

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2063

By: Leist of the House

and

Easley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; creating the Oklahoma Lead-based Paint Management Act; defining terms; providing for powers and duties of Environmental Quality Board and Department of Environmental Quality; requiring certification for certain lead-based paint contractors, evaluators and specialists; providing for rules; requiring fees and determination of fees; providing exceptions; providing for construction and limitations of rules; requiring certain restrictions on rules; making certain designation; specifying powers and duties of the Department; providing for accreditation and certification; setting certain procedures; authorizing certain waivers; prohibiting certain actions; providing certain requirements; providing for health and safety information; providing for consultations; authorizing appointment of task forces; prohibiting certain actions; providing procedures and penalties for certain violations; providing for issuance, expiration, renewal, revocation and suspension of certifications; authorizing educational and publicity programs; providing for certain public information; specifying content; providing for guidelines; providing for hiring and termination of certain employees; creating Article XII of the Oklahoma Environmental Code; providing for noncodification; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

ARTICLE XII

Lead-based Paint

Part 1. Short Title and Definitions

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-101 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 11 of this act shall be known and may be cited as the "Oklahoma Lead-based Paint Management Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Oklahoma Lead-based Paint Management Act:

1. "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Board. The term abatement includes but is not limited to:

- a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil, and
- b. all preparation, cleanup, disposal and postabatement clearance testing activities associated with such measures;

2. "Board" means the Environmental Quality Board;

3. "Certified lead-based paint contractor" means any individual who is certified by the Department as a lead-based paint reduction contractor, inspector or hazard evaluator or a combination thereof;

4. "Certified lead-based paint specialist" means a lead-based paint specialist certified by the Department;

5. "Deleading" means activities conducted by a lead-based paint contractor or specialist who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities;

6. "Department" means the Department of Environmental Quality;

7. "Executive Director" means the Executive Director of the Department of Environmental Quality;

8. "Federally assisted housing" means residential dwellings receiving project-based assistance pursuant to programs including, but not limited to:

- a. Section 221(d)(3) or 236 of the National Housing Act,
- b. Section 1 of the Housing and Urban Development Act of 1965,
- c. Section 8 of the United States Housing Act of 1937, or
- d. Sections 502(a), 504, 514, 515, 516 and 533 of the Housing Act of 1949;

9. "Federally owned housing" means residential dwellings owned or managed by the federal agency, or for which a federal agency is a trustee or conservator. The term federal agency includes the federal Department of Housing and Urban Development, the Farmers Home Administration, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, the Department of Defense, the federal Department of Veterans Affairs, the Department of the Interior, the federal Department of Transportation, and any other federal agency;

10. "Hazard evaluation" means an on-site investigation process established by the rules of the Board to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings. For purposes of this act, the term hazard evaluation shall be synonymous with the term risk assessment as used in Title X of the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., Public Law No. 102-550;

11. "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;

12. "Lead-based paint" means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or:

- a. in the case of paint or other surface coatings in target housing, such lower level as may be established by the United States Secretary of Housing and Urban Development, as defined in Section 302(c) of the federal Lead-based Paint Poisoning Prevention Act, or
 - b. in the case of any other paint or surface coatings, such other level as may be established by the Board;
13. "Lead-based paint activities" means:
- a. in the case of public property and private property, hazard evaluation assessment, inspection, deleading and abatement of lead sources or lead-based paint, lead-based paint hazards, lead-contaminated dust, or lead-contaminated soil, and demolition, and
 - b. in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges and demolition;
14. "Lead-based paint contractor" means any individual who performs or supervises or offers to perform or to supervise lead-based paint inspections, hazard evaluations or reduction;
15. "Lead-based paint reduction contractor" means any individual who performs or supervises lead-based paint services, including but not limited to hazard reduction, abatement, or deleading;
16. "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Board;
17. "Lead-based paint hazard evaluator" means an individual certified by the Department to perform lead-based paint hazard evaluations;

18. "Lead-based paint inspector" means an individual certified by the Department to perform a surface-by-surface investigation to determine the presence of lead-based paint and provide a report explaining the results of the investigation;

19. "Lead-based paint services" means any lead-based paint hazard evaluation, detection, reduction, deleading, abatement, on-site testing, or any other lead-based paint activities;

20. "Lead-based paint specialist" means any worker or other person directly and substantially involved in the performance of lead-based paint services and who has satisfactorily completed the required level of lead-based paint training from accredited training providers and programs, or in the case of out-of-state providers and programs, from Department recognized and approved providers and programs. For the purposes of this article, the term lead-based paint specialist shall be synonymous with the term abatement worker or worker as used in Title X of the Residential Lead-based Paint Hazards Reduction Act of 1992, 42 U.S.C., Section 4851 et seq., Public Law No. 102-550;

21. "Lead-contaminated dust" means surface dust in residential or commercial dwellings that contains an area or mass concentration of lead in excess of levels determined by the Board to pose a threat of adverse human health effects;

22. "Lead-contaminated soil" means bare soil on residential or commercial real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Board;

23. "Lead-hazard detection" means the identification of lead-based paint hazards;

24. "Publicly owned or operated" means any residential building, bridge or superstructure owned or leased by the state or political subdivision thereof;

25. "Reduction" or "lead-hazard reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement;

26. "Residential dwelling" means:

- a. a single-family dwelling, including attached structures such as porches and stoops, or
- b. a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons; and

27. "Target housing" means any housing constructed prior to 1978. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the United States Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

Part 2. Powers and Duties

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-201 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Board shall promulgate rules governing lead-based paint services which will:

1. Enable any lead-based paint reduction contractor, specialist, inspector or hazard evaluator meeting the standards and criteria established by the Board including satisfactory completion of required training in applicable courses offered by Department accredited training providers and programs or an out-of-state provider or program recognized and approved by the Department to become certified by the Department;

2. Require that any lead-based paint reduction contractor, inspector or hazard evaluator or specialist performing or offering to perform lead-based paint services on state or federally assisted housing, state or federally owned housing and any publicly owned or leased building, bridge or superstructure, any building renovations conducted pursuant to federal economic development projects, or other public works project is certified prior to the performance of any such service;

3. Ensure that persons holding themselves out to be certified lead-based paint contractors or certified lead-based paint specialists have been certified as such by the Department; and

4. Provide for accreditation of approved training providers and programs located in this state.

B. Such rules shall:

1. Contain standards for performing lead-based paint activities taking into account reliability, effectiveness and safety;

2. Contain specific requirements for the accreditation of lead-based paint training programs and the instructors of such programs including, but not limited to:

- a. minimum requirements for the accreditation of training providers,
- b. minimum training curriculum requirements,
- c. minimum training hour requirements,
- d. minimum hands-on training requirements,
- e. minimum trainee competency and proficiency requirements, and
- f. minimum requirements for training program quality control;

3. Set training requirements for certified lead-based paint contractors and lead-based paint specialists and require that such training be provided by Department-accredited training providers and programs, or by out-of-state providers and programs recognized and approved by the Department. Such requirements shall allow for differences in the training needs of such contractors and specialists in lead-based paint services for residential structures, public buildings, commercial buildings, bridges, or other structures or superstructures and in applicable state and municipal regulatory waste disposal requirements;

4. Provide that training requirements applicable to lead-based paint specialists establish minimum acceptable levels of training and periodic refresher training for each class of specialists;

5. Require that all lead-based paint training programs shall include, but not be limited to, a hands-on component and instruction on the health effects of lead exposure, the use of personal protective equipment, workplace hazards and safety problems, reduction and abatement methods and work practices, decontamination procedures, cleanup and waste disposal procedures, lead monitoring and on-site testing methods, and legal rights and responsibilities;

6. Set forth requirements for certification of lead-based paint contractors and specialists. Such requirements shall include, but are not limited to, applications therefor, bonding and education, training, examination and experience prerequisites;

7. Establish a system of training for all personnel who render review and inspection services for the Department in order to assure uniform statewide application of rules; and

8. Identify guidelines, based on federal regulations, for the determination of adverse human health effects posed by lead-based paint hazards.

C. 1. The Board shall establish a system of nonrefundable fees to be charged for certification of lead-based paint contractors and specialists, accreditation of approved Oklahoma training programs and training providers, recognition and approval of out-of-state accredited training programs and training providers, any training or other program related to lead-based paint services conducted by the Department, and for services rendered by the Department in connection with such certification, accreditation, recognition and approval, and programs.

2. The Board shall base its schedule of fees upon the costs of services provided.

3. The state and political subdivisions thereof, shall be exempt from any certification fees required by rules of the Board if an affidavit is filed with the Department stating that the applicant is employed by the state or political subdivision thereof and shall only be performing lead-based paint services for the state or political subdivision employer. Any such employee who performs or offers to perform lead-based paint services as a

certified lead-based paint contractor or specialist for persons other than his state or political subdivision employer shall be subject to certification fees upon such performance or offer.

D. Any rules promulgated by the Board shall be consistent with federal laws and regulations relating to lead-based paint services specified by the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., Public Law No. 102-550, to ensure consistency in regulatory action. Such rules shall not be more restrictive than corresponding federal regulations unless such stringency is specifically authorized by this article. The Board shall have the right to revise its regulations and procedures from time to time to assure that state lead-based paint projects on state or federally assisted housing, state or federally owned housing and any publicly owned or leased building, bridge or superstructure or other public works project continue to be eligible for federal funding by meeting the state certification program standards and other requirements that may from time to time be promulgated by federal agencies that have jurisdiction over lead-based paint hazards.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-202 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Department of Environmental Quality is hereby designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint reduction and regulation program under the jurisdiction of, the federal Environmental Protection Agency.

B. In addition to authority under the Oklahoma Environmental Quality Code, the Department shall have the power and duty to:

1. Issue, renew, reactivate and renew, reinstate, modify, suspend, revoke, or refuse to issue, renew, reactivate and renew, reinstate, or modify certification pursuant to the provisions of the Oklahoma Lead-based Paint Management Act;

2. Cooperate with others in facilitating the development of educational and training programs, examinations, and community outreach materials, and cooperate with those who conduct

educational and training programs or prepare materials related to lead-based paint activities and associated subjects;

3. Conduct, and determine the criteria for the successful completion of, certification examinations and provide for the confidentiality of examinations and individual scores;

4. Issue, renew, reinstate, modify, suspend, revoke, or refuse to issue, renew, reinstate, or modify accreditation to lead-based paint training programs and the providers of such programs, and recognize and approve out-of-state training programs and providers;

5. Enforce the provisions of this article, rules promulgated thereunder, and orders, accreditations and certifications issued pursuant thereto;

6. Collect and analyze samples to determine the presence and condition of lead-based paint as necessary for the enforcement of this article;

7. Convene and coordinate an interagency task force which shall meet on a regular basis to exchange information regarding lead poisoning prevention and lead-hazard control matters;

8. Establish liaison with other states having a state certification program to assure consistency of program requirements, in order to facilitate reciprocity of certification and accreditation among the several states;

9. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers pursuant to the Oklahoma Lead-based Paint Management Act including, but not limited to, contracts with the United States, other states, agencies and political subdivisions of this state;

10. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable; and

11. Otherwise exercise all incidental powers as necessary and proper to implement and enforce the provisions of the Oklahoma

Lead-based Paint Management Act and the rules of the Board promulgated thereto.

Part 3. Accreditation and Certification

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-301 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. An applicant who has paid the required nonrefundable certification fees and has complied with the requirements of this article and rules promulgated thereunder, including, but not limited to, education, training, experience and examination prerequisites, shall be certified by the Department.

B. The Department may waive some or all of its testing, training, experience, or examination requirements for certification if the applicant presents a currently valid certificate or license issued to him by another state or certifying agency or institution or national nonprofit organization for lead-based paint services, if the Department finds that the certification requirements of the issuer in effect at the time of issuance are equivalent to its certification requirements; provided, however, that no certification shall be issued under this subsection unless the holder of the certificate would be issued a similar certificate or license by such other state, certifying agency, or organization under substantially the same conditions. For contractors under contract with the Department of Transportation for lead-based paint services, certification by the Steel Structures Painting Council specified by the Department of Transportation shall be considered equivalent to the Department's certification requirements.

C. Any certificate issued under this section shall be renewed by the April 1 occurring not more than one year after the date of the most recent date of issuance, renewal, reactivation or reinstatement. Thereafter, the certificate may be renewed for a one-year period beginning April 1 and ending March 31 of the following year.

D. A certificate shall be renewed upon approval of the Department. Application for such renewal shall be submitted to

the Department on forms prescribed by the Department, shall be accompanied by a nonrefundable renewal fee as set by the Board and shall include documentation that the applicant has met the annual renewal requirements of the Department. The Department shall allow a thirty-day grace period for such renewals without payment of late fees, provided the applicant submits the required renewal fee and qualifies for such renewal.

E. A certificate which is not so renewed shall expire on April 30 after the thirty-day grace period, and shall have no further validity unless the Department, upon receipt of an application from the holder of the expired certificate within one (1) year after the certificate's March 31 renewal date, reactivates and renews such certificate. Such reactivation and renewal application shall include the submission of data on forms prescribed by the Department, nonrefundable renewal and reactivation late fees as set by the Board, and documentation that the applicant has met the Department's renewal requirements. A reactivated certificate may be renewed annually thereafter as provided in this section.

F. The holder of an expired and unreactivated certificate shall not be issued any new certificate unless he applies and qualifies therefor pursuant to this article and rules promulgated thereunder.

G. Any certificate issued pursuant to the Oklahoma Lead-based Paint Management Act may contain such conditions or restrictions as the Department shall deem necessary or appropriate.

H. A certificate shall not be issued pursuant to the provisions of this article to any person other than an individual.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-302 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. No lead-based paint contractor or specialist shall perform or offer to perform lead-based paint services upon state or federally assisted housing, state or federally owned housing and any publicly owned or leased building, bridge or other superstructure or public works project unless such person is

certified by the Department prior to performing or offering to perform such services.

B. No individual shall advertise or otherwise present himself as a certified lead-based paint contractor or specialist, for purposes of offering to perform or performing lead-based paint services unless certified by the Department pursuant to this article and rules promulgated thereunder.

C. Certified lead-based paint contractors and specialists shall use only environmental sampling laboratories that are part of an effective voluntary accreditation program as determined by the federal Environmental Protection Agency or which are federally certified to analyze for lead in paint films, soil and dust.

D. The Department shall maintain an official listing of the names and addresses of all certified lead-based paint contractors and specialists and make such list available to any person requesting it upon payment of a copying fee established by the Board.

E. The State Department of Labor shall provide health and safety information on lead abatement to all lead-based paint contractors and specialists certified pursuant to the terms of this article.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-303 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. No person, agency, institution or organization shall advertise or otherwise present itself as an accredited lead-based paint training program unless accredited by the Department pursuant to this article and rules promulgated thereunder.

B. No individual shall advertise or otherwise present himself as an accredited lead-based paint training provider or instructor unless accredited for such purposes by the Department pursuant to this article and rules promulgated thereunder.

C. Any accreditation issued pursuant to this article may contain conditions as the Department shall deem necessary or appropriate.

D. Any program or training provider accreditation issued pursuant to this article and rules promulgated thereunder shall be renewable annually for the period September 1 through August 31 pursuant to rules promulgated by the Board.

E. 1. Upon application by an out-of-state training program or training provider, the Department may recognize and approve in part or in whole the current accreditation of the applicant if the Department finds that the state's accreditation requirements in effect at the time of accreditation are equivalent to the requirements of the Department; provided, however, that no such accreditation will be recognized and approved by the Department unless the applicant program or provider would be accredited by such other state under substantially the same conditions.

2. Recognition and approval of an out-of-state training program or training provider may be granted with such conditions as the Department shall deem necessary or appropriate.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-304 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. 1. The Department shall have power to refuse to issue or renew, in part or in whole, a certificate or accreditation or, after notice and opportunity for an individual proceeding as provided in Article II of the Administrative Procedures Act and the Oklahoma Environmental Quality Code, and rules promulgated thereunder, revoke or suspend in part or in whole any certificate or accreditation for good cause including, but not limited to:

- a. gross inefficiency or incompetence,
- b. violation of any provisions of this article, rules promulgated thereunder or the terms or conditions of any certification, accreditation or order issued pursuant thereto, or
- c. fraud or misrepresentation in obtaining a certificate or accreditation.

2. After the expiration of one (1) year after the Department's denial of an application for a new or renewed certification or accreditation, or for a reactivated and renewed

certificate, or the Department's revocation of a certification or accreditation, the holder of such certificate or accreditation may make application to the Department for new certification or accreditation. After the expiration of one (1) year after the Department's suspension of a certification or accreditation, the holder may make application to the Department for reinstatement or new certification or accreditation. Such new issuance or reinstatement shall rest in the sound discretion of the Department.

B. The Department may withdraw in part or in whole its recognition and approval of any out-of-state training program or training provider at any time the program or provider does not qualify therefor pursuant to this article and rules of the Board.

Part 4. Lead-based Paint Information

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-401 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Consistent with the terms of federal funding agreements and the receipt of such funds by the Department for such information programs, the Executive Director shall institute an education and public information program, in order to inform the general public, and particularly parents of children residing in areas of significant exposure to sources of lead-based paint hazards, teachers, social workers and other human services personnel; owners of residential property, particularly property constructed previous to 1945; and health services personnel at major hospitals, of the dangers, frequency, and sources of lead-based paint hazards, and the methods of preventing such hazards.

B. Consistent with the terms of federal funding agreements and the receipt of such funds by the Department for such an information program, the Department, after notice and opportunity for comment, shall publish, and from time to time revise, a lead-based paint hazard information pamphlet to be used in connection with the Oklahoma Lead-based Paint Management Act and Section 1018 of the federal Residential Lead-based Paint Hazard Reduction Act of 1992. The pamphlet shall:

1. Contain information regarding the health risks associated with exposure to lead;

2. Provide information on the presence of lead-based paint hazards in federally assisted, federally owned, and target housing;

3. Describe the risk of lead exposure for children under six (6) years of age, pregnant women, women of childbearing age, persons with respiratory disease or disabilities, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards;

4. Describe the risks of renovation in a dwelling with lead-based paint hazards;

5. Provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;

6. Advise persons how to obtain a list of certified contractors;

7. State that a hazard evaluation or on-site inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing;

8. State that certain state and local laws may impose additional requirements related to lead-based paint in housing and provide a listing of federal, state, and local agencies in each state, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and

9. Provide such other information about environmental hazards associated with residential real property as the Department deems appropriate.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-402 of Title 27A, unless there is created a duplication in numbering, reads as follows:

In order to reduce the risk of exposure to lead in connection with renovation, demolition and remodeling of target housing,

public buildings constructed before 1978, and commercial buildings, the Board shall, consistent with the terms of federal funding agreements and the receipt of such funds by the Department for such development and dissemination, promulgate guidelines for the conduct of such renovation, demolition and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Department shall disseminate such guidelines to persons engaged in such renovation, demolition and remodeling through hardware and paint stores, employee organizations, trade groups, state and local agencies, and through other appropriate means.

Part 5. Miscellaneous

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-501 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Any full-time-equivalent employees employed by the Department pursuant to this article to be compensated with federal funds shall have their employment contingent upon the procurement of federal funds and shall be terminated when federal support of those positions is discontinued. All activities performed by these employees shall be discontinued upon their termination due to the lack of such federal funds.

SECTION 12. Sections 1 through 11 of this act shall be codified as Article XII of the Oklahoma Environmental Quality Code, entitled "Oklahoma Lead-based Paint Management Act".

SECTION 13. Section 12 of this act shall not be codified in the Oklahoma Statutes.

SECTION 14. This act shall become effective July 1, 1994.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

