

# HOUSE BILL No. 5561

February 10, 1998, Introduced by Reps. Schermesser, Martinez, Parks, Bogardus, Hanley, Scott, Hale, Gire, Varga, Leland, Tesanovich, Kelly, Goschka and LaForge and referred to the Committee on Health Policy.

A bill to provide for the licensing and regulation of lead abatement contractors; to create the lead abatement contractors licensing board; to establish powers and duties of certain state agencies and officials; to create certain funds and to provide for expenditures from the funds; to impose certain fees; and to prescribe penalties and provide remedies.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "lead abatement contractors licensing act".

3       Sec. 3. As used in this act:

4       (a) "Administrative procedures act of 1969" means the admin-  
5 istrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
6 24.328.

7       (b) "Board" means the lead abatement contractors licensing  
8 board created in section 5.

1 (c) "Business entity" means an individual, person,  
2 partnership, firm, association, corporation, limited liability  
3 company, sole proprietorship, public or private agency, or other  
4 legal entity engaged in the business of lead abatement.

5 (d) "Construction contractor" means a business entity that  
6 provides an improvement to real property.

7 (e) "Construction subcontractor" means a business entity  
8 that performs any part of a construction contractor's contract  
9 for an improvement to real property.

10 (f) "Department" means the department of community health.

11 (g) "Lead abatement contractor" means a business entity that  
12 engages the business of lead abatement on the premises of another  
13 business entity and not on the lead abatement contractor's  
14 premises.

15 (h) "Lead abatement" means any activity involving persons  
16 working directly with the removal or sealing, or both, surfaces  
17 containing lead.

18 (i) "License" means an authorization issued by the depart-  
19 ment upon recommendation by the board for lead abatement.

20 (j) "Neutral party" means a business entity that is not part  
21 of the lead abatement contractor's immediate family and is not  
22 legally associated to any business operated by the lead abatement  
23 contractor.

24 (k) "Removal" means the taking out or stripping of lead from  
25 an existing structure.

26 (l) "Working day" means any day other than a Saturday,  
27 Sunday, or state legal holiday.

1           Sec. 5. (1) The lead abatement contractors licensing board  
2 is created within the department and shall consist of 7 members  
3 appointed by the governor with the advice and consent of the  
4 senate. Three members appointed to the board shall represent  
5 lead abatement contractors, 3 shall represent lead abatement  
6 laborers, and 1 shall represent the general public and be  
7 experienced in public health areas. A member representing lead  
8 abatement laborers shall not belong to the same labor organiza-  
9 tion as any other member. As used in this section, "labor  
10 organization" means that term as defined in section 2 of 1939 PA  
11 176, MCL 423.2.

12           (2) The governor shall appoint board members within 90 days  
13 after the effective date of this act, and except as provided in  
14 subsection (3), each member shall serve for a term of 3 years, or  
15 until his or her successor is appointed.

16           (3) The members first appointed to the board shall serve the  
17 following terms:

18           (a) One representative of lead abatement laborers and 1 rep-  
19 resentative of lead abatement contractors shall serve a term of 1  
20 year.

21           (b) One representative of lead abatement laborers and 1 rep-  
22 resentative of lead abatement contractors shall serve a term of 2  
23 years.

24           (c) One representative of lead abatement laborers, 1 repre-  
25 sentative of lead abatement contractors, and 1 member representa-  
26 tive of the general public shall serve a term of 3 years.

1 (4) If a vacancy occurs on the board, the governor shall  
2 make an appointment for the balance of the unexpired term in the  
3 same manner as the original appointment.

4 (5) The governor may remove a member of the lead abatement  
5 contractors licensing board for incompetency, dereliction of  
6 duty, malfeasance, misfeasance, or nonfeasance in office, or any  
7 other good cause.

8 (6) The board shall meet within 30 days after all members  
9 have been appointed. At the first meeting, the board shall elect  
10 from among its members a chairperson and other officers as it  
11 considers appropriate or necessary. After the first meeting, the  
12 board shall meet at least quarterly or more frequently at the  
13 call of the chairperson or if requested by 4 or more members. A  
14 special meeting of the board may be called by the chairperson and  
15 shall be called upon the chairperson's receipt of a written  
16 request signed by 2 or more members of the board.

17 (7) A majority of the board constitutes a quorum for the  
18 transaction of business at a meeting of the board. A majority  
19 vote of the members present and serving is required for official  
20 action of the board.

21 (8) The business of the board shall be conducted at a public  
22 meeting of the board held in compliance with the open meetings  
23 act, 1976 PA 267, MCL 15.261 to 15.275.

24 (9) A writing prepared, owned, used, in the possession of,  
25 or retained by the board in the performance of an official func-  
26 tion is subject to the freedom of information act, 1976 PA 442,  
27 MCL 15.231 to 15.246.

1 (10) Members of the board shall serve without compensation.  
2 However, members of the board may be reimbursed for their actual  
3 and necessary expenses incurred in the performance of their offi-  
4 cial duties as members of the board pursuant to the standard  
5 travel regulations of the department of management and budget.

6 Sec. 7. The board shall do all of the following:

7 (a) Establish formal and informal procedures for the board.

8 (b) Make recommendations to the department concerning the  
9 issuance, denial, suspension, or revocation of licenses required  
10 pursuant to this act, and other enforcement matters under this  
11 act.

12 (c) Upon request by the department, advise the department on  
13 the preparation and distribution of information on lead.

14 (d) Advise the department on the promulgation of administra-  
15 tive rules pursuant to this act.

16 Sec. 9. (1) Except as otherwise provided in subsection (2),  
17 a lead abatement contractor shall not engage in lead abatement or  
18 any activity involving lead abatement unless licensed under this  
19 act by the department.

20 (2) Until June 1, 1999, the licensing requirement of subsec-  
21 tion (1) does not apply to any of the following if engaged in a  
22 lead abatement project that is incidental to the primary licensed  
23 trade and involves not more than 160 square feet or 260 linear  
24 feet of surface area containing lead:

25 (a) A business entity licensed under the electrical adminis-  
26 trative act, 1956 PA 217, MCL 338.881 to 338.892.

1 (b) A business entity licensed under the Forbes mechanical  
2 contractors act, 1984 PA 192, MCL 338.971 to 338.988.

3 (c) A business entity licensed under 1929 PA 266, MCL  
4 338.901 to 338.917.

5 (d) A business entity licensed as a residential builder or a  
6 residential maintenance and alteration contractor under article  
7 24 of the occupational code, 1980 PA 299, MCL 339.2401 to  
8 339.2412.

9 Sec. 11. (1) To apply for or renew a license, a business  
10 entity shall do all of the following:

11 (a) Submit a completed application to the department on  
12 forms provided by the department. The business entity shall  
13 state on the application whether or not that business entity has  
14 liability insurance.

15 (b) Pay the fee required by subsection (2).

16 (c) Submit proof of Michigan workers' disability compensa-  
17 tion insurance.

18 (d) Submit proof that each employee and agent of the busi-  
19 ness entity who is responsible for, or is involved in, lead  
20 abatement has satisfactorily completed training in a lead abate-  
21 ment program approved by the department.

22 (2) The fees for initial licensure or renewal under subsec-  
23 tion (1) are as follows:

1 Number of employees

2 to be engaged in

3 lead abatement projects                      License fee                      License renewal fee

4                      4 or less                                      \$200.00                                      \$100.00

5                      5 or more    \$400.00                                      \$300.00

6                      Sec. 13. (1) Within 15 working days after receiving a  
7 license application, the department shall acknowledge receipt of  
8 the application and notify the applicant of any deficiency in the  
9 application. Within 60 calendar days after receiving a completed  
10 application, including all additional information requested by  
11 the department, the department shall, by certified mail, issue a  
12 license or shall deny the license application. The license shall  
13 contain a statement in bold print that the issuance of a license  
14 does not imply lead indemnification coverage.

15                      (2) The department shall deny a license application if the  
16 department determines that the applicant has not demonstrated the  
17 ability to comply with either or both of the following:

18                      (a) The applicable requirements and procedures established  
19 by the department and the board pursuant to this act.

20                      (b) Other state and federal law pertaining to the health and  
21 safety aspects of lead abatement.

22                      (3) If the department denies a license applicant, the  
23 department shall return to the applicant the application fee,  
24 less \$25.00.

1 (4) Proceedings for the denial of a license pursuant to this  
2 act shall be in accordance with contested case provisions of the  
3 administrative procedures act of 1969.

4 Sec. 15. In granting a license, the department may impose  
5 reasonable terms and conditions to ensure continuous compliance  
6 with this act.

7 Sec. 17. The department may revoke or suspend a license as  
8 provided under the administrative procedures act of 1969.

9 Sec. 19. (1) Unless the department revokes or suspends a  
10 license, the license shall remain in effect for 1 year from the  
11 date of issuance.

12 (2) The department shall renew a license annually if the  
13 lead abatement contractor does all of the following:

14 (a) Submits a completed application for a renewal on forms  
15 provided by the department not sooner than 90 days before the  
16 license expires and not later than 30 days before the license  
17 expires.

18 (b) Pays to the department the license renewal fee as speci-  
19 fied in section 11.

20 (c) Complies with all applicable requirements of this act  
21 and the rules promulgated under this act.

22 Sec. 21. (1) If a contract does not provide for lead abate-  
23 ment, a construction contractor or construction subcontractor who  
24 contracts to provide an improvement to real property is not  
25 responsible for the removal of lead discovered in the course of  
26 providing the improvement to the property.



1           (2) Subsection (1) does not apply to construction contractor  
2 and construction subcontractor contracts entered into prior to  
3 the effective date of this act.

4           (3) A person performing lead abatement and a lead abatement  
5 contractor shall retain any records involving lead abatement for  
6 not less than 30 years. Records of lead abatement shall comply  
7 with the requirements of section 78a of the Michigan occupational  
8 safety and health act, 1974 PA 154, MCL 408.1078a.

9           Sec. 23. (1) Until June 1, 1999, a lead abatement contrac-  
10 tor shall notify the department in writing of all of the follow-  
11 ing at least 10 days before beginning a project involving lead  
12 abatement exceeding 10 linear feet or 15 square feet, or both, of  
13 surfaces containing lead:

14           (a) The name and address of the owner of the building or  
15 structure.

16           (b) The location of the building or structure where the lead  
17 abatement will be performed.

18           (c) The schedule for the starting and completion of the lead  
19 abatement. The project involving lead abatement shall not exceed  
20 1 year in length.

21           (d) An estimate of the amount of lead that will be removed  
22 or sealed.

23           (2) Until June 1, 1999, if during the course of a construc-  
24 tion or improvement project and after a written contract is exe-  
25 cuted, a business entity that is exempt from licensure under  
26 section 9(2) and whose primary licensed trade is not that of a  
27 lead abatement contractor discovers that the removal or sealing

1 of a surface containing lead in an amount exceeding 10 linear  
2 feet or 15 square feet, or both, is required, that business  
3 entity shall notify the department of the lead abatement before  
4 lead removal or sealing begins. Not more than 10 days after the  
5 discovery, the business entity shall provide written notification  
6 to the department that includes the information described in  
7 subsection (1)(a) to (d).

8 (3) Until June 1, 1999, a lead abatement contractor provid-  
9 ing written notification to the department pursuant to  
10 subsection (1) for lead abatement shall include a fee equal to 1%  
11 of the price of the contract for the lead abatement and shall  
12 make available upon the request of the department a copy of the  
13 contract for the lead abatement. All fees collected pursuant to  
14 this subsection shall be deposited in the lead abatement fund  
15 created in subsection (5).

16 (4) Until June 1, 1999, the primary licensed trade contrac-  
17 tor of a business entity that removes or seals a surface contain-  
18 ing lead after notice is provided under subsection (2) for lead  
19 abatement that is incidental to the business entity's primary  
20 licensed trade shall include a fee of 1% of the lead abatement  
21 portion of the contract price and shall make available upon the  
22 request of the department a copy of that portion of the contract  
23 covering the lead abatement. All fees collected pursuant to this  
24 subsection shall be deposited in the lead abatement fund created  
25 in subsection (5).

26 (5) The lead abatement fund is created and, until June 1,  
27 1999, shall exist in the state treasury and shall receive revenue

1 as provided in this act and other revenue as the legislature may  
2 provide. The state treasurer shall direct the investment of the  
3 fund. All interest and earnings of the fund shall be retained by  
4 the fund. Money in the fund at the close of the fiscal year  
5 shall remain in the fund and shall not revert to the general  
6 fund.

7 (6) Money in the lead abatement fund shall be used by the  
8 department only for the lead-related responsibilities of the  
9 department under this act which include, but are not limited to,  
10 the inspection of lead abatement and the education of lead abate-  
11 ment contractors. The department shall not expend money from the  
12 fund for lead abatement projects on state owned property.

13 (7) Not later than October 1 of each year and until June 1,  
14 1999, the department shall report to the senate and house of rep-  
15 resentatives appropriations committees and standing committees on  
16 occupational issues on the amount of money generated by the fees  
17 charged under this section. The report shall include the number  
18 of lead abatement projects inspected and the number of citations  
19 issued for violations of this act and other applicable laws,  
20 rules, and regulations.

21 (8) Until June 1, 1999, emergency lead abatement resulting  
22 from equipment failure or malfunctions are exempt from the 10-day  
23 written advance notice imposed under this section. The written  
24 notice in emergency situations shall be provided within 48 hours  
25 after the commencement of the lead abatement except that the  
26 business entity shall contact the department telephonically

1 immediately or as soon as possible after the discovery of the  
2 emergency situation.

3       Sec. 25. (1) Until June 1, 1999, except as provided by this  
4 subsection, the owner or lessee of a building or structure shall  
5 have a postabatement lead monitoring check performed by a quali-  
6 fied neutral party at all lead abatement sites at which lead  
7 levels exceed an amount determined by the department to be safe.  
8 If the lead abatement contractor and the building or structure  
9 owner or lessee agree, the owner or lessee may have the post-  
10 abatement lead monitoring check required by this subsection per-  
11 formed by in-house personnel or by the lead abatement  
12 contractor.

13       (2) Whenever feasible, unless waived by the building or  
14 structure owner or lessee, the postabatement lead monitoring  
15 check required by this section shall make use of testing methods  
16 approved by the department.

17       (3) Upon request by the department, a postabatement lead  
18 monitoring check taken pursuant to this section shall be reported  
19 to the department.

20       (4) After completion of the lead abatement project, the  
21 level of lead per cubic centimeter of surface area at the lead  
22 abatement project site shall not exceed the maximum level deter-  
23 mined by the department to be safe.

24       Sec. 27. The department, with the advice of the board,  
25 shall do all of the following:

26       (a) Administer this act.

1 (b) Issue licenses.

2 (c) Promulgate rules as may be necessary for the orderly  
3 conduct of its affairs in relation to this act and for the admin-  
4 istration of this act pursuant to the administrative procedures  
5 act of 1969, including, but not limited to, all of the  
6 following:

7 (i) The training and periodic refresher training of workers,  
8 inspectors, and other persons involved in lead abatement.

9 (ii) The accreditation of lead abatement training providers  
10 consisting with those standards established under section 78a of  
11 the Michigan occupational safety and health act, 1974 PA 154, MCL  
12 408.1078a.

13 (iii) The establishing of standards for lead abatement  
14 activities.

15 (iv) The establishing of procedures for the enforcement of  
16 this act and rules promulgated under this act.

17 (v) The revision of department procedures to ensure lead  
18 abatement activities in the state comply with the state certifi-  
19 cation program standards and other requirements that may be  
20 promulgated from time to time by federal agencies having juris-  
21 diction over lead hazards.

22 (vi) The facilitation of reciprocity of certification and  
23 accreditation standards between this state and other states.

24 (vii) The cooperation with federal agencies or departments  
25 in overseeing laboratories that provide lead analysis services.

26 (viii) The providing of programs for public education  
27 concerning lead hazards.

1           Sec. 29. The department shall receive or initiate  
2 complaints of alleged violations of this act or rules promulgated  
3 under this act and take action with respect to alleged violations  
4 or complaints as prescribed by this act.

5           Sec. 31. (1) Upon a recommendation by the board or the  
6 written complaint of an aggrieved party, state agency, or politi-  
7 cal subdivision, the department may investigate the acts of a  
8 lead abatement contractor. After an investigation, the depart-  
9 ment may deny, suspend, or revoke a license issued under this act  
10 if a lead abatement contractor is found to be not in compliance  
11 with this act or the rules promulgated under this act.

12           (2) The department may deny, suspend, or revoke a license  
13 for any of the following:

14           (a) A willful or negligent act that causes any person to be  
15 exposed to lead in violation of this act, a rule promulgated  
16 under this act, or other state or federal law pertaining to the  
17 public health and safety aspects of lead removal or sealing.

18           (b) Falsification of records.

19           (c) Continued failure to obtain or renew a license.

20           (d) Deliberate misrepresentation of an act in applying for a  
21 license.

22           (e) Permitting any person who has not received the proper  
23 training and certification under state or federal law to come in  
24 contact with lead or be responsible for a lead abatement  
25 project.

26           (3) If the license of a business entity is denied,  
27 suspended, or revoked under this act, the denial, suspension, or

1 revocation applies to each partner, trustee, director, officer,  
2 or person exercising control of the business entity.

3       Sec. 33. Upon application by the attorney general or a  
4 party to a contested case under the administrative procedures act  
5 of 1969, the circuit court may issue a subpoena requiring a  
6 person to appear before a hearings examiner in the contested case  
7 or before the department in an investigation and be examined with  
8 reference to a matter within the scope of that contested case or  
9 investigation and to produce books, papers, or documents pertain-  
10 ing to that contested case or investigation.

11       Sec. 35. (1) Upon recommendation by the board and pursuant  
12 to the administrative procedures act of 1969, the department  
13 shall promulgate rules establishing a schedule of monetary admin-  
14 istrative fines of not more than \$10,000.00 for each specified  
15 violation of this act or a rule promulgated under this act. The  
16 department may impose an administrative fine for each day that a  
17 violation continues.

18       (2) If the department alleges that a person has violated  
19 this act or a rule promulgated under this act, the department may  
20 issue a citation at that time or not later than 90 days after  
21 discovery of the alleged violation. The citation shall be writ-  
22 ten and shall state with particularity the nature of the viola-  
23 tion, including reference to the section of this act or the rule  
24 alleged to have been violated, the administrative fine estab-  
25 lished for the violation, if any, and the right to appeal the  
26 citation pursuant to section 37. The citation shall be

1 personally delivered or sent by certified mail to the alleged  
2 violator.

3       Sec. 37. (1) Not later than 20 days after receipt of a  
4 citation issued pursuant to section 35, the alleged violator may  
5 petition the department for an administrative hearing within 30  
6 days after receipt of the petition. The department shall notify  
7 the alleged violator's employees or employee representative of  
8 the date, time, and place of the hearing. After the administra-  
9 tive hearing, the director of the department may affirm, dismiss,  
10 or modify the citation.

11       (2) An alleged violator aggrieved by a decision of the  
12 department under this section may petition for review under the  
13 appropriate provisions of the administrative procedures act of  
14 1969.

15       (3) An administrative fine becomes final if a petition for  
16 an administrative hearing or review is not received within the  
17 time specified in this section. An administrative fine imposed  
18 under this act is payable to the department for deposit in the  
19 general fund. The department may recover an administrative fine  
20 in a civil action brought in the county in which the violation  
21 occurred or in which the defendant resides.

22       (4) Administrative hearings under this section shall be con-  
23 ducted pursuant to the administrative procedures act of 1969.

24       Sec. 39. Notwithstanding the provisions of sections 35 and  
25 37, a lead abatement contractor who engages in the trade or busi-  
26 ness of lead abatement without a license issued under this act,  
27 or a person who violates this act or a rule promulgated under



1 this act and who fails to correct the violation after notice, is  
2 guilty of a misdemeanor, punishable by a fine of not more than  
3 \$500.00 for a first offense. Upon conviction for a second or  
4 subsequent offense, the person is subject to a fine of not more  
5 than \$1,000.00, or imprisonment for not more than 6 months, or  
6 both. A violation of this act may be prosecuted by either the  
7 attorney general or the prosecuting attorney of the judicial dis-  
8 trict in which the violation was committed.

9       Sec. 41. The remedies for a violation of this act are cumu-  
10 lative and the application of sanctions under this act does not  
11 preclude the application of other sanctions, penalties, or provi-  
12 sions of any other federal, state, or political subdivision.

13       Sec. 43. The department shall submit to the senate and  
14 house of representatives standing committees on occupational  
15 issues an annual report on the status of all of the following:

16       (a) The licensing of lead abatement contractors.

17       (b) Lead hazard detection and reduction.

18       (c) Certification, accreditation, and enforcement activities  
19 of the department.

20       Sec. 45. The licensing provisions of this act shall take  
21 effect 3 months after the effective date of this act.

22       Enacting section 1. This act does not take effect unless  
23 Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
24 no. 01019'97) of the 89th Legislature is enacted into law.