

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2063

By: Leist

COMMITTEE SUBSTITUTE

(Environment and natural resources - creating
the Oklahoma Lead-based Paint Reduction and
Regulation Act -

emergency)

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

PART 1. AUTHORIZATION AND DEFINITIONS

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

This article shall be known and may be cited as the "Oklahoma Lead-based Paint Reduction and Regulation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-102 of Part 1 of Article XII of Title 27A, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Oklahoma Lead-based Paint Reduction and Regulation Act:

1. "Abatement" means any measure or measures designed to permanently eliminate a lead-based paint hazard and 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 faces or fixtures, and the removal or covering of lead-contaminated soil, and

- b. all preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures;

2. "Abatement contractor" means any individual, certified by the Department, who offers to perform lead-hazard detection or lead-hazard reduction services as a contractor, inspector, or supervisor;

3. "Abatement specialist" means any worker, inspector, or other person directly and substantially involved in the performance of lead-based paint activities or who assists an abatement contractor in lead-hazard detection or lead-hazard reduction and who has satisfactorily completed the required level of training in lead-based paint activities 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 "abatement 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;

4. "Board" means the Environmental Quality Board;

5. "Deleading" means activities conducted by a certified abatement contractor 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. "Hazard evaluation" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including but not limited to:

- a. information-gathering regarding the age and history of the housing and occupancy by children under six (6) years of age,
- b. visual inspection,
- c. limited wipe sampling or other environmental sampling techniques,
- d. other activity as may be appropriate, and
- e. provision of a report explaining the results of the investigation.

For purposes of this article, 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., Section 4851 et seq., Public Law No. 102-550;

9. "Interim controls" means a set of measures designed to reduce temporary 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;

10. "Lead-based paint" means paint or other surface coatings that contain lead in excess of 1.0 milligrams per square centimeter 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 coating, such other level as may be established by the Board;

11. "Lead-based paint activities" means:

- a. in the case of public property and private property, hazard evaluation, inspection, on-site testing, deleading, and abatement of lead sources or lead-

- based paint, lead-based paint hazards, lead-contaminated dust, or lead-contaminated soil, 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;

12. "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated paint 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;

13. "Lead-contaminated dust" means dust from sanding or scraping lead-based paint or surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the Board to pose a lead-based paint hazard;

14. "Lead-contaminated soil" means bare soil on residential real property that contains lead at or in excess of the levels determined to be a lead-based paint hazard;

15. "Lead-hazard detection" means the identification of lead-based paint hazards and the development of a plan for the reduction or abatement of such hazards;

16. "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;

17. "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 individuals; and

18. "Target housing" means any housing constructed prior to 1978, or an earlier date as designated by the Secretary of Housing and Urban Development, except for the elderly or persons with disabilities, unless any child who is less than six (6) years of age resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero (0) bedroom dwelling.

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 Part 2 of Article XII of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Environmental Quality Board shall promulgate rules governing lead-based paint activities and abatement or reduction of a lead-based paint hazard to implement this article to ensure that:

1. Persons who offer to perform lead-based paint detection or lead-based paint reduction services as abatement contractors are certified as such by the Department;

2. Persons holding themselves out to be abatement contractors or abatement specialists have satisfactorily completed required training in applicable classes of lead-based paint activities offered by training providers and programs which have been accredited or, if an out-of-state provider or program, recognized and approved by the Department; and

3. Approved training providers and programs located in this state are accredited by the Department.

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 approval and accreditation of training programs and providers 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 abatement contractors and abatement specialists and require that such training be provided by 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 abatement contractors and abatement workers in lead-hazard detection and reduction, abatement or lead-based paint activities required for residential structures, public buildings, commercial buildings, bridges, or other structures or superstructures;

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

5. Require that training in lead-hazard detection, lead-hazard reduction, abatement, and lead-based paint activities includes a hands-on component and instruction on the health effects of lead exposure, the use of personal protective equipment, workplace hazards and safety problems, abatement methods and 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 an abatement contractor certification program in lead-hazard detection and lead-hazard reduction and abatement and other lead-based paint activities such as inspection, on-site testing and deleading which includes, but is not limited to, applications therefor, and educational, training, 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 the rules;

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

C. 1. The Board shall adopt a schedule of nonrefundable fees to be charged for certification of abatement contractors, accreditation of approved training programs and training providers, recognition and approval of out-of-state accredited training programs and training providers, any training or other programs related to lead-based paint activities and lead-hazard detection or lead-hazard reduction conducted by the Department, and for services rendered by the Department in connection with such certification, accreditation, recognition and approvals, and programs.

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

3. The state and other governmental entities, including counties, municipalities, and political subdivisions, 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 other governmental entity and shall only be performing abatement services for the entity itself. Any person who performs or offers to perform lead-hazard detection or lead-hazard reduction services as an abatement contractor for persons other than a governmental employer shall be subject to certification fees.

D. Any rules promulgated by the Board shall be consistent with federal laws and regulations relating to lead-based paint abatement specified by the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C., Section 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 specifically authorized by this article; provided, the Board shall have the right to revise its regulations

and procedures from time to time to assure that state lead-hazard activities 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 hazards.

E. Unless specifically required otherwise for a state lead-based paint reduction and regulation program by a federal Environmental Protection Agency regulation or a federal Housing and Urban Development Agency regulation, rules promulgated by the Board shall not:

1. Require any person to employ or hire an abatement contractor or abatement specialist for the removal of a lead-based paint hazard;

2. Limit the authority of a private property owner to determine when lead-based paint abatement is necessary; or

3. Require that the detection, reduction, or abatement of lead-based paint hazards or lead-based paint activities, located on property owned or leased by a commercial or industrial entity, be conducted by an abatement contractor or abatement specialist; provided that:

- a. the individuals performing such abatement are full-time employees of the entity and have successfully completed training which is recognized by the Department as adequate to ensure the health and safety of workers and other individuals,
- b. such abatement is performed in accordance with the rules adopted by the Board, and
- c. removal and disposal of any lead-based paint or materials from any abatement activity are performed pursuant to the requirements of the Oklahoma Environmental Quality Code.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-202 of Part 2 of Article XII 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 and implementing and maintaining programs and requirements under the jurisdiction of the federal Environmental Protection Agency and the federal Housing and Urban Development Agency regarding lead-based paint detection, reduction, and abatement, and other lead-based paint activities.

B. In addition to other authority under the 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 to any individual engaging or proposed to engage in the business of lead-hazard detection or lead-hazard reduction or both as an abatement contractor;

2. Cooperate with others in facilitating the development of educational and training programs, 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. Issue, renew, reinstate, modify, suspend, revoke, or refuse to issue, renew, reinstate, or modify accreditation to lead-based paint hazards and activities training programs and the providers of such programs or recognize and approve out-of-state training programs and providers;

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

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

6. 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; and

7. 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.

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 Part 3 of Article XII of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. No person shall advertise or otherwise present himself as an abatement contractor for purposes of offering to perform or performing lead-hazard detection or lead-hazard reduction services unless he is certified by the Department as an abatement contractor pursuant to this article and rules promulgated thereunder.

B. Abatement contractors and abatement 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.

C. The Department shall maintain an official listing of the names and addresses of all individuals certified as abatement contractors by the Department and shall make such list available to any person requesting it upon payment of a copying fee established by the Board.

D. The State Department of Labor shall provide health and safety information on lead abatement to all individuals certified as abatement contractors under the terms of this article.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-302 of Part 3 of Article XII 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 themselves as an accredited lead-based paint training program for purposes of this article 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 trainer, instructor, or training provider in lead-based paint activities or abatement or reduction 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 training program or training provider accreditation issued pursuant to this article and rules promulgated thereunder shall be effective for a period of five (5) years and shall be renewable 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-303 of Part 3 of Article XII 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 education, training, and experience provisions of this article and rules promulgated thereunder, shall be certified by the Department.

B. The Department may waive some or all of its education, training, or experience requirements for certification if the applicant presents a currently valid certificate or license issued to him by another state, certifying agency, institution, or

national nonprofit organization for lead-based paint activities or abatement or reduction, and 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 abatement contractors under contract with the Department of Transportation, certification by the Steel Structures Painting Council specified by the Department of Transportation shall be considered equivalent to the Department certification requirements.

C. Any certificate issued under this section shall be renewed by the October 1 occurring not more than two (2) years after the date of the most recent issuance date. Thereafter, the certificate may be renewed for a two-year period beginning October 1 and ending September 30 of the second 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 may allow a thirty-one-day grace period for such renewals, from October 1 through October 31, provided the applicant submits the required renewal fee and qualifies for renewal during that period.

E. A certificate which is not renewed shall expire on September 30, or October 31 after a thirty-one-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 September 30 expiration 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 fees as set by the Board, and

documentation that the applicant has met the Department's renewal training 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 this article may contain such conditions 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-304 of Part 3 of Article XII 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, renew, or reactivate and renew, or, after notice and opportunity for an individual proceeding as provided in the Administrative Procedures Act and the Oklahoma Environmental Quality Code, and rules promulgated thereunder, revoke or suspend, any accreditation or certificate for good cause including, but not limited to:

- a. gross inefficiency or incompetence,
- b. any violation of any provisions of this article, rules promulgated thereunder, or the terms or conditions of any accreditation, certification, 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 accreditation or certification, a reactivated and renewed certificate, or its revocation of an accreditation or certification, the holder of such accreditation or certification may make application to the Department for new accreditation or certification or, if the accreditation or certification was

suspended, the holder may make application to the Department for reinstatement or new accreditation or certification. New issuance or reinstatement shall rest in the sound discretion of the Department.

B. Upon conviction thereof, any person who has violated the terms or conditions of any accreditation, certification, or order of the Executive Director issued pursuant to this article, or any rule promulgated thereunder, shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00) for each offense. The Department may file a written complaint with the district court in the jurisdiction in which the violation occurred. Punishment by fine under this section may be in addition to the suspension or revocation of any license or certification.

C. 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 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 Part 4 of Article XII of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Consistent with the terms of federal funding agreements which provide funds to 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 hazard, teachers, social workers, and other human service 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 poisoning.

B. Consistent with the terms of federal funding agreements which provide funds to the Department for such purposes, the

Department, after notice and opportunity for comment, may publish, and from time to time revise, a lead-hazard information pamphlet to be used in connection with the Oklahoma Lead-based Paint Reduction and Regulation 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 child bearing age, 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 the effectiveness of such methods in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;
6. Provide instructions for obtaining a list of abatement contractors certified pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act in lead-based paint hazards evaluation and reduction in the area in which the pamphlet is to be used;
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, which 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 Part 4 of Article XII 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 and remodeling of target housing, public buildings constructed before 1978, and commercial buildings, the Board shall, consistent with the terms of federal funding agreements which provide funds to the Department for such development and dissemination, promulgate guidelines for the conduct of such renovation 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 and remodeling through hardware and paint stores, employee organizations, trade groups, state and local agencies, and through other appropriate means.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-403 of Part 4 of Article XII of Title 27A, unless there is created a duplication in numbering, reads as follows:

The employment of persons hired pursuant to this article to be compensated with federal funds shall be 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. This act shall become effective July 1, 1994.

SECTION 13. 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.

44-2-2336

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