

Act No. 219
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

**Introduced by Reps. Schermesser, Martinez, Parks, Bogardus, Hanley, Scott, Hale, Gire, Varga, Leland, Tesanovich, Kelly, Goschka and LaForge
Reps. Alley, Anthony, Bankes, Basham, Bodem, Brown, Callahan, Cherry, DeHart, Freeman, Middaugh, Murphy, Prusi, Quarles, Raczkowski, Rison, Rocca, Stallworth, Vaughn, Wetters and Wojno named co-sponsors**

ENROLLED HOUSE BILL No. 5561

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding sections 5451, 5457, 5458, 5459, 5460, 5460a, 5461, 5468, 5469, 5470, 5472, 5473a, 5474, 5475, and 5477.

The People of the State of Michigan enact:

PART 54A
LEAD ABATEMENT

Sec. 5451. This part shall be known and may be cited as the "lead abatement act".

Sec. 5457. (1) "Guest instructor" means an individual designated by the manager or principal instructor of an accredited training program to provide instruction specific to the lecture, hands-on activities, or work practice components of a course in the accredited training program.

(2) "Hands-on skills assessment" means an evaluation that tests a trainee's ability to satisfactorily perform the work practices, work procedures, or any other skill taught in an accredited training program.

(3) "Hazardous waste" means waste as defined in 40 C.F.R. 261.3.

(4) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(5) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards including, but not limited to, 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.

Sec. 5458. (1) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

(2) "Lead-based paint activity" means inspection, risk assessment, and abatement in target housing and child occupied facilities.

(3) "Lead-based paint hazard" means a condition causing exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based or lead-contaminated paint that is deteriorated or present in an accessible surface, friction surface, or impact surface that would result in adverse human health effects.

(4) "Lead-contaminated dust" means surface dust in a residential dwelling or child occupied facility that contains an area or mass concentration of lead at or in excess of levels identified by the EPA pursuant to section 403 of title IV of the toxic substance control act, Public Law 94-469, 15 U.S.C. 2683, or as otherwise defined by rule.

(5) "Lead-contaminated soil" means bare soil on residential real property or on the property of a child occupied facility that contains lead at or in excess of levels identified by the EPA pursuant to section 403 of title IV of the toxic substance control act, Public Law 94-469, 15 U.S.C. 2683, or as otherwise defined by rule.

(6) "Lead-hazard screen" means a limited risk assessment activity that involves limited lead-based or lead-contaminated paint and lead dust sampling.

(7) "Living area" means an area of a residential dwelling used by 1 or more children age 6 and under including, but not limited to, a living room, kitchen area, den, playroom, and a children's bedroom.

Sec. 5459. (1) "Multifamily dwelling" means a structure that contains more than 1 separate residential dwelling unit and that is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(2) "Paint in poor condition" means 1 or more of the following:

(a) More than 10 square feet of deteriorated paint on an exterior component with a large surface area.

(b) More than 2 square feet of deteriorated paint on an interior component with large surface areas.

(c) More than 10% of the total surface area of the component is deteriorated on an interior or exterior component with a small surface area.

(3) "Permanently covered soil" means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials including, but not limited to, pavement or concrete, but not including grass, mulch, or other landscaping materials.

(4) "Person" means that term as defined in section 1106 but including the state and a political subdivision of the state.

(5) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course in an accredited training program.

(6) "Recognized laboratory" means an environmental laboratory recognized by the EPA pursuant to section 405 of title IV of the toxic substances control act, Public Law 94-469, 15 U.S.C. 2685, as being capable of performing an analysis for lead compounds in paint, soil, and dust.

(7) "Reduction" means a measure designed to reduce or eliminate human exposure to a lead-based paint hazard through methods including, but not limited to, interim controls and abatement.

(8) "Residential dwelling" means either of the following:

(a) A detached single family dwelling unit, including, but not limited to, attached structures such as porches and stoops.

(b) A single family dwelling unit in a structure that contains more than 1 separate residential dwelling unit used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(9) "Risk assessment" means both of the following:

(a) An on-site investigation to determine the existence, nature, severity, and location of a lead-based paint hazard.

(b) The provision of a report by the person conducting the risk assessment explaining the results of the investigation and options for reducing the lead-based paint hazard.

Sec. 5460. (1) "Target housing" means housing constructed before 1978, except either of the following:

(a) Housing for the elderly or persons with disabilities, unless any 1 or more children age 6 years or under resides or is expected to reside in that housing.

(b) A 0-bedroom dwelling.

(2) "Third party examination" means the examination for certification under this part in the disciplines of inspector, risk assessor, worker, and supervisor offered and administered by a party other than an accredited training program.

(3) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

(4) "Training hour" means not less than 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience or a combination of those activities.

(5) "Training manager" means the individual responsible for administering an accredited training program and monitoring the performance of principal instructors and guest instructors.

(6) "Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child occupied facility following an abatement designed to determine whether the abatement has been successfully completed.

(7) "Visual inspection for risk assessment" means the visual examination of a residential dwelling or a child occupied facility to determine the existence of deteriorated paint or other potential sources of lead-based paint hazards.

Sec. 5460a. (1) This part contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and other persons engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities as that term is defined in section 5458. This part requires that all lead-based paint activities be performed by certified individuals and persons, except for those circumstances and persons described in section 5453(2).

(2) This part does not apply to individuals and persons engaged in lead-based paint activities conducted within or on certain owner-occupied residential and multifamily dwellings as further described in section 5453(2) except in certain dwellings in which a residing child is identified as having an elevated blood lead level.

(3) This part does not require the owner or occupant to undertake any lead-based paint activities.

Sec. 5461. (1) A person shall not engage or offer to engage in a lead-based paint activity unless certified in the appropriate discipline under this part. A person conducting a lead-based paint activity shall comply with the standards for performing lead-based paint activities contained in this part and the rules promulgated under this part.

(2) The department shall certify a person applying for certification under this part if that person demonstrates to the department that he or she is licensed, certified, or registered in another state and the standards for obtaining that license, certification, or registration are substantially similar to those imposed under this part.

Sec. 5468. (1) An individual seeking certification by the department to engage in lead-based paint activities shall pay the appropriate application fee required under section 5471 and submit an application to the department demonstrating either of the following:

(a) Compliance with the requirements of this part and the rules promulgated under this part for the particular discipline for which certification is sought.

(b) A copy of a valid lead-based paint activities certification or its equivalent, as determined by the department, from a training program that has been authorized by the EPA pursuant to 40 C.F.R. part 745 along with proof of the applicant's third party examination results.

(2) Following the submission of an application demonstrating that the requirements of this part and the rules promulgated under this part have been met, the department shall certify an applicant in 1 or more of the following disciplines:

(a) Inspector.

(b) Risk assessor.

(c) Supervisor.

(d) Project designer.

(e) Abatement worker.

(3) Upon receiving the department certification in 1 or more of the disciplines described in subsection (2), an individual conducting lead-based paint activities shall comply with the work practice standards for performing that discipline as established under this part and the rules promulgated under this part.

(4) Beginning March 1, 1999, an individual shall not conduct a lead-based paint activity unless that individual is certified by the department under this section in the appropriate discipline.

(5) An individual shall do all of the following in order to become certified by the department as an inspector, risk assessor, abatement worker, or supervisor:

(a) Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Pass the third party exam in the appropriate discipline.

(c) Meet the experience or education requirements, or both, as described in rules promulgated by the department.

(6) After an individual passes the appropriate certification exam and submits an application demonstrating that he or she meets the appropriate training, education, and experience requirements, the department shall issue a certificate to the individual in the specific discipline for which certification is sought. To maintain certification, an individual must be recertified pursuant to this part.

(7) An individual shall take the third party exam within 6 months after receiving a course completion certificate or must again complete the appropriate course from an accredited training program in order to be eligible for certification. An individual is not eligible to take the third party exam more than 3 times within the 6 months after receiving a course completion certificate.

(8) An individual shall do both of the following in order to become certified by the department as a project designer:

(a) Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Meet the experience or education requirements, or both, as described in rules promulgated by the department.

(9) After an individual has successfully completed the appropriate training courses, applied to the department, and met the requirements of this part and the rules promulgated under this part, the department shall issue a certificate to the individual in the discipline of project designer. To maintain certification, the individual must be periodically recertified pursuant to this part.

(10) An individual who received training in a lead-based paint activity between October 1, 1990 and March 1, 1999 and an individual who has received lead-based paint activities training at an EPA-authorized accredited training program are eligible for certification by the department under rules promulgated by the department.

(11) Until August 30, 1999, an individual may apply to the department for certification under subsection (10). Beginning August 30, 1999, an individual seeking certification to engage in lead-based paint activities shall apply for initial certification under this part.

(12) Upon submission of an application and payment of the appropriate fee, the department shall issue a certification to engage in lead-based paint activities to an individual registered by the department by August 30, 1998 under the department's voluntary registration program.

(13) In order to maintain certification in a particular discipline, a certified individual shall apply to and be recertified in that discipline by the department every 3 years.

Sec. 5469. (1) Beginning August 30, 1999, a person shall not perform or offer to perform lead-based paint activities without obtaining certification by the department under this part.

(2) A person seeking certification under subsection (1) shall submit to the department a letter attesting that the person shall only employ appropriately certified employees to conduct lead-based paint activities and that the person and its employees shall follow the work practice standards for conducting lead-based paint activities as established in rules promulgated by the department.

(3) A person seeking certification under subsection (1) shall do all of the following:

(a) Complete the application and pay the appropriate fee accompanied by a corporate identification number, certificate of sole proprietorship, or other business entity documentation acceptable to the department.

(b) Indicate whether the applicant has liability insurance.

(c) Submit proof of Michigan workers' disability compensation insurance.

(d) Submit proof that each employee or agent involved in lead-based paint activities has received training and certification as required by this part.

(e) If applicable, submit the name of each principal partner, shareholder, member, or owner.

(4) Not more than 90 days from the date of receipt of the person's completed application, the department shall approve or disapprove the person's request for certification. Within that time period, the department shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(5) A person certified by the department under this section shall maintain all records pursuant to the requirements imposed in rules promulgated by the department.

Sec. 5470. Beginning on March 1, 1999, all lead-based paint activities shall be performed by an individual certified in the appropriate discipline under this part and pursuant to the work practice standards prescribed in rules promulgated by the department.

Sec. 5472. Before beginning a lead-based paint activity, a person conducting lead-based paint activities shall notify the department, on forms provided by the department, regarding information the department considers necessary in order to conduct an unannounced site inspection. The person shall send notification not less than 7 calendar days before commencing the lead-based paint activity.

Sec. 5473a. (1) The department shall administer this part and promulgate rules as may be necessary for the administration and enforcement of this part pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall authorize, coordinate, and conduct programs to educate persons including, but not limited to, homeowners and remodelers of lead hazards associated with remodeling target housing and methods of lead-hazard reduction activities.

(3) The department shall establish a program that provides an opportunity for property owners, managers, and maintenance staff to learn about lead-safe practices and the avoidance of creating lead-based paint hazards during minor painting, repair, or renovation.

(4) Not later than January 1, 2000, the department shall recommend appropriate maintenance practices for owners of residential property, day care facilities, and secured lenders that are designed to prevent lead poisoning among children under 6 years of age and pregnant women. In making its recommendations, the department shall consult with affected stakeholders and shall consider the effects of those maintenance practices on the availability and affordability of housing and credit.

Sec. 5474. (1) The department shall establish a lead poisoning prevention program that has the following components:

(a) A coordinated and comprehensive plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards.

(b) A comprehensive educational and community outreach program regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public schools, owners and tenants of residential dwellings, and parents of young children. These educational materials shall be made available, upon request, to local and state community groups, legal services organizations, and tenants' groups.

(c) A technical assistance system for health care providers to assist those providers in managing cases of childhood lead poisoning. As part of this system, the department shall require that results of all blood lead level tests conducted in Michigan be reported to the department as provided for in rule and that when the department receives notice of blood lead levels above 10 micrograms per deciliter, it shall initiate contact with the local public health department or the physician, or both, of the child whose blood lead level exceeds 10 micrograms per deciliter.

(2) The department shall report to the legislature by January 1, 1999, and annually thereafter, the number of children through age 6 who were screened for lead poisoning during the preceding fiscal year and who were confirmed to have had blood lead levels above 10 micrograms per deciliter. The report shall compare these rates with those of previous fiscal years and the department shall recommend methods for improving compliance with guidelines issued by the federal centers for disease control and prevention, including any necessary legislation or appropriations.

(3) Not more than 1 year after the effective date of this part, and annually thereafter, the department shall prepare a written report regarding the expenditures under the lead poisoning prevention program including the amounts and sources of money from the previous year and a complete accounting of its use. The report shall be given to the appropriate committees of the legislature and be made available to the general public upon request.

Sec. 5475. (1) The department shall receive or initiate complaints of alleged violations of this part or rules promulgated under this part and take action with respect to alleged violations or complaints as prescribed by this part.

(2) The department, in its own discretion, or upon the written complaint of an aggrieved party or of a state agency or political subdivision of this state, may investigate the acts of an accredited training program or an individual or other person certified under this part. The department may deny, suspend, or revoke certification or accreditation issued under this part if a certified person, accredited training program, or certified individual is found to be not in compliance with this part or the rules promulgated under this part. In addition, the department may deny, suspend, or revoke a certification or accreditation issued under this part for 1 or more of the following:

(a) Willful or negligent acts that cause a person to be exposed to a lead-containing substance in violation of this part, the rules promulgated under this part, or other state or federal law pertaining to the public health and safety aspects of lead abatement.

(b) Falsification of records required under this part.

(c) Continued failure to obtain or renew certification or accreditation under this part.

(d) Deliberate misrepresentation of facts or information in applying for certification or accreditation under this part.

(e) Permitting a person who has not received the proper training and certification under this part or other applicable state or federal law to come in contact with lead or be responsible for a lead abatement project.

Sec. 5477. (1) A person who engages in a regulated activity as provided for by this part or any person who violates this part or any rules promulgated under this part and who fails to correct the violation after notice from the department under this part is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00, and upon conviction for a second or subsequent offense, not more than \$10,000.00, or imprisonment for not more than 6 months, or both. A violation of this part may be prosecuted by either the attorney general or the prosecuting attorney of the judicial district in which the violation was committed.

(2) The application of sanctions under this part is cumulative and does not preclude the application of other sanctions, penalties, or provisions of any other federal, state, or political subdivision.

(3) This act does not diminish the responsibilities of an owner or occupant, or the authority of enforcing agents under state, county, city, municipal, or other local building, housing, or health and safety codes.

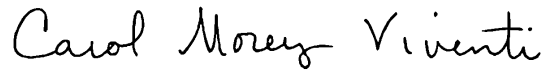
(4) The requirements of this act are in addition to other pertinent provisions of a code listed in subsection (3).

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1047 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.