



HOUSE BILL No. 5639

June 14 1994 Introduced by Rep Shugars and referred to the Committee on Public Health

A bill to provide for the licensing and regulation of lead abatement contractors to create the lead abatement contractors licensing board to establish the powers and duties of the department of public health and the lead abatement contractors licensing board to provide for certain powers and duties concerning lead abatement to create a lead abatement fund and to provide for expenditures from the fund to provide for the promulgation of rules to provide for certain fees and to provide for penalties and civil fines

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Sec 101 This act shall be known and may be cited as the
2 "lead abatement contractors licensing act

3 Sec 103 As used in this act

1 (a) Administrative procedures act of 1969 means Act
2 No 306 of the Public Acts of 1969, being sections 24 201 to
3 24 328 of the Michigan Compiled Laws

4 (b) Board means the lead abatement contractors licensing
5 board created in section 201

6 (c) Business entity means a person, partnership firm
7 association, corporation, sole proprietorship public or private
8 agency, or other legal entity

9 (d) Construction contractor means a business entity that
10 pursuant to a contract with the owner or lessee of real property
11 provides an improvement to that property

12 (e) Construction subcontractor means a business entity
13 that, pursuant to a contract with a person other than the owner
14 or lessee of the real property, performs any part of a construc-
15 tion contractor's contract for an improvement to that property

16 (f) "Department" means the department of public health

17 (g) 'Lead abatement contractor means a business entity that
18 is licensed under this act and that carries on the business of
19 lead abatement on the premises of another business entity and not
20 on the lead abatement contractor s premises

21 (h) "Lead abatement project" means any activity involving
22 persons working directly with the removal or sealing of surfaces
23 containing lead

24 (i) 'License means an authorization issued by the depart-
25 ment upon recommendation by the board for removal or sealing of
26 surfaces containing lead

1 (j) Neutral party means a business entity that is not part
2 of the lead abatement contractor's primary or secondary family
3 and is not legally associated to any business operated by the
4 lead abatement contractor

5 (k) Removal means the taking out or stripping of lead from
6 an existing structure

7 (l) Working day' means any day other than a Saturday
8 Sunday or state legal holiday

9 Sec 201 (1) The lead abatement contractors licensing
10 board is created within the department and shall consist of 7
11 members appointed by the governor with the advice and consent or
12 the senate At least 3 members appointed to the board shall rep-
13 resent lead abatement contractors, 3 shall represent lead abate-
14 ment laborers, and 1 shall represent the general public and be
15 experienced in public health areas A member representing lead
16 abatement laborers shall not belong to the same labor organiza-
17 tion as any other member As used in this section labor
18 organization means that term as defined in section 2 of Act 176
19 of the Public Acts of 1939, being section 423 2 of the Michigan
20 Compiled Laws

21 (2) The governor shall appoint board members within 90 days
22 after the effective date of this act, and except as provided in
23 subsection (3), each member shall serve for a term of 3 years, or
24 until his or her successor is appointed

25 (3) The members first appointed to the board shall serve the
26 following terms

1 (a) One representative of lead abatement laborers and 1
2 representative of lead abatement contractors shall serve a term
3 of 1 year

4 (b) One representative of lead abatement laborers and 1 rep-
5 resentative or lead abatement contractors shall serve a term of 2
6 years

7 (c) One representative of lead abatement laborers 1 repre-
8 sentative of lead abatement contractors, and 1 member representa-
9 tive of the general public shall serve a term of 3 years

10 (4) If a vacancy occurs on the board the governor shall
11 make an appointment for the balance of the unexpired term in the
12 same manner as the original appointment

13 (5) The governor may remove a member of the lead abatement
14 contractors licensing board for incompetency, dereliction of
15 duty, malfeasance, misfeasance, or nonfeasance in office, or any
16 other good cause

17 (6) The board shall meet within 30 days after all members
18 have been appointed At the first meeting the board shall elect
19 from among its members a chairperson and other officers as it
20 considers appropriate or necessary After the first meeting, the
21 board shall meet at least quarterly or more frequently at the
22 call of the chairperson or if requested by 4 or more members A
23 special meeting of the board may be called by the chairperson and
24 shall be called upon the chairperson s receipt of a written
25 request signed by 2 or more members of the board

26 (7) A majority of the board constitutes a quorum for the
27 transaction of business at a meeting of the board A majority

1 vote of the members present and serving is required for official
2 action of the board

3 (8) The business of the board shall be conducted at a public
4 meeting of that board held in compliance with the open meetings
5 act Act No 267 or the Public Acts of 1976 being sections
6 15 261 to 15 275 of the Michigan Compiled Laws

7 (9) A writing prepared owned used in the possession of
8 or retained by the board in the performance of an official func-
9 tion is subject to the freedom of information act Act No 442 of
10 the Public Acts of 1976 being sections 15 231 to 15 246 of the
11 Michigan Compiled Laws

12 (10) Members of the board shall serve without compensation
13 However, members of the board may be reimbursed for their actual
14 and necessary expenses incurred in the performance of their offi-
15 cial duties as members of the board pursuant to the standard
16 travel regulations of the department of management and budget

17 Sec 205 The board shall do all of the following

18 (a) Establish rules governing the board s formal and infor-
19 mal procedures

20 (b) Make recommendations to the department concerning the
21 denial, suspension, or revocation of licenses required pursuant
22 to this act, and other enforcement matters under this act

23 (c) Upon request by the department, advise the department on
24 the preparation and distribution of information on lead

25 (d) Advise the department on the promulgation of administra-
26 tive rules pursuant to this act

1 Sec 207 (1) Except as otherwise provided in subsection
2 (2), a lead abatement contractor shall not engage in any activity
3 involving the removal or sealing of surfaces containing lead
4 without first receiving a license from the department

5 (2) Until June 1, 1998, the licensing requirement or subsec-
6 tion (1) does not apply to any of the following if engaged in a
7 lead abatement project that is incidental to the primary licensed
8 trade and involves not more than 160 square feet or 260 linear
9 feet of surface area containing lead

10 (a) A business entity licensed under the electrical adminis-
11 trative act, Act No 217 of the Public Acts of 1956, being sec-
12 tions 338 881 to 338 892 of the Michigan Compiled Laws

13 (b) A business entity licensed under the Forbes mechanical
14 contractors act, Act No 192 of the Public Acts of 1984, being
15 sections 338 971 to 338 988 of the Michigan Compiled Laws

16 (c) A business entity licensed under Act No 266 of the
17 Public Acts of 1929, being sections 338 901 to 338 917 of the
18 Michigan Compiled Laws

19 (d) A business entity licensed as a residential builder or a
20 residential maintenance and alteration contractor under article
21 24 of the occupational code, Act No 299 of the Public Acts of
22 1980, being sections 339 2401 to 339 2412 of the Michigan
23 Compiled Laws

24 Sec 209 (1) To apply for or renew a license, a lead
25 abatement contractor shall do all of the following

26 (a) Submit a completed application to the department on
27 forms provided by the department The lead abatement contractor

1 shall state on the application whether or not that contractor has
2 liability insurance

3 (b) Pay the fee required by subsection (2)

4 (c) Submit proof of Michigan workers' disability compensa-
5 tion insurance

6 (d) Submit proof that all employees and agents of a lead
7 abatement contractor who are responsible for, or are involved in,
8 a lead abatement project have satisfactorily completed training
9 in a lead abatement program approved by the department

10 (2) A license or renewal fee shall be paid as follows

11 Number of employees

12 to be engaged in

13	<u>lead abatement projects</u>	<u>License fee</u>	<u>License renewal fee</u>
14	4 or less	\$200 00	\$100 00
15	5 or more	\$400 00	\$300 00

16 Sec 211 (1) Within 15 working days after receiving a
17 license application, the department shall acknowledge receipt of
18 the application and notify the applicant of any deficiency in the
19 application Within 60 calendar days after receiving a completed
20 application, including all additional information requested by
21 the department, the department shall issue a license by certified
22 mail or shall deny the license application The license shall
23 contain a statement in bold print that the issuance of a license
24 does not infer lead indemnification coverage

1 (2) The department shall deny a license application if the
2 department determines that the applicant has not demonstrated the
3 ability to comply with either of the following

4 (a) The applicable requirements and procedures established
5 by the department and the board pursuant to this act

6 (b) Other state and federal law pertaining to the health and
7 safety aspects of lead surface removal or sealing

8 (3) If the department denies a license, the department shall
9 return to the applicant the application fee less \$25 00

10 (4) Proceedings for the denial of a license pursuant to this
11 act shall be in accordance with the administrative procedures act
12 of 1969

13 Sec 213 In granting a license, the department may fol-
14 lowing review by the director of the department, impose reason-
15 able terms and conditions to ensure continuous compliance with
16 this act

17 Sec 215 The department may revoke or suspend a license as
18 provided under the administrative procedures act of 1969

19 Sec 217 (1) Unless the department revokes or suspends a
20 license the license shall remain in effect for 1 year from the
21 date of issuance

22 (2) The department shall renew a license annually if the
23 lead abatement contractor does all of the following

24 (a) Submits a completed application for a renewal on forms
25 provided by the department no sooner than 90 days before the
26 license expires and not later than 30 days before the license
27 expires

1 (b) Pays to the department the license renewal fee as
2 specified in section 209

3 (c) Complies with all applicable requirements of this act
4 and the rules promulgated under this act

5 Sec 219 If the contract does not provide for lead abate-
6 ment, a construction contractor or construction subcontractor who
7 contracts to provide an improvement to real property shall not be
8 responsible to provide for the removal of lead discovered in the
9 course of providing the improvement to the property This sec-
10 tion does not apply to construction contractor and construction
11 subcontractor contracts entered into prior to the effective date
12 of this act

13 Sec 220 (1) Until June 1 1998, a lead abatement contrac-
14 tor shall notify the department in writing of all of the follow-
15 ing at least 10 days before beginning a lead abatement project
16 exceeding 10 linear feet or 15 square feet, or both, of surfaces
17 containing lead

18 (a) The name and address of the owner of the building or
19 structure

20 (b) The location of the building or structure where the lead
21 abatement project will be performed

22 (c) The schedule for the starting and completion of the lead
23 abatement project which shall not exceed 1 year in length

24 (d) The amount of lead that will be removed or sealed

25 (2) Until June 1 1998, if during the course of a project
26 and after a written contract is executed a business entity that
27 is exempt from licensure under section 207(2) and whose primary

1 licensed trade is not that of a lead abatement contractor
2 discovers that the removal or sealing of a surface containing
3 lead in an amount exceeding 10 linear feet or 15 square feet or
4 both, is required that business entity shall notify the depart-
5 ment of the lead abatement project before lead removal or sealing
6 begins Not more than 10 days after the discovery the business
7 entity shall provide written notification to the department that
8 includes the information described in subsection (1)(a) to (d)

9 (3) Until June 1, 1998 a lead abatement contractor provid-
10 ing written notification to the department pursuant to
11 subsection (1) for a lead abatement project shall include a fee
12 equal to 1% of the price of the contract for the lead abatement
13 project and shall make available upon the request of the depart-
14 ment a copy of the contract for the lead abatement project All
15 fees collected pursuant to this subsection shall be deposited in
16 the lead abatement fund created in subsection (5)

17 (4) Until June 1, 1998, the primary licensed trade contrac-
18 tor of a business entity that removes or seals a surface contain-
19 ing lead after notice is provided under subsection (2) for a lead
20 abatement project that is incidental to the business entity s
21 primary licensed trade shall include a fee of 1% of the lead
22 abatement project portion of the contract price and shall make
23 available upon the request of the department a copy of that por-
24 tion of the contract covering the lead abatement All fees col-
25 lected pursuant to this subsection shall be deposited in the lead
26 abatement fund created in subsection (5)

1 (5) The lead abatement fund is created and, until June 1,
2 1998, shall exist in the state treasury and shall receive revenue
3 as provided in this act and other revenue as the legislature may
4 provide The state treasurer shall direct the investment of the
5 fund All interest and earnings of the fund shall be retained by
6 the fund Money in the fund at the close of the fiscal year
7 shall remain in the fund and shall not revert to the general
8 fund

9 (6) Money in the lead abatement fund shall be used by the
10 department only for the lead-related responsibilities of the
11 department under this act which include, but are not limited to,
12 the inspection of lead abatement projects and the education of
13 lead abatement contractors The department shall not expend
14 money from the fund for lead abatement projects on state owned
15 property

16 (7) Not later than October 1 of each year and until June 1,
17 1998 the department shall report to the senate and house of rep-
18 resentatives appropriations committees and standing committees on
19 occupational issues on the amount of money generated by the fees
20 charged under this section The report shall include the number
21 of lead abatement projects inspected and the number of citations
22 issued for violations of this act and other applicable laws
23 rules, and regulations

24 (8) Until June 1, 1998, emergency lead abatement projects
25 resulting from equipment failure or malfunctions are exempt from
26 the 10-day written advance notice imposed under this section
27 The written notice in emergency situations shall be provided

1 within 48 hours after the commencement of the lead abatement
2 project except that the business entity shall contact the depart-
3 ment telephonically immediately or as soon as possible after the
4 discovery of the emergency situation

5 Sec 221 (1) Until June 1, 1998 except as provided by
6 this subsection, the owner or lessee of a building or structure
7 shall have a postabatement lead monitoring check performed by a
8 qualified neutral party completely independent of the lead abate-
9 ment contractor at all lead abatement project sites at which lead
10 levels exceed an amount determined by the department to be safe
11 If the lead abatement contractor and the building or structure
12 owner or lessee agree the owner or lessee may have the post-
13 abatement lead monitoring check required by this subsection per-
14 formed by in-house personnel or by the lead abatement
15 contractor

16 (2) Whenever feasible, unless waived by the building or
17 structure owner or lessee the postabatement lead monitoring
18 check required by this section shall make use of testing methods
19 approved by the department

20 (3) Upon request by the department a postabatement lead
21 monitoring check taken pursuant to this section shall be reported
22 to the department

23 (4) After completion of the lead abatement project, the
24 level of lead per cubic centimeter of surface area at the lead
25 abatement project site shall not exceed the maximum level deter-
26 mined by the department to be safe

1 Sec 301 The department, with the advice of the board,
2 shall do all of the following

3 (a) Administer this act

4 (b) Issue licenses

5 (c) Promulgate rules as may be necessary for the orderly
6 conduct of its affairs in relation to this act and for the admin-
7 istration of this act pursuant to the administrative procedures
8 act of 1969, including but not limited to, all of the
9 following

10 (1) Rules governing the training and periodic refresher
11 training of workers, inspectors, and other persons involved in
12 lead abatement

13 (11) Rules governing the accreditation of lead abatement
14 training providers, including the minimum training curriculum
15 competency, and proficiency requirements each provider must
16 meet

17 (111) Rules establishing standards for lead abatement
18 activities

19 (1v) Rules establishing procedures for the enforcement of
20 this act and rules promulgated under this act

21 (v) Rules that provide for revision of department procedures
22 and rules to ensure lead abatement activities in the state comply
23 with the state certification program standards and other require-
24 ments that may be promulgated from time to time by federal agen-
25 cies having jurisdiction over lead hazards

26 (v1) Rules that facilitate reciprocity of certification and
27 accreditation standards between this state and other states

1 (vii) Rules that provide for department staffing and other
2 requirements necessary to implement this act

3 (viii) Rules that provide for cooperation with federal agen-
4 cies or departments in overseeing laboratories that provide lead
5 analysis services

6 (ix) Rules providing for public education programs about
7 lead hazards

8 Sec 303 The department shall receive or initiate com-
9 plaints of alleged violations of this act or rules promulgated
10 under this act and take action with respect to alleged violations
11 or complaints as prescribed by this act

12 Sec 305 (1) Upon a recommendation by the board or the
13 written complaint of an aggrieved party state agency, or politi-
14 cal subdivision, the department may investigate the acts of a
15 lead abatement contractor under this act After an investiga-
16 tion, the department may deny, suspend or revoke a license
17 issued under this act if a lead abatement contractor is found to
18 be not in compliance with this act or the rules promulgated under
19 this act In addition, the department may deny, suspend or
20 revoke a license for any of the following

21 (a) A willful or negligent act that causes any person to be
22 exposed to lead in violation of this act, a rule promulgated
23 under this act, or other state or federal law pertaining to the
24 public health and safety aspects of lead removal or sealing

25 (b) Falsification of records

26 (c) Continued failure to obtain or renew a license

1 (d) Deliberate misrepresentation of an act in applying for a
2 license

3 (e) Permitting any person who has not received the proper
4 training and certification under state or federal law to come in
5 contact with lead or be responsible for a lead abatement
6 project

7 (2) If the license of a business entity is denied, sus-
8 pended, or revoked under this act, the denial, suspension, or
9 revocation applies to each partner, trustee director officer,
10 or person exercising control of the business entity

11 Sec 306 Upon application by the attorney general or a
12 party to a contested case, the circuit court may issue a subpoena
13 requiring a person to appear before a hearings examiner in the
14 contested case or before the department in an investigation and
15 be examined with reference to a matter within the scope of that
16 contested case or investigation and to produce books papers or
17 documents pertaining to that contested case or investigation

18 Sec 307 (1) Upon recommendation by the board and pursuant
19 to the administrative procedures act of 1969, the department
20 shall promulgate a schedule of monetary civil penalties of not
21 more than \$10,000 00 for each specified violation of this act or
22 a rule promulgated under this act A civil penalty may be
23 imposed for each day that a violation continues

24 (2) If the department alleges that a person has violated
25 this act or a rule promulgated under this act, the department may
26 issue a citation at that time or not later than 90 days after
27 discovery of the alleged violation The citation shall be

1 written and shall state with particularity the nature of the
2 violation, including reference to the section of this act or the
3 rule alleged to have been violated, the civil penalty established
4 for the violation, if any, and the right to appeal the citation
5 pursuant to section 309 The citation shall be personally deliv-
6 ered or sent by certified mail to the alleged violator

7 Sec 309 (1) Not later than 20 days after receipt of a
8 citation issued pursuant to section 307, the alleged violator may
9 petition the department for an administrative hearing which shall
10 be held before the board or the board's designated representative
11 within 30 days after receipt of the petition The department
12 shall notify the alleged violator s employees or employee repre-
13 sentative that an administrative hearing will be held and the
14 date, time, and place of the hearing The alleged violator shall
15 permit the attendance of an employee representative at the admin-
16 istrative hearing After the administrative hearing, the direc-
17 tor of the department may affirm dismiss or modify the
18 citation

19 (2) An alleged violator aggrieved by a decision of the
20 director of the department under this section may petition the
21 circuit court of the county in which the violation was alleged to
22 have occurred for review The petition shall be filed not later
23 than 60 days following receipt of the director's final decision

24 (3) A civil penalty becomes final if a petition for an
25 administrative hearing or review is not received within the time
26 specified in this section A civil penalty imposed under this
27 act shall be payable to the department for deposit in the general

1 fund A civil penalty may be recovered in a civil action brought
2 in the county in which the violation occurred or the defendant
3 resides

4 (4) Administrative hearings under this section shall be con-
5 ducted pursuant to the administrative procedures act of 1969

6 Sec 311 Notwithstanding the provisions of sections 307
7 and 309, a lead abatement contractor who engages in the trade or
8 business of lead abatement without a license issued under this
9 act, or a person who violates this act or a rule promulgated
10 under this act and who fails to correct the violation after
11 notice, is guilty of a misdemeanor, punishable by a fine of not
12 more than \$500 00 for a first offense Upon conviction for a
13 subsequent offense, the person is subject to a fine of not more
14 than \$1,000 00, or imprisonment for not more than 6 months or
15 both A violation of this act may be prosecuted by either the
16 attorney general or the prosecuting attorney of the judicial dis-
17 trict in which the violation was committed

18 Sec 313 The application of sanctions under this act does
19 not preclude the application of other sanctions penalties or
20 provisions of any other federal, state, or political
21 subdivision

22 Sec 315 The department shall submit to the governor and
23 the senate and house of representatives standing committees on
24 occupational issues an annual report on the status of all of the
25 following

26 (a) The licensing of lead abatement contractors

1 (b) Lead hazard detection and reduction

2 (c) Certification, accreditation, and enforcement activities
3 of the department

4 Sec 317 The licensing provisions of this act shall take
5 effect 3 months after the effective date of this act

6 Sec 319 This act shall not take effect unless Senate Bill
7 No _____ or House Bill No 5640 (request no 03417 93 c) of the
8 87th Legislature is enacted into law