

STATE OF NEW YORK

6554

2021-2022 Regular Sessions

IN SENATE

May 5, 2021

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed 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:

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

3 ARTICLE 31-A

4 NEW YORK STATE LEAD-SAFE

5 RENOVATION, REPAIR AND PAINTING ACT

6 Section 925. Short title.

7 926. Legislative findings.

8 927. Definitions.

9 928. Residential property renovation.

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

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

21 The predominant cause of lead poisoning in children is the ingestion
22 of lead dust from lead-based paint from older residences. Although New
23 York state banned the sale of lead-based paint in nineteen hundred
24 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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1 constructed prior to nineteen hundred seventy and ten percent of New
2 York's housing was constructed between nineteen hundred seventy and
3 nineteen hundred seventy-nine while lead-based paint was still available
4 through nineteen hundred seventy-eight. New York state has both the
5 nation's greatest number (over four million units), the highest percent-
6 age (55.08%) of pre-nineteen hundred sixty and pre-nineteen hundred
7 fifty (41.0%) housing, and the oldest housing inventory among the fifty
8 states. According to the federal Environmental Protection Agency, some
9 lead painted surfaces can be found in eighty-seven percent of homes
10 constructed before nineteen hundred forty, sixty-nine percent of homes
11 constructed between nineteen hundred forty and nineteen hundred fifty-
12 nine, and twenty-four percent of homes constructed between nineteen
13 hundred sixty and nineteen hundred seventy-eight. New York state's older
14 housing stock places residents at great risk of exposure to lead
15 hazards, with low-income children living in older housing having the
16 highest risk of lead poisoning.

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

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

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

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

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

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

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

7 1. "Lead-based paint" means paint or other similar surface coating
8 material containing 1.0 milligrams of lead per square centimeter or
9 greater, as determined by laboratory analysis of paint samples with all
10 layers of paint present, or by an x-ray fluorescence analyzer. If an
11 x-ray fluorescence analyzer is used, readings shall be corrected for
12 substrate bias when necessary as specified by the performance character-
13 istic sheets released by the United States environmental protection
14 agency and the United States department of housing and urban development
15 for the specific x-ray fluorescence analyzer used. X-ray fluorescence
16 readings shall be classified as positive, negative or inconclusive in
17 accordance with the most recent United States department of housing and
18 urban development guidelines for the evaluation and control of lead-
19 based paint hazards in housing and the performance characteristic sheets
20 released by the United States environmental protection agency and the
21 United States department of housing and urban development for the
22 specific x-ray fluorescence analyzer used. X-ray fluorescence readings
23 that fall within the inconclusive zone, as determined by the performance
24 characteristic sheets, shall be confirmed by laboratory analysis of
25 paint chips, results shall be reported in milligrams of lead per square
26 centimeter and the measure of such laboratory analysis shall be defini-
27 tive. If laboratory analysis is used to determine lead content, results
28 shall be reported in milligrams of lead per square centimeter. Where the
29 surface area of a paint chip sample cannot be accurately measured or if
30 an accurately measured paint chip sample cannot be removed, a laboratory
31 analysis may be reported in percent by weight. In such case, lead-based
32 paint shall mean any paint or other similar surface coating material
33 containing more than 0.009% of metallic lead, based on the non-volatile
34 content of the paint or other similar surface coating material. In the
35 event that the United States environmental protection agency or a
36 successor agency, or the United States department of housing and urban
37 development or a successor agency, or a department or agency of the
38 state of New York that has obtained applicable authorization pursuant to
39 40 CFR part 745 subpart Q or successor regulation, adopts more stringent
40 definitions of lead-based paint, such definitions shall apply for the
41 purposes of this article.

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

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

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

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

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

5 (b) renovation training, certification, accreditation, and work prac-
6 tice standards programs, including:

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

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

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

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

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

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

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

21 (a) Requiring the use of lead dust clearance testing, rather than
22 cleaning verification, pursuant to 40 CFR 745.85(c) or successor regu-
23 lation, and requiring that the collection of dust clearance testing
24 samples be performed by an inspector, risk assessor, or dust sampling
25 technician independent of the owner or contractor and accredited pursu-
26 ant to (i) the United States environmental protection agency pursuant to
27 40 CFR 745.226 or 40 CFR 745.90(c) or successor regulation; or (ii)
28 certification by a state or tribal program authorized by the United
29 States environmental protection agency to certify individuals engaged in
30 lead-based paint activities pursuant to 40 CFR 745.325 or successor
31 regulation;

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

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

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

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

45 (iv) paint stripping in a poorly ventilated space using a volatile
46 stripper that is a hazardous substance in accordance with regulations of
47 the United States consumer product safety commission under 16 CFR
48 1500.3, and a hazardous chemical in accordance with the United States
49 occupational safety and health administration regulations under 29 CFR
50 1910.1200 or 1926.59 or successor regulation, as applicable to the work,
51 methylene chloride and n-methyl-2-pyrrolidone (NMP), and such other
52 chemicals that the department may by rule or regulation determine to be
53 hazardous;

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

1 (e) Applying such regulations to all demolition activities;

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

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

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

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

15 3. (a) The accreditation of individuals and/or firms pursuant to the
16 regulations adopted under subdivision one of this section shall extend
17 for a period of three years unless the commissioner has probable cause
18 to believe an individual or firm accredited under this section has
19 violated the terms of such accreditation or has engaged in illegal or
20 unethical conduct related to inspections required by this section, in
21 which case such accreditation to perform inspections shall be suspended
22 pending a hearing in accordance with the provisions of the state admin-
23 istrative procedure act. The commissioner shall establish by regulation
24 a schedule of fees for the accreditation and registration of such indi-
25 viduals and/or firms. Such fees shall be required to be paid at the time
26 of initial registration and at the time of subsequent renewal of regis-
27 tration, and shall be sufficient to cover all costs, including the costs
28 of state personnel, attributable to accreditation activities conducted
29 under this section.

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

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

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

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

42 h. minimum basic training and in-service training requirements for
43 personnel charged with administration and enforcement of the state ener-
44 gy conservation construction code; ~~and~~

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

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

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