

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2063

By: Leist

AS INTRODUCED

An Act relating to environment and natural resources; creating the Oklahoma Lead-based Paint Reduction and Regulation Act; defining terms; providing for powers and duties of Environmental Quality Board and Department of Environmental Quality; requiring certification for lead-based paint abatement; providing for rules; requiring fees; providing exceptions; providing for construction and limitations; providing for certain testing of new methods of removal; providing for consultations; authorizing appointment of task forces; prohibiting certain actions; providing for certain dates of implementation; providing procedures and penalties for certain violations; providing for certifications; setting certain penalties; providing for expiration and renewal and suspension of certifications; requiring certain certificates; authorizing educational and publicity programs; providing for certain public information; specifying content; providing for guidelines; 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:

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 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 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 set of measures designed to
permanently eliminate lead-based paint hazards in accordance with
rules established by the Environmental Quality Board pursuant to the
Oklahoma Lead-based Paint Reduction and Regulation Act. Such term
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 postabatement
clearance testing activities associated with such
measures;

2. "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;

3. "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;

4. "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;

5. "Lead-contaminated dust" means 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 threat of adverse health effects in pregnant women or young children;

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

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

8. "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;

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

10. "Board" means the Environmental Quality Board;

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

12. "Abatement contractor" means any person hired by a property owner or resident to perform abatement of a lead source;

13. "Lead-based paint activities" means:

- a. public property and private property including but not limited to target housing; risk assessment, inspection, deleading and abatement of lead sources or lead-based paint, lead-based paint hazard, 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; and

14. "Deleading" means activities conducted by an abatement contractor who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-103 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Board shall promulgate rules governing lead-based paint activities to ensure that:

1. Contractors and workers engaged in lead-based paint activities are certified;

2. Individuals engaged in lead-based paint activities are properly trained; and

3. Training programs are accredited.

B. Such rules shall contain standards for performing lead-based paint activities taking into account reliability, effectiveness and safety. Such rules shall require that all risk assessment, inspection, deleading, and abatement activities performed shall be performed by certified contractors.

C. 1. Final rules promulgated pursuant to this section shall contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities.

2. All lead abatement training must include 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 work practices, decontamination procedures, cleanup and waste disposal procedures, lead monitoring and testing methods, and legal rights and responsibilities.

D. 1. The Board shall establish a system of fees to be charged for certification of abatement contractors, and training and lead-based paint activity programs for services rendered in the issuance and renewal of certifications of abatement contractors, and training and lead-based paint activity programs.

2. The Board shall base its schedule of fees upon the reasonable costs of review and inspection services rendered in connection with each certification and other program. The Department shall establish a system of training for all personnel who render review and inspection services in order to assure uniform statewide application of rules.

3. The state and political subdivisions thereof, counties and political subdivisions thereof, and municipalities and political subdivisions thereof, and their supervisors and employees shall be exempt from any certification fees required by this section when any such entity acts as a contractor.

E. Any rules promulgated by the Board shall be consistent with federal laws and regulations relating to lead-based paint abatement specified by the federal Lead-based Paint Hazard Reduction Act of 1992. Provided the Department shall coordinate Board rules with the federal law and regulations to ensure consistency in regulatory action and that state rules are not more restrictive than the federal law and regulations. Any rules promulgated by the Board shall not limit the authority of a private property owner to determine when lead-based paint abatement is necessary.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-104 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The Department shall have the power and duty to:

1. Issue, renew, suspend, revoke, refuse to renew, modify or deny certification to engage in lead-based paint abatement pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act;

2. Enter upon public and private property for the purpose of inspecting contractor and worker certifications and lead-based paint abatement for compliance with the provisions of the Oklahoma Lead-based Paint Reduction and Regulation Act and the rules of the Board promulgated thereto;

3. Supervise, administer and enforce the provisions of the Oklahoma Lead-based Paint Reduction and Regulation Act and rules promulgated thereto;

4. Initiate prosecutions;

5. Assess and collect administrative penalties pursuant to Section 2-3-504 of the Environmental Code;

6. Prepare and conduct examinations for applicants for certification pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act;

7. Keep a complete record of all certified abatement contractors and to prepare an official listing of the names and addresses of all certified abatement contractors which shall be kept current. A copy of such listing shall be available to any person requesting it upon payment of a copying fee established by the Board;

8. Keep a permanent record of all proceedings pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act;

9. Conduct hearings for violations of the Oklahoma Lead-based Paint Reduction and Regulation Act, and to issue subpoenas to compel witnesses to testify or produce evidence at such hearings in accordance with the Administrative Procedures Act;

10. Collect and analyze samples to determine the presence and condition of lead-based paint;

11. 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 under the Oklahoma Lead-based Paint Reduction and Regulation Act including, but not limited to, contracts with the United States, other states, agencies and political subdivisions of this state;

12. 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

13. Otherwise exercise all incidental powers as necessary and proper to implement and enforce the provisions of the Oklahoma Lead-based Paint Reduction and Regulation Act and the rules of the Board promulgated thereto.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-105 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Department shall investigate, field test and approve new methods of removing or covering paint, plaster, or other materials containing dangerous levels of lead that facilitate compliance with the Oklahoma Lead-based Paint Reduction and Regulation Act. The Department shall consult with the Department of Labor and industries prior to field testing or approval of new methods of removal or covering to ensure that these methods are consistent with regulations and laws concerning the occupational safety and health of workers engaged in deleading operations.

B. The Executive Director shall establish a task force composed of appropriate representatives of the public and private sectors to review, evaluate and recommend such new methods. The Executive Director may contract with persons to support research and development of such new methods.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-106 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Except as provided by the Oklahoma Lead-based Paint Reduction and Regulation Act, no person shall enter into, engage in or conduct lead-based paint activity or abatement unless such person shall have received a certification therefor.

B. The Board shall set a date after which only certified abatement contractors and workers may conduct removal and abatement of lead-based paint but in no event shall that date be later than December 1, 1994. The Board shall also set out the conditions, if any, under which uncertified abatement contractors and workers may conduct such removal and abatement during this transition period.

C. All private laboratories which perform lead testing for persons shall be certified by the Department and shall follow testing protocols established by the Department.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-107 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Abatement contractors must, within one hundred eighty (180) days after rules are promulgated pursuant to Section 3 of this act, obtain a certificate from the Executive Director according to forms and procedures prescribed by the Board. Employees of abatement contractors must obtain certification from the Executive Director. The Commissioner shall specify training and testing requirements for certification and shall charge a fee for the cost of issuing a certificate.

B. The Executive Director shall provide health and safety information on lead abatement to all abatement contractors and workers certified pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act. The information must include material on ways to protect the health and safety of both employees working on lead contaminated structures and residents of lead-contaminated structures.

C. Contractors shall not advertise or otherwise present themselves as abatement contractors unless they are certified by the Department pursuant to rules promulgated pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-108 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. An applicant who meets the requirements for certification pursuant to the provisions of the Oklahoma Lead-based Paint Reduction and Regulation Act, has paid the required certification fees and has otherwise complied with the provisions of the Oklahoma

Lead-based Paint Reduction and Regulation Act shall be certified by the Department.

B. Certifications issued pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act shall expire twenty-four (24) months from the date of issuance unless revoked. A certification may be renewed upon application and payment of fees. Failure to renew a certification as required by the Oklahoma Lead-based Paint Reduction and Regulation Act shall constitute a suspension of said certification.

C. A person whose certification has been suspended may make application within one (1) year following the suspension in writing to the Department requesting reinstatement in a manner prescribed by the Board and payment of the fees required by the Board. The certification of a person whose certification has been suspended pursuant to this section for more than one (1) year shall not be renewed except upon making application and taking and passing the examination as required by the Oklahoma Lead-based Paint Reduction and Regulation Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-109 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Department may revoke, suspend, refuse to renew, cancel or deny any certification or, at any time, if it believes that the terms or conditions thereof are being violated or that the holder of or applicant for the certification has violated the Oklahoma Lead-based Paint Reduction and Regulation Act or any rule of the Department. Any person aggrieved by a determination of the Department to issue, deny, revoke, suspend or refuse to renew any certification may request a hearing pursuant to the Administrative Procedures Act and Section 2-3-502 of the Environmental Code.

B. Upon conviction thereof, any person who has violated the terms or conditions of any certification or order of the Executive

Director issued pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act or any rule promulgated pursuant thereto 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 of any license or certification.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-110 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Executive Director shall institute an educational and publicity 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 poisoning, teachers, social workers and other human service personnel; owners of residential property, particularly property constructed previous to 1945; and health services personnel, particularly interns, residents and other intake personnel at major hospitals, of the dangers, frequency, and sources of lead-based paint poisoning, and the methods of preventing such poisoning.

B. Not later than September 1, 1994, after notice and opportunity for comment, the Department shall 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 childbearing 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 their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;

6. Advise persons how to obtain a list of contractors certified pursuant to the Oklahoma Lead-based Paint Reduction and Regulation Act in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used;

7. State that a risk assessment or 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 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-12-111 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,

on or before September 1, 1994, 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 12. Sections 1 through 11 of this act shall be codified as Article XII of the Oklahoma Environmental Code, entitled "Oklahoma Lead-based Paint Reduction and Regulation 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.

44-2-7752

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