 7 of this act shall be
3 deposited into the account. Moneys in the account may be spent only
4 after appropriation. Expenditures from the account may be used only
5 for the purposes of this chapter.

6 NEW SECTION. **Sec. 7.** (1) The department shall collect a fee in
7 the amount of twenty-five dollars for certification and recertification
8 of lead paint firms, inspectors, project developers, risk assessors,
9 supervisors, and abatement workers.

10 (2) The department shall collect a fee in the amount of two hundred
11 dollars for the accreditation of lead paint training programs.

12 NEW SECTION. **Sec. 8.** (1)(a) The director or the director's
13 designee is authorized to inspect at reasonable times and, when
14 feasible, with at least twenty-four hours prior notification:

15 (i) Premises or facilities where those engaged in training for
16 lead-based paint activities conduct business; and

17 (ii) The business records of, and take samples at, the businesses
18 accredited or certified under this chapter to conduct lead-based paint
19 training or activities.

20 (b) Any accredited training program or any firm or individual
21 certified under this chapter that denies access to the department for
22 the purposes of (a) of this subsection shall be subject to
23 deaccreditation or decertification under section 4 of this act.

24 (2)(a) The director or the director's designee is authorized to
25 inspect premises or facilities where federal funds have been used for
26 conducting lead-based paint activities, at reasonable times and after
27 consent to inspection is given with at least forty-eight hours prior
28 notification of the inspection.

29 (b) For the purposes of (a) of this subsection, consent to inspect,
30 solely for the purposes of lead-based paint activities, shall be given
31 whenever the premise or facility is owned or operated by the state, a
32 city, a town, a county, a housing authority created under chapter 35.82
33 RCW, or a community action agency designated in the state federal
34 community service block grant plan under the authority of RCW
35 43.63A.115, and federal funds for the purposes of lead-based paint

1 activities were applied for, received, or expended regarding that
2 premise or facility.

3 (c) For the purposes of (a) of this subsection, consent to inspect,
4 solely for the purposes of lead-based paint activities, shall be given
5 by any person or entity who applied for, received, or expended federal
6 funds for lead-based paint activities regarding that premise or
7 facility, in order to determine compliance with the statutes and rules
8 pertaining to lead-based paint activities.

9 (d) The inspection authority granted under this subsection (2)
10 expires ninety days after the completion of a federally funded lead-
11 based paint activity.

12 (3) Prior to receipt of federal lead-based paint abatement funding,
13 all premise or facility owners shall be notified by any entity that
14 receives and disburses the federal funds that an inspection may be
15 conducted. If a premise or facility owner does not wish to have an
16 inspection conducted, that owner will not be eligible to receive lead-
17 based paint abatement funding.

18 NEW SECTION. **Sec. 9.** (1) The department is designated as the
19 official agency of this state for purposes of cooperating with, and
20 implementing the state lead-based paint activities program under the
21 jurisdiction of the United States environmental protection agency.

22 (2) No individual or firm can perform, offer, or claim to perform
23 lead-based paint activities without certification from the department
24 to conduct these activities.

25 (3) The department may deny, suspend, or revoke a certificate for
26 failure to comply with the requirements of this chapter or any rule
27 adopted under this chapter. No person whose certificate is revoked
28 under this chapter shall be eligible to apply for a certificate for one
29 year from the effective date of the final order of revocation. A
30 certificate may be denied, suspended, or revoked on any of the
31 following grounds:

32 (a) A risk assessor, inspector, contractor, project designer, or
33 worker violates work practice standards established by the United
34 States environmental protection agency or the United States department
35 of housing and urban development governing work practices and
36 procedures; or

1 (b) The certificate was obtained by error, misrepresentation, or
2 fraud.

3 (4) Any person convicted of violating any of the provisions of this
4 chapter is guilty of a misdemeanor. A conviction is an unvacated
5 forfeiture of bail or collateral deposited to secure the defendant's
6 appearance in court, the payment of a fine, a plea of guilty, or a
7 finding of guilt on a violation of this chapter, regardless of whether
8 imposition of sentence is deferred or the penalty is suspended, and
9 shall be treated as a violation conviction for purposes of
10 certification forfeiture under this chapter. Violations of this
11 chapter include:

- 12 (a) Failure to comply with any requirement of this chapter;
- 13 (b) Failure or refusal to establish, maintain, provide, copy, or
14 permit access to records or reports as required;
- 15 (c) Obtaining certification through fraud or misrepresentation;
- 16 (d) Failure to obtain certification from the department and
17 performing work requiring certification at a job site; or
- 18 (e) Fraudulently obtaining certification and engaging in any lead-
19 based paint activities requiring certification.

20 NEW SECTION. **Sec. 10.** The department's duties under this act are
21 subject to the availability of sufficient funding from the federal
22 government for this purpose. The director or his or her designee shall
23 seek funding of the department's efforts under this chapter from the
24 federal government. By October 15th of each year, the director shall
25 determine if sufficient federal funding has been provided or guaranteed
26 by the federal government. If the director determines sufficient
27 funding has not been provided, the department shall cease efforts under
28 this chapter due to the lack of federal funding.

29 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
30 constitute a new chapter in Title 70 RCW.

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