

HB 4321 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

House Bill No. 4321

(By Delegates Perdue, Hatfield, Staton,
Browning, Rick Thompson and Stemple)



Passed March 10, 2006

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 4321

(BY DELEGATES PERDUE, HATFIELD, STATON,
BROWNING, RICK THOMPSON AND STEMPLER)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, all relating to definitions and modifications of exemptions from notification and licensure with respect to lead abatement.

Be it enacted by the Legislature of West Virginia:

That §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 35. LEAD ABATEMENT.

§16-35-3. Definitions.

- 1 (a) "Abatement" means any measure or set of measures
- 2 designed to permanently eliminate lead-based paint hazards.
- 3 Abatement includes, but is not limited to:
 - 4 (1) The removal of lead-based paint and lead-contaminated
 - 5 dust, the permanent enclosure or encapsulation of lead-based

6 paint, the replacement of lead-painted surfaces or fixtures, and
7 the removal or covering of lead-contaminated soil;

8 (2) All preparation, cleanup, disposal, and post-abatement
9 clearance testing activities associated with such measures;

10 (3) Projects for which there is a written contract to perma-
11 nently eliminate lead-based paint hazards from a dwelling unit
12 or child-occupied building;

13 (4) Projects involving the permanent elimination of
14 lead-based paint or lead-contaminated soil; and

15 (5) Projects involving the permanent elimination of
16 lead-based paint hazards that are conducted in response to
17 federal, state or local abatement orders.

18 (b) "Child lead poisoning" means that the amount of lead
19 circulating in the blood stream of children is at or exceeds the
20 level defined by the United States center for disease control.

21 (c) "Child-occupied building" means any of the following
22 structures built before one thousand nine hundred sev-
23 enty-eight: Public or private buildings, or portions thereof, or a
24 room in a residential dwelling or unit, any of which structures
25 are currently visited, or intended to be visited, three hours a day
26 twice a week or more often by a child age six or under, includ-
27 ing, but not limited to, day care centers, kindergarten class-
28 rooms, schools, camps and recreational facilities.

29 (d) "Contained work area" means a designated room or
30 rooms, spaces, or other areas, including a decontamination
31 structure, where lead abatement activities are performed,
32 separated from the uncontaminated environment in accordance
33 with OSHA standards.

34 (e) "Commissioner" means the Commissioner of the West
35 Virginia Bureau for Public Health or his or her representative.

36 (f) "Discipline" means any one of the following: Lead
37 abatement contractor, lead abatement supervisor, lead inspector,
38 lead risk assessor, lead abatement worker, or lead abatement
39 project designer.

40 (g) "Elevated blood-lead level" means a concentration of
41 lead in the blood stream as defined by the United States Center
42 for Disease Control.

43 (h) "Industrial facility" means any factory, mill, plant,
44 refinery, warehouse, building or complex of buildings or other
45 industrial structures including the land on which it is located.

46 (i) "Inspection" means a surface-by-surface investigation to
47 determine the presence of lead-based paint or lead hazards and
48 the provision of a report explaining the results of the investiga-
49 tion.

50 (j) "Interim controls" means a set of measures designed to
51 temporarily reduce human exposure or likely exposure to
52 lead-based paint hazards, including specialized cleaning,
53 repairs, maintenance, painting, temporary containment, ongoing
54 monitoring of lead-based paint hazards or potential hazards, and
55 the establishment and operation of management and resident
56 education programs.

57 (k) "Lead" means elemental lead and all inorganic and
58 organic lead compounds.

59 (l) "Lead abatement contractor" means any person who
60 contracts to conduct any lead abatement activity.

61 (m) "Lead abatement designer" means an individual who
62 designs lead abatement projects and occupant protection plans.

63 (n) "Lead abatement project" means an activity in target
64 housing or child-occupied buildings intended to permanently
65 remove or encapsulate lead-based paint, lead-containing dust,
66 lead-containing soil or other lead-containing materials and
67 decontamination of an area, but does not include interim
68 controls which do not permanently eliminate lead hazards.

69 (o) "Lead abatement worker" means an individual who is
70 employed by a lead abatement contractor for a lead abatement
71 project.

72 (p) "Lead-based paint" means paint or other surface
73 coatings that contains lead at a level defined by the commis-
74 sioner by legislative rule as provided in section four of this
75 article.

76 (q) "Lead hazard" means any condition that may result in
77 exposure to lead including, but not limited to,
78 lead-contaminated dust, lead-contaminated soil, or lead-based
79 paint present on accessible surfaces, friction surfaces, impact
80 surfaces or other lead sources that could result in adverse
81 effects on human health.

82 (r) "Lead inspector" means an individual who conducts
83 inspections to determine and report the existence, nature,
84 severity and location of lead-based paint or lead hazards.

85 (s) "Lead risk assessment" means an investigation of the
86 potential risk to human health or the environment posed by lead
87 abatement projects or lead hazards, including, but not limited
88 to, considerations of toxicity, concentration, form, mobility and
89 potential of exposure.

90 (t) "Lead risk assessor" means an individual who is
91 responsible for or conducts lead risk assessments and estab-
92 lishes priorities for a lead abatement project.

93 (u) "Lead supervisor" means a person employed by a lead
94 abatement contractor to supervise workers on a lead abatement
95 project, to develop occupant protection plans and to develop
96 abatement reports.

97 (v) "OSHA" means the United States Occupational Safety
98 and Health Administration.

99 (w) "Owner-occupied housing" means a detached single
100 unit residence owned by the individual living within the unit.

101 (x) "Person" means any individual, partnership, firm,
102 society, association, trust, corporation, other business entity or
103 any agency, unit, or instrumentality of federal, state or local
104 government.

105 (y) "Target housing" means residential structures built prior
106 to one thousand nine hundred seventy-eight or residential
107 structures that are confirmed by inspection to contain
108 lead-based paint.

§16-35-7. Exemptions from notification and licensure.

1 (a) Homeowners performing lead abatement or interim
2 abatement controls on their single unit owner-occupied housing
3 are exempt from the requirements of this article: *Provided*, That
4 the provisions of this section do not apply to any residential
5 dwelling occupied by a person or persons other than the owner
6 or the owner's immediate family as well as to any residential
7 dwelling where a child with a documented elevated blood lead
8 level resides.

9 (b) Abatement does not include renovation, remodeling,
10 landscaping or other activities, when the purpose of such
11 activities are not intended to permanently eliminate lead-based
12 paint hazards, but, instead, are designed to repair, restore or
13 remodel a given structure or dwelling, even though these

14 activities may incidentally result in a reduction or elimination
15 of lead-based paint hazards. Abatement also does not include
16 interim controls, operations and maintenance activities, or other
17 measures and activities designed to temporarily, but not
18 permanently reduce lead-based paint hazards.

19 (c) The provisions of this article do not apply to lead-hazard
20 reduction activities or to persons performing such activities
21 when such activities are performed wholly within or on an
22 industrial facility and are performed by persons who are subject
23 to the training requirements of OSHA: *Provided*, That the
24 provisions of this article do apply to any child-occupied
25 building or area such as a child day care center located at an
26 industrial facility.

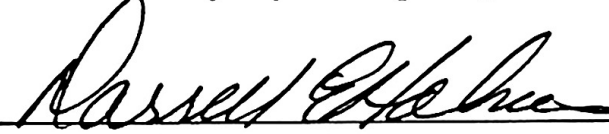
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

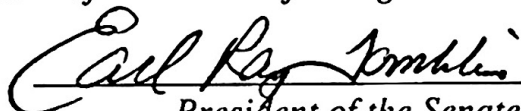

Chairman House Committee

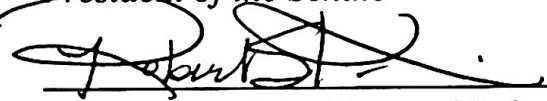
Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 4th
day of April, 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 22 2006

Time 3:55 pm