STATE OF NEW YORK

7117

2021-2022 Regular Sessions

IN ASSEMBLY

April 22, 2021

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the executive law, in relation to establishing the "New York state lead-safe renovation, repair and painting act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new article 31-A to read as follows:

ARTICLE 31-A
NEW YORK STATE LEAD-SAFE
RENOVATION, REPAIR AND PAINTING ACT

Section 925. Short title.
926. Legislative findings.
927. Definitions.
928. Residential property renovation.

§ 925. Short title. This article shall be known and may be cited as the "New York state lead-safe renovation, repair and painting act".

§ 926. Legislative findings. The legislature hereby finds and declares that lead poisoning of children persists as one of the most prevalent and preventable environmental diseases in New York. Nearly one hundred thousand children were newly identified with levels of lead in their blood at five micrograms per deciliter in New York state between two thousand eleven and two thousand fifteen. Medical research indicates that children can suffer permanent brain damage at blood levels even lower than five micrograms per deciliter, and that there is no level of lead ingestion which is without adverse impact.

The predominant cause of lead poisoning in children is the ingestion of lead dust from lead-based paint from older residences. Although New York state banned the sale of lead-based paint in nineteen hundred seventy, seventy-four percent of New York's housing stock was

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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constructed prior to nineteen hundred seventy and ten percent of New York's housing was constructed between nineteen hundred seventy and nineteen hundred seventy-nine while lead-based paint was still available through nineteen hundred seventy-eight. New York state has both the nation's greatest number (over four million units), the highest percentage (55.08%) of pre-nineteen hundred sixty and pre-nineteen hundred fifty (41.0%) housing, and the oldest housing inventory among the fifty states. According to the federal Environmental Protection Agency, some lead painted surfaces can be found in eighty-seven percent of homes constructed before nineteen hundred forty, sixty-nine percent of homes constructed between nineteen hundred forty and nineteen hundred fifty-nine, and twenty-four percent of homes constructed between nineteen hundred sixty and nineteen hundred seventy-eight. New York state's older housing stock places residents at great risk of exposure to lead hazards, with low-income children living in older housing having the highest risk of lead poisoning.

A key source of lead dust is renovation, repair, and painting work in homes that contain lead-based paint. These activities exacerbate lead dust levels and leave harmful dust for many years.

Renovation workers often unwittingly expose themselves to lead hazards by using unsafe work practices that result in exposure for workers and their family members.

The federal Environmental Protection Agency (EPA) has developed guidelines to conduct renovations in a lead-safe manner, known as the Renovation, Repair, and Painting (RRP) rule and compliance with the RRP rule is required for all contractors and landlords working in housing and childcare facilities built before nineteen hundred seventy-eight. However, the EPA's enforcement of this program, which includes over six million homes in New York state, is minimal with only seven EPA enforcement actions in New York in two thousand nineteen.

Multiple studies conducted prior to implementation of the RRP rule present the harmful effects of lead dust produced from specifically renovation, repair, and painting activities in homes with lead-based paint. One study of children in New York in two thousand six-two thousand seven found that fourteen percent of the children with extremely high EBLLs (twenty micrograms per deciliter and above) were related to renovation, repair and painting activities; all the homes linked to RRP-related lead exposure were built before nineteen hundred seventy-eight except one, and children with lower EBLLs (less than twenty micrograms per deciliter) were estimated to have been primarily exposed to lead through RRP activities in nearly forty percent of cases. This indicates that renovation, repair and painting activities are one of the primary sources of lead exposure in young children. If these rates of exposure from RRP are extrapolated to hold for the entire New York state population of lead-exposed children, approximately nine thousand three hundred twenty-seven children become subject to lead poisoning as a result of renovation, repair, and painting activities each year. Of those, two thousand four hundred eighteen children would experience severely high EBLLs of twenty micrograms per deciliter or greater and above. The safe work practices in the RRP rule can also protect the health of renovation workers.

The EPA regulations provide that states can obtain delegation from the federal government to manage their own lead-safe renovation programs, and at least fourteen states have done so and tailored their RRP programs to meet the implementation and enforcement needs of their state. With the oldest housing stock in the nation, New York has an

especially serious lead poisoning problem and urgently needs to seek authorization for this program. Doing so will give state agencies the authority to enforce existing regulations and the opportunity to strengthen them in an appropriate manner.

§ 927. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Lead-based paint" means paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis of paint samples with all layers of paint present, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the most recent United States department of housing and urban development guidelines for the evaluation and control of lead-based paint hazards in housing and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface coating material containing more than 0.009% of metallic lead, based on the non-volatile content of the paint or other similar surface coating material. In the event that the United States environmental protection agency or a successor agency, or the United States department of housing and urban development or a successor agency, or a department or agency of the state of New York that has obtained applicable authorization pursuant to 40 CFR part 745 subpart Q or successor regulation, adopts more stringent definitions of lead-based paint, such definitions shall apply for the purposes of this article.

2. "Lead dust clearance" means mass-per-area concentrations of lead less than five micrograms of lead per square foot on floors and less than forty micrograms per square foot on interior window sills, provided, however, that:

(a) The commissioner may by regulation set more stringent levels for lead dust clearance in the event the commissioner determines such more stringent levels are needed to identify potential lead hazards and protect public health; and

(b) The commissioner shall by regulation adopt such more stringent levels for lead dust clearance as may be set by the United States environmental protection agency or the United States department of housing and urban development.

§ 928. Residential property renovation. 1. The commissioner shall adopt rules and/or regulations, sufficient to satisfy the requirements of 40 C.F.R. 745.326 or its successor regulation, governing:

(a) pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation; and

(b) renovation training, certification, accreditation, and work practice standards programs, including:

(i) procedures and requirements for the accreditation of renovation and dust sampling technician training programs;

(ii) procedures and requirements for accredited initial and refresher training for renovators and dust sampling technicians and on-the-job training for other individuals who perform renovations;

(iii) procedures and requirements for the certification of individuals and/or firms;

(iv) requirements that all renovations be conducted by appropriately certified individuals and/or firms;

(v) work practice standards for the conduct of renovations; and

(vi) clear enforcement mechanisms and procedures for unannounced compliance inspections of properties and for responding to complaints.

2. The regulations adopted under subdivision one of this section shall include provisions:

(a) Requiring the use of lead dust clearance testing, rather than cleaning verification, pursuant to 40 CFR 745.85(c) or successor regulation, and requiring that the collection of dust clearance testing samples be performed by an inspector, risk assessor, or dust sampling technician independent of the owner or contractor and accredited pursuant to (i) the United States environmental protection agency pursuant to 40 CFR 745.226 or 40 CFR 745.90(c) or successor regulation; or (ii) certification by a state or tribal program authorized by the United States environmental protection agency to certify individuals engaged in lead-based paint activities pursuant to 40 CFR 745.325 or successor regulation;

(b) Barring the disturbance or removal of lead-based paint or paint of unknown content using any of the following methods:

(i) dry scraping or dry sanding, meaning the removal of paint or similar surface coating material by scraping or sanding without the use of water misting to reduce dust levels or other similar methods to control dust;

(ii) open flame burning or torching, or the use of heat guns operating above eleven hundred degrees Fahrenheit, or charring paint;

(iii) machine sanding or grinding, or abrasive blasting or sandblasting, without the use of local exhaust control employing a vacuum cleaner device equipped with a high-efficiency particulate air filter capable of filtering out monodispersed particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater;

(iv) paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States consumer product safety commission under 16 CFR 1500.3, and a hazardous chemical in accordance with the United States occupational safety and health administration regulations under 29 CFR 1910.1200 or 1926.59 or successor regulation, as applicable to the work, methylene chloride and n-methyl-2-pyrrolidone (NMP), and such other chemicals that the department may by rule or regulation determine to be hazardous;

(d) Requiring the on-site presence of a person accredited pursuant to subdivision one of this section at all times during residential property renovation work;

(e) Applying such regulations to all demolition activities;

(f) Directing that municipalities and counties may, upon the approval of the commissioner, assume enforcement in part or whole of such regulations pertaining to residential property renovation;

(g) Requiring training programs authorized by the commissioner to offer such trainings in a manner that is culturally competent including, where needed, multiple languages, and accommodations for individuals with low-literacy;

(h) Directing that pre-work or start-work notifications be filed with such local agencies as the commissioner may designate;

(i) For posting notices in common areas of multi-family housing with a designated phone number for contacting such local agencies as the commissioner may designate for the enforcement of the regulations pertaining to residential property renovation.

3. (a) The accreditation of individuals and/or firms pursuant to the regulations adopted under subdivision one of this section shall extend for a period of three years unless the commissioner has probable cause to believe an individual or firm accredited under this section has violated the terms of such accreditation or has engaged in illegal or unethical conduct related to inspections required by this section, in which case such accreditation to perform inspections shall be suspended pending a hearing in accordance with the provisions of the state administrative procedure act. The commissioner shall establish by regulation a schedule of fees for the accreditation and registration of such individuals and/or firms. Such fees shall be required to be paid at the time of initial registration and at the time of subsequent renewal of registration, and shall be sufficient to cover all costs, including the costs of state personnel, attributable to accreditation activities conducted under this section.

(b) Fees collected pursuant to this subdivision shall be held in a continuing, non-lapsing special fund to be used for accreditation purposes under this section.

(c) Such fund established under paragraph (b) of this subdivision shall be invested and reinvested and any investment earnings shall be paid into the fund.

4. Any violation of the provisions of this section shall be punishable as a misdemeanor, and a civil penalty of not less than ten thousand dollars per violation.

§ 2. Paragraphs h and i of subdivision 1 of section 381 of the executive law, as added by chapter 560 of the laws of 2010, are amended and a new paragraph j is added to read as follows:

h. minimum basic training and in-service training requirements for personnel charged with administration and enforcement of the state energy conservation construction code; [~~and~~]

i. standards and procedures for measuring the rate of compliance with the state energy conservation construction code, and provisions requiring that such rate of compliance be measured on an annual basis[~~.~~]; and

j. procedures requiring the documentation of compliance with regulations adopted pursuant to section nine hundred twenty-eight of the labor law as a condition to issuance of a construction permit.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.