

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 185

An Act to amend and reenact §§ 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-516, and 54.1-517 of the Code of Virginia, relating to certification of lead contractors, professionals, and workers.

[S 405]

Approved April 2, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-516, and 54.1-517 of the Code of Virginia are amended and reenacted as follows:

CHAPTER 5.

ASBESTOS AND LEAD CONTRACTORS AND WORKERS.

§ 54.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Asbestos" means any material containing more than one percent asbestos by area as determined by microscopy.

"Asbestos analytical laboratory license" means an authorization issued by the Department to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Department permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos inspector's license" means an authorization issued by the Department permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Department permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Department permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Department permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Department permitting an individual to work on an asbestos project.

"Certified lead contractor, professional or worker" means a person who meets the Board's training, examination, and experience requirements for engaging in or contracting for lead-based paint evaluation, inspection, and abatement activities.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Friable" means that the material when dry, may be crumbled, pulverized or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Lead occupation" means any person employed as a contractor, inspector, technician, supervisor, or worker performing identification, physical and hazard assessment, encapsulation, removal, repair, renovation, or demolition of lead-containing structures or surfaces.

"Lead-containing substance" means any coating, paint, plaster or surface encapsulation material containing more than 0.5 percent lead by weight of dry film or more than one milligram of lead per square centimeter of dry film, or other materials meeting standards that are consistent with applicable federal regulations.

"Local education agency" or "LEA" shall have the meaning provided in the USEPA AHERA regulations set forth in 40 CFR 763.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

"Primary instructor" means an instructor whose main responsibility is to instruct courses, supervise other instructors and manage the overall course curriculum.

"RFS contractor's license" means an authorization issued by the Department permitting a person to enter into contracts to install, remove or encapsulate nonfriable asbestos-containing roofing, flooring and siding materials.

"RFS inspector's license" means an authorization issued by the Department authorizing a person to identify the presence of asbestos-containing roofing, flooring or siding material through sampling and interpretation of testing reports prepared by a licensed asbestos analytical laboratory.

§ 54.1-500.1. Virginia Board for Asbestos Licensing and Lead Certification; membership; meetings; offices; quorum.

The Virginia Board for Asbestos Licensing *and Lead Certification* shall be appointed by the Governor and composed of ~~seven~~ *nine* members as follows: one shall be a representative of a Virginia licensed asbestos contractor, *one shall be a representative of a Virginia certified lead contractor*, one shall be a representative of an asbestos RFS contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, *one shall be a Virginia certified lead risk assessor*, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos *and lead* training course provider and two shall be citizen members. ~~For the initial~~ *Of the 1994* appointments, the terms shall be as follows: ~~two members~~ *one member* shall serve a term of two years, ~~two members~~ *shall serve a term of three years* and ~~three members~~ *one member* shall serve a term of four years. Thereafter, the terms of members of the Board shall be four years, *except that vacancies may be filled for the remainder of the unexpired term. The initially appointed representatives of the lead industry shall be deemed to be certified upon having completed lead training offered at an Environmental Protection Agency Regional Training Center.*

The Board shall meet at least four times each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice chairman to serve for a period of one year. Five members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

§ 54.1-501. Powers and duties of the Board.

The Board shall administer and enforce this chapter. The Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of licenses, and governing conflicts of interest between various categories of asbestos licenses *and lead certificates*;

2. Approve the criteria for training courses and primary instructors;

3. Approve training courses, examinations and the grading system for testing applicants for *asbestos licensure and lead certification*;

4. Promulgate training requirements for supervisors and workers employed by RFS contractors in the installation, removal or encapsulation of nonfriable asbestos-containing roofing, flooring or siding materials not later than July 1, 1989, and to promulgate training requirements for RFS inspectors not later than January 1, 1991. The training requirements shall be promulgated in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.);

5. Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories; ~~and~~

6. Promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors; *and*

7. *Promulgate, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), regulations necessary to certify all persons performing lead inspection, evaluation, and abatement activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. The Board's regulations shall not be more stringent than the federal requirements.*

§ 54.1-503. Licenses required.

A. It shall be unlawful for any person who does not have an asbestos contractor's, supervisor's, inspector's, management planner's, or project designer's license to contract with another person, for compensation, to carry out an asbestos project or develop a management plan. It shall be unlawful for any person who does not have a license as an RFS contractor or asbestos contractor to enter into any contract for compensation to install, remove or encapsulate nonfriable asbestos-containing roofing, flooring, or siding material. After July 1, 1991, it shall be unlawful for any person who does not have a license as a project monitor to act as project monitor on an asbestos project.

B. *After January 1, 1995, it shall be unlawful for any person who does not hold a certificate issued by the Board as a certified lead contractor, professional, or worker to perform lead inspection, evaluation, or abatement activities.*

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, suspend or revoke the *certificate of a lead contractor, professional or*

worker or the license of an asbestos contractor, RFS contractor, supervisor, inspector, RFS inspector, management planner, project designer, project monitor or worker or the approval of an asbestos training provider or primary instructor, if the licensee or approved entity:

1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;
2. Fails at any time to meet the qualifications for a license or approval or to comply with the requirements of this chapter or any regulation adopted by the Board; or
3. Fails to meet any applicable federal or state standard when performing an asbestos project or service *or performing lead inspection, evaluation, or abatement.*

B. The Board may reprimand, suspend or revoke the license of any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project *or any lead contractor who employs or permits an individual required to be certified under this chapter to perform any lead inspection, evaluation, or abatement.*

§ 54.1-517. Penalties for willful violations.

Notwithstanding any other provision of law, any person who willfully violates any provision of this chapter or any regulation related to licensure, certification or training adopted pursuant to this chapter shall be guilty of a Class 1 misdemeanor for the first two violations and a Class 6 felony for a third and each subsequent violation within a three-year period.

In addition, licensed asbestos contractors, RFS contractors, supervisors, inspectors, RFS inspectors, management planners, project designers, project monitors, asbestos analytical laboratories and workers *and certified lead contractors, professionals and workers* may be assessed a civil penalty by the Board of not more than \$1,000 for an initial violation and \$5,000 for each subsequent violation within a three-year period arising from a willful violation of standards established by the Environmental Protection Agency, Occupational Safety and Health Administration, Department of Labor and Industry, Department of Air Pollution Control and the Department of Waste Management in a three-year period.