

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 739

An Act to amend and reenact §§ 54.1-500, 54.1-501, 54.1-503, 54.1-512, 54.1-516, and 54.1-517 of the Code of Virginia and to repeal § 54.1-513 of the Code of Virginia, relating to the regulation of asbestos abatement and lead-based paint activities.

[S 510]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

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

§ 54.1-500. Definitions.

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

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Asbestos" means any material containing more than one percent asbestos by area as determined by microscopy the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board 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 Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

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

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

"Board" means the Virginia Board for Asbestos and Lead.

"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 abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including lead-contaminated dust or soil.

"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 percent by weight.

"Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and lead-contaminated soil.

"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.

"Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA.

"Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the Environmental Protection Agency.

"Licensed Lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead-based paint activities lead abatements.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provisions of a report explaining the results of the investigation.

"Lead inspector" means an individual who has been licensed by the Board to conduct lead inspections and abatement clearance testing.

"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.

"Lead project designer" mean an individual who has been licensed by the Board to prepare lead project designs.

"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.

"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.

"Licensed lead professional" or "licensed lead worker" means a person who has met the licensing requirements in at least one of the lead evaluation, inspection or abatement disciplines established by the Board and has been issued a license by the Board.

"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.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training course or an accredited lead training course or both.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training or an accredited lead training program or both.

§ 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 and lead licenses, and governing conflicts of interest between various categories of asbestos and lead licenses;

2. Approve the criteria for ~~training courses~~ accredited asbestos training programs, accredited lead training programs, training managers and ~~primary~~ principal instructors;

3. Approve accredited asbestos training ~~courses~~ programs, accredited lead training programs, examinations and the grading system for testing applicants for asbestos and lead licensure;

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

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

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~~ accredited lead training programs, (ii) licensure of individuals and firms to engage in lead inspection, evaluation, and abatement lead-based paint 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. If the United States Environmental Protection Agency (EPA) has adopted, prior to the promulgation of any related regulations by the Board, any final regulations relating to lead-based paint activities, then the related regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA 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 an asbestos project designer's license to develop an asbestos project design. It shall be unlawful for any person who does not have an asbestos inspector's license to conduct an asbestos inspection. It shall be unlawful for any person who does not have an asbestos management planner's license to develop an asbestos management plan.* It shall be unlawful for any person who does not have a license as ~~a~~ *an asbestos project monitor* to act as project monitor on an asbestos project.

B. It shall be unlawful for any person who does not possess a valid asbestos analytical laboratory license issued by the Board to communicate the findings of an analysis, verbally or in writing, for fee, performed on material known or suspected to contain asbestos for the purpose of determining the presence or absence of asbestos.

C. ~~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~~ *possess* a license ~~issued by the Board~~ as a licensed lead contractor, ~~professional, or worker~~ *to contract with another person to perform lead inspection, evaluation, or abatement activities. It shall be unlawful for any person who does not possess a lead supervisor's license to act as a lead supervisor on a lead abatement project. It shall be unlawful for any person who does not possess a lead worker's license to act as a lead worker on a lead abatement project. It shall be unlawful for any person who does not possess a lead project designer's license to develop a lead project design. It shall be unlawful for any person who does not possess a lead inspector's license to conduct a lead inspection. It shall be unlawful for any person who does not possess a lead risk assessor's license to conduct a lead risk assessment. It shall be unlawful for any person who does not possess a lead inspector's or lead risk assessor's license to conduct lead abatement clearance testing.*

§ 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, 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.

D. *Nothing in this chapter shall be construed as requiring the licensure of a contractor who contracts to undertake a project, a portion of which constitutes an asbestos or lead abatement project if all of the asbestos or lead abatement work is subcontracted to a person licensed to perform such work in accordance with the provisions of this chapter.*

E. *This chapter shall not apply to any person who performs lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted or a child is residing in the property and has been identified as having an elevated blood-lead level.*

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, or suspend or revoke (i) the license of a lead contractor, ~~professional or lead inspector, lead risk assessor, lead project designer, lead supervisor, lead worker or the license of an~~ asbestos contractor, ~~asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner, asbestos project designer, asbestos project monitor or asbestos worker or~~ (ii) the approval of an accredited asbestos training ~~provider~~ program, accredited lead training program, training manager or ~~primary~~ principal instructor, if the licensee or approved person or program:

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 a ~~lead inspection, evaluation, or abatement~~ *lead-based paint activities*.

B. The Board may reprimand, or suspend or revoke the license of, (i) 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 licensed under this chapter to perform any lead inspection, evaluation, or abatement~~ *without a lead supervisor's or lead worker's license to work on a lead abatement project.*

§ 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 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, *asbestos* supervisors, *asbestos* inspectors, *asbestos* management planners, *asbestos* project designers, *asbestos* project monitors, asbestos analytical laboratories and *asbestos* workers ~~and licensed~~, lead contractors, ~~professionals and lead inspectors~~, *lead risk assessors, lead project designers, lead supervisors, lead workers, and accredited asbestos training programs, accredited lead training programs, training managers or principal instructors* 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 or~~ the Divisions of Air Pollution Control and Waste Management of the Department of Environmental Quality in a three-year period.

2. That § 54.1-513 of the Code of Virginia is repealed.