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SENATE BILL NO. 453

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 25, 2016)

(Patron Prior to Substitute—Senator Stanley)

A BILL to amend and reenact §§ 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-516, 54.1-517.2, and 55-519 of the Code of Virginia and to repeal § 54.1-517.1 of the Code of Virginia, relating to the Virginia Board for Asbestos, Lead, and Home Inspectors; licensing of home inspectors.

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, 54.1-517.2, and 55-519 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.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means 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, Lead, and Home Inspectors.

"Certified home inspection" means any inspection of a residential building for compensation conducted by a certified home inspector. A certified home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A certified home inspection may be limited in scope as provided in a home inspection contract, provided such contract is not inconsistent with the provisions of this chapter or the regulations of the Board.

"Certified home inspector" means a person who meets the criteria of education, experience, and testing required by this chapter and regulations of the Board and who has been certified by the Board.

60 "Dust clearance sampling" means an on-site collection of dust or other debris that is present after the
61 completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a
62 report explaining the results.

63 "Dust sampling technician" means an individual licensed by the Board to perform dust clearance
64 sampling.

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

69 "*Home inspection*" means any inspection of a residential building for compensation conducted by a
70 licensed home inspector. A home inspection shall include a written evaluation of the readily accessible
71 components of a residential building, including heating, cooling, plumbing, and electrical systems;
72 structural components; foundation; roof; masonry structure; exterior and interior components; and other
73 related residential housing components. A home inspection may be limited in scope as provided in a
74 home inspection contract, provided that such contract is not inconsistent with the provisions of this
75 chapter or the regulations of the Board. For purposes of this chapter, residential building energy
76 analysis alone, as defined in § 54.1-1144, shall not be considered a home inspection.

77 "*Home inspector*" means a person who meets the criteria of education, experience, and testing
78 required by this chapter and regulations of the Board and who has been licensed by the Board to
79 perform home inspections.

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

82 "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of
83 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

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

87 "Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at
88 or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15
89 U.S.C. § 2683).

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

92 "Lead contractor" means a person who has met the Board's requirements and has been issued a
93 license by the Board to enter into contracts to perform lead abatements.

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

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

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

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

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

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

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

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

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

115 "Principal instructor" means the individual who has the primary responsibility for organizing and
116 teaching an accredited asbestos training program, an accredited lead training program, an accredited
117 renovation training program, or any combination thereof.

118 "Renovation" means the modification of any existing structure or portion thereof, for compensation,
119 that results in the disturbance of painted surfaces, unless that activity is performed as a part of a lead
120 abatement. As used in this definition, "compensation" shall include the receipt of (i) pay for work
121 performed, such as that paid to contractors and subcontractors; (ii) wages, including but not limited to

those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (iii) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

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

§ 54.1-500.1. Virginia Board for Asbestos, Lead, and Home Inspectors; membership; meetings; offices; quorum.

The Virginia Board for Asbestos, Lead, and Home Inspectors shall be appointed by the Governor and composed of 14 members as follows: one shall be a representative of a Virginia-licensed asbestos contractor, one shall be a representative of a Virginia-licensed lead contractor, one shall be a representative of a Virginia-licensed renovation contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, one shall be a Virginia-licensed lead risk assessor, one shall be a Virginia-licensed renovator, one shall be a Virginia-licensed dust sampling technician, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos, lead, or renovation training program, one shall be a member of the Board for Contractors, two shall be ~~certified~~ *Virginia-licensed* home inspectors, and two shall be citizen members. After initial staggered terms, 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 two home inspector members appointed to the Board shall have practiced as home inspectors for at least five consecutive years immediately prior to appointment. The renovation contractor, renovator, and dust sampling technician members appointed to the board shall have practiced respectively as a renovation contractor, renovator, or dust sampling technician for at least five consecutive years prior to appointment.

The Board shall meet at least once 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. Eight 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 (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos, lead, and renovation licenses, and governing conflicts of interest among various categories of asbestos, lead, and renovation licenses;

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

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

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of accredited lead training programs, (ii) licensure of individuals and firms to engage in 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

183 related regulations by the Board, then the related regulations of the Board shall not be more stringent
184 than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations
185 subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as
186 practicable, amend its existing regulations so as to be not more stringent than such EPA regulations;

187 7. Promulgate regulations for ~~certification~~ *the licensing* of home inspectors not inconsistent with this
188 chapter regarding the professional qualifications of home inspectors applicants, the requirements
189 necessary for passing home inspectors examinations ~~in whole or in part~~, the proper conduct of its
190 examinations, the proper conduct of the home inspectors ~~certified~~ *licensed* by the Board, ~~the~~
191 ~~implementation of exemptions from certifications requirements~~, and the proper discharge of its duties;
192 and

193 8. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish
194 procedures and requirements for the (i) approval of accredited renovation training programs, (ii)
195 licensure of individuals and firms to engage in renovation, and (iii) establishment of standards for
196 performing renovation consistent with the Residential Lead-based Paint Hazard Reduction Act and
197 United States Environmental Protection Agency (EPA) regulations. Such regulations of the Board shall
198 be consistent with the EPA Lead Renovation, Repair, and Painting Program final rule.

199 **§ 54.1-503. Licenses required.**

200 A. It shall be unlawful for any person who does not have an asbestos contractor's license to contract
201 with another person, for compensation, to carry out an asbestos project or to perform any work on an
202 asbestos project. It shall be unlawful for any person who does not have an asbestos project designer's
203 license to develop an asbestos project design. It shall be unlawful for any person who does not have an
204 asbestos inspector's license to conduct an asbestos inspection. It shall be unlawful for any person who
205 does not have an asbestos management planner's license to develop an asbestos management plan. It
206 shall be unlawful for any person who does not have a license as an asbestos project monitor to act as
207 project monitor on an asbestos project.

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

212 C. It shall be unlawful for any person who does not possess a license as a lead contractor to contract
213 with another person to perform lead abatement activities or to perform any lead abatement activity or
214 work on a lead abatement project. It shall be unlawful for any person who does not possess a lead
215 supervisor's license to act as a lead supervisor on a lead abatement project. It shall be unlawful for any
216 person who does not possess a lead worker's license to act as a lead worker on a lead abatement project.
217 It shall be unlawful for any person who does not possess a lead project designer's license to develop a
218 lead project design. It shall be unlawful for any person who does not possess a lead inspector's license
219 to conduct a lead inspection. It shall be unlawful for any person who does not possess a lead risk
220 assessor's license to conduct a lead risk assessment. It shall be unlawful for any person who does not
221 possess a lead inspector's or lead risk assessor's license to conduct lead abatement clearance testing.

222 D. It shall be unlawful for any person who does not possess a license as a renovation contractor to
223 perform renovation. It shall be unlawful for any person who does not possess a renovator's license to
224 perform or direct others to perform renovation. It shall be unlawful for any person who does not possess
225 a dust sampling technician's license to perform dust clearance sampling.

226 E. *It shall be unlawful for any individual who does not possess a license as a home inspector issued*
227 *by the Board to perform a home inspection for compensation on a residential building.* It shall be
228 unlawful for any person ~~individual~~ who is ~~not a certified home inspector pursuant to this chapter and~~
229 ~~who has not successfully completed the training module required by § 54.1-517.2~~ *does not possess a*
230 *home inspector license with the new residential structure endorsement* to conduct a home inspection for
231 *compensation on any new residential structure. For purposes of this chapter, "new residential structure"*
232 *means a residential structure for which the first conveyance of record title to a purchaser has not*
233 *occurred, or of which a purchaser has not taken possession, whichever occurs later.*

234 **§ 54.1-516. Disciplinary actions.**

235 A. The Board may reprimand, fine, suspend or revoke (i) the license of a lead contractor, lead
236 inspector, lead risk assessor, lead project designer, lead supervisor, lead worker, asbestos contractor,
237 asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner,
238 asbestos project designer, asbestos project monitor, asbestos worker, renovator, dust sampling technician,
239 ~~or renovation contractor, or home inspector~~ or (ii) the approval of an accredited asbestos training
240 program, accredited lead training program, accredited renovation training program, training manager or
241 principal instructor, if the licensee or approved person or program:

242 1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;

243 2. Fails at any time to meet the qualifications for a license or approval or to comply with the
244 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, performing lead-based paint activities, or performing renovations.

B. The Board may reprimand, fine, 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, (ii) any lead contractor who employs or permits an individual without a lead supervisor's or lead worker's license to work on a lead abatement project, or (iii) any renovation contractor who employs or permits an individual without a renovator's license to perform or to direct others who perform renovations.

C. The Board may reprimand, fine, suspend or revoke the ~~certification~~ license of a home inspector.

§ 54.1-517.2. Requirements for licensure.

A. The Board ~~may~~ *shall* issue a ~~certificate~~ license to practice as a ~~certified~~ home inspector in the Commonwealth to ~~any~~:

1. *An individual who holds an unexpired certificate as a home inspector issued prior to June 30, 2017; or*

2. *An applicant who has submitted satisfactory evidence that he has successfully:*

1. *a. Completed ~~any~~ the educational requirements as required by the Board;*

2. *b. Completed ~~any~~ the experience requirements as required by the Board; and*

3. *c. Passed ~~any~~ written or electronic the examination offered or approved by the Board; and*

4. *(Effective July 1, 2016) If conducting inspections on new residential structures, completed.*

B. *The Board shall issue a license with the new residential structure endorsement to any applicant who completes a training module developed by the Board in conjunction with the Department of Housing and Community Development based on the International Residential Code component of the Virginia Uniform Statewide Building Code.*

~~The Board may issue a certificate to practice as a certified home inspector to any applicant who is a member of a national or state professional home inspectors association approved by the Board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the Board for all applicants.~~

§ 55-519. Required disclosures.

A. With regard to transfers described in § 55-517, the owner of the residential real property shall furnish to a purchaser a residential property disclosure statement in a form provided by the Real Estate Board stating that the owner makes the following representations as to the real property:

1. The owner makes no representations with respect to the matters set forth and described at a website maintained by the Real Estate Board and that the purchaser is advised to consult this website for important information about the real property; and

2. The owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, except as disclosed on the disclosure statement, nor any pending violation of the local zoning ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on the disclosure statement.

B. At the website referenced in subdivision A 1, the Real Estate Board shall include language providing notice to the purchaser that by delivering the residential property disclosure statement:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a ~~certified~~ home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

4. The owner makes no representations with respect to whether the property contains any resource

306 protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act
307 (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to
308 § 62.1-44.15:74 and that purchasers are advised to exercise whatever due diligence a particular purchaser
309 deems necessary to determine whether the provisions of any such ordinance affect the property,
310 including review of any official map adopted by the locality depicting resource protection areas, in
311 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
312 any event, prior to settlement pursuant to such contract;

313 5. The owner makes no representations with respect to information on any sexual offenders registered
314 under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to exercise whatever
315 due diligence they deem necessary with respect to such information, in accordance with terms and
316 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement
317 pursuant to such contract;

318 6. The owner makes no representations with respect to whether the property is within a dam break
319 inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence
320 they deem necessary with respect to whether the property resides within a dam break inundation zone,
321 including a review of any map adopted by the locality depicting dam break inundation zones;

322 7. The owner makes no representations with respect to the presence of any stormwater detention
323 facilities located on the property, or any maintenance agreement for such facilities, and purchasers are
324 advised to exercise whatever due diligence they deem necessary to determine the presence of any
325 stormwater detention facilities on the property, or any maintenance agreement for such facilities, in
326 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
327 any event, prior to settlement pursuant to such contract;

328 8. The owner makes no representations with respect to the presence of any wastewater system,
329 including the type or size thereof or associated maintenance responsibilities related thereto, located on
330 the property and purchasers are advised to exercise whatever due diligence they deem necessary to
331 determine the presence of any wastewater system on the property, in accordance with terms and
332 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement
333 pursuant to such contract;

334 9. The owner makes no representations with respect to any right to install or use solar energy
335 collection devices on the property; and

336 10. The owner makes no representations with respect to whether the property is located in one or
337 more special flood hazard areas and purchasers are advised to exercise whatever due diligence they
338 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
339 the property is located in one or more special flood hazard areas, (ii) review of any map depicting
340 special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and
341 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement
342 pursuant to such contract.

343 C. Any purchaser who is a party to a real estate purchase contract subject to this section may
344 provide in such contract that the disclosures provided on the Real Estate Board website be printed off
345 and provided to such purchaser.

346 **2. That § 54.1-517.1 of the Code of Virginia is repealed.**

347 **3. That the provisions of this act shall become effective on July 1, 2017, except as otherwise**
348 **provided in the fourth enactment of this act.**

349 **4. That the Virginia Board for Asbestos, Lead, and Home Inspectors shall promulgate regulations**
350 **to implement the provisions of this act to be effective no later than July 1, 2017. The Board's**
351 **initial adoption of regulations necessary to implement the provisions of this act shall be exempt**
352 **from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the**
353 **Board shall provide an opportunity for public comment on the regulations prior to adoption.**