

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 180

An Act to amend and reenact §§ 40.1-51.20, 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-505, 54.1-512, 54.1-514, 54.1-516, and 54.1-517 of the Code of Virginia, relating to roofing, flooring and siding contractors and inspectors.

[S 483]

Approved March 11, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-51.20, 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-505, 54.1-512, 54.1-514, 54.1-516, and 54.1-517 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-51.20. Duties of licensed asbestos and certified lead contractors.

A. A licensed asbestos contractor, ~~any licensed roofing, flooring or siding (RFS) contractor~~, and any certified lead contractor shall notify the Department of Labor and Industry at least twenty days prior to commencement of each asbestos or lead project. Notification shall be sent in a manner prescribed by the Department of Labor and Industry. The Department of Labor and Industry shall have the authority to waive all or any part of the twenty-day notice.

B. A licensed asbestos contractor, ~~licensed RFS contractor~~ or certified lead contractor shall obtain an asbestos or lead project permit from the Department of Labor and Industry prior to commencing each asbestos or lead project in accordance with this chapter and shall pay directly to the Commissioner a fee as established by the Safety and Health Codes Board pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.). The fees shall be sufficient but not excessive to cover the cost of administering the program. All fees collected pursuant to this section shall be paid into a special fund in the state treasury to the credit of the Department of Labor and Industry and shall be used in carrying out the Department's mission under this chapter.

The provisions of this subsection shall not apply to asbestos projects in residential buildings as defined by the Board in regulations adopted pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.).

C. A licensed asbestos contractor, ~~licensed RFS contractor~~ or certified lead contractor shall keep a record of each asbestos or lead project performed and shall make the record available to the Departments of Professional and Occupational Regulation and of Labor and Industry upon request. Records required by this section shall be kept for at least thirty years. The records shall include:

1. The name, address, and asbestos or lead supervisor's license or certification number of the individual who supervised the asbestos or lead project and each employee or agent who worked on the project;

2. The location and description of the project and the amount of asbestos or lead material that was removed;

3. The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards; and

4. The name and address of each disposal site where waste containing asbestos or lead was deposited, the results of the lead toxicity characteristic test, and the disposal site receipts.

§ 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 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~~ three shall be citizen members. Of the 1994 appointments, the terms shall be as follows: one member shall serve a term of two years, and 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 asbestos licenses and lead certificates, 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;

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

6. 5. 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. 6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of lead-based paint activities training programs, (ii) certification of individuals and firms to engage in lead inspection, evaluation, and abatement activities, and (iii) establishment of standards for performing lead-based paint 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 set forth in: (i) the United States Environmental Protection Agency's (EPA) proposed regulations, if the Board's regulations are promulgated prior to the effective date of the EPA's final regulations, or (ii) the EPA's final regulations, if the Board's regulations are promulgated after the effective date of the EPA's final regulations.

§ 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. One hundred and twenty days after the effective date of the Board's initial regulations, 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.

§ 54.1-505. Qualification for an asbestos contractor's license.

To qualify for an asbestos contractor's ~~or RFS contractor's~~ license, an applicant shall:

1. Except as provided in § 54.1-504, ensure that each of his employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos supervisor or worker; and

2. Demonstrate to the satisfaction of the Board that the applicant and his employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Department of Labor and Industry, and the State Air Pollution Control Board covering any part of an asbestos project.

§ 54.1-512. Exemptions from licensure.

A. In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the Board may waive the requirement for asbestos contractor's, ~~RFS contractor's~~, supervisor's and worker's licenses.

B. Any employer, and any employee of such employer, who conducts an asbestos project on premises owned or leased by such employer shall be exempt from licensure.

C. Notwithstanding the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), neither the Commonwealth nor any agency or employee of the Commonwealth shall be subject to any liability as the result of a determination made by the Board hereunder.

§ 54.1-514. Award of contracts by state agencies and political subdivisions.

A state agency or a political subdivision shall not award a contract in connection with an asbestos project to a person who does not hold an asbestos contractor's, ~~RFS contractor's~~, inspector's, management planner's or project designer's license at the time the bid is submitted unless the general contractor to whom the contract is awarded will be contractually committed to have all asbestos related work performed by its own subcontractors who are appropriately licensed as asbestos contractors, ~~RFS contractors~~, inspectors, management planners or project designers pursuant to this chapter.

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, *or* 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~~ *certified* entity:

1. Fraudulently or deceptively obtains or attempts to obtain a license or ~~approval~~ *approval certificate*;
2. Fails at any time to meet the qualifications for a license or ~~approval~~ *approval certificate* 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, *or* suspend or revoke *(i)* 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 *(ii)* 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, and the Divisions of Air Pollution Control and Waste Management of the Department of Environmental Quality in a three-year period.