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SENATE BILL 214

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Dede Feldman

FOR THE MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE
AND THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH; CREATING A PROGRAM TO PREVENT LEAD
POISONING IN CHILDREN; PROVIDING POWERS AND DUTIES; PROVIDING
FOR SUNSET OF THE PROGRAM

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Lead Hazard Act".

Section 2. PURPOSES. -- The purposes of the Lead Hazard
Act are to:

A. establish, pursuant to federal requirements, a
program in the department for prevention of childhood lead
poisoning through regulation of work practices for lead hazard
identification, risk assessment, reduction and abatement in
target housing;

B. establish the legislative and regulatory

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1 framework necessary for New Mexico to be eligible for federal
2 funding to identify and abate lead hazards for children and
3 help prevent childhood lead poisoning;

4 C. permit New Mexico to administer and enforce
5 rules developed pursuant to Title 4 of the federal Toxic
6 Substances Control Act rather than having the United States
7 environmental protection agency administer and enforce the
8 program in the state;

9 D. provide for certification of professionals
10 conducting lead hazard activities in target housing,
11 accreditation of training providers and development of work-
12 practice standards for target housing; and

13 E. provide for reciprocity of certification and
14 accreditation with other states.

15 Section 3. DEFINITIONS. --As used in the Lead Hazard Act:

16 A. "child" means a person less than six years of
17 age;

18 B. "department" means the department of health;

19 C. "federal requirements" means:

20 (1) Title 4 of the federal Toxic Substances
21 Control Act and rules adopted by the environmental protection
22 agency pursuant to that act as they relate to target housing;
23 and

24 (2) rules or requirements adopted by the
25 department of housing and urban development regarding

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1 eligibility for grants to states and local governments;

2 D. "housing for the elderly" means retirement
3 communities or housing reserved for households composed of one
4 or more persons sixty-two years of age or older;

5 E. "interim control activity" means any measure or
6 set of measures designed to temporarily reduce current or
7 potential human exposure to a lead hazard;

8 F. "lead-based paint" means paint or other surface
9 coatings that contain lead equal to or in excess of one
10 milligram per square centimeter or one-half of one percent by
11 weight;

12 G. "lead hazard" means a substance, surface or
13 object that contains lead and that, due to its condition,
14 location or nature, may contribute to human lead poisoning or
15 lead exposure;

16 H. "lead hazard abatement" means any measure or
17 set of measures designed to permanently eliminate a lead
18 hazard, as specified under federal requirements;

19 I. "lead hazard activities" includes lead hazard
20 identification, risk assessment, reduction and abatement in
21 target housing;

22 J. "lead hazard identification" means the on-site
23 inspection of target housing for the presence of actual or
24 potential lead hazards;

25 K. "lead hazard reduction" means actions designed

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1 to minimize lead hazards in target housing, including lead
2 hazard abatement and interim control activities;

3 L. "lead hazard risk assessment" means an on-site
4 investigation of target housing to determine the existence,
5 nature, severity and location of lead hazards;

6 M. "lead poisoning" or "lead exposure" means a
7 confirmed concentration of lead in whole blood of a child of
8 ten or more micrograms of lead per deciliter of whole blood;

9 N. "secretary" means the secretary of health;

10 O. "target housing" means:

11 (1) housing constructed prior to 1978, except
12 housing for the elderly or persons with disabilities unless
13 one or more children reside or are expected to reside in such
14 housing, and except for zero-bedroom dwellings;

15 (2) a child-occupied facility, which is a
16 residence or other building or portion of a building,
17 constructed prior to 1978, visited regularly by the same child
18 on at least two different days within the week, Sunday through
19 Saturday, when each day's visit lasts at least three hours,
20 the combined weekly visit lasts at least six hours and the
21 combined annual visits last at least sixty hours. Child-
22 occupied facilities include daycare centers, preschools and
23 kindergarten classrooms; or

24 (3) all structures attached to target housing
25 and the real property upon which target housing stands that

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1 may include a lead hazard; and

2 P. "zero-bedroom dwelling" means any residential
3 dwelling in which the living area is not separated from the
4 sleeping area and includes efficiencies, studio apartments,
5 dormitory housing, military barracks and rentals of individual
6 rooms in residential dwellings.

7 Section 4. DEPARTMENT-- POWERS AND DUTIES. --

8 A. The department is the designated state agency
9 for implementation of federal requirements and shall develop
10 and implement a lead hazard program that meets but is no more
11 stringent than federal requirements.

12 B. The department shall:

13 (1) establish a program for prevention of
14 childhood lead poisoning through regulation of work practices
15 for lead hazard identification, risk assessment, reduction and
16 abatement in target housing;

17 (2) adopt and promulgate rules that:

18 (a) require certification of persons
19 that offer to perform lead hazard activities in target
20 housing;

21 (b) set training requirements for
22 persons directly and substantially involved in the performance
23 of lead hazard activities in target housing;

24 (c) establish accreditation standards
25 for programs that train persons involved in lead hazard

1 activities in target housing, including: 1) minimum
2 requirements for the accreditation of training providers; 2)
3 minimum training curriculum requirements; 3) minimum training
4 hour requirements; 4) minimum hands-on training requirements;
5 5) minimum trainee competency and proficiency requirements; 6)
6 minimum requirements for training program quality control; and
7 7) criteria and procedures for suspension, revocation and
8 modification of accredited training programs;

9 (d) establish standards for performing
10 lead hazard activities in target housing, taking into account
11 reliability, effectiveness and safety;

12 (e) establish criteria and procedures
13 for suspension and revocation of professional certification;
14 and

15 (f) provide for enforcement of the Lead
16 Hazard Act and the rules adopted pursuant to that act;

17 (3) dedicate suitable staff and acquire
18 suitable space, equipment, supplies and other items necessary
19 to carry out the provisions of the Lead Hazard Act and rules
20 adopted pursuant to that act; and

21 (4) apply for and expend available federal
22 funds for lead hazard activities and implementation of the
23 lead hazard program.

24 C. In order to carry out the purposes of the Lead
25 Hazard Act and to ensure that lead hazard activities do not

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1 create additional health hazards, the department may:

2 (1) with prior notification enter target
3 housing where lead hazard activities are being conducted by a
4 paid inspector or contractor for the purpose of monitoring the
5 conduct of those lead hazard activities at reasonable times
6 and without undue delay;

7 (2) enter and inspect the facilities of a
8 person providing lead hazard activities training for the
9 purpose of monitoring training activities and equipment, at
10 reasonable times and without undue delay; and

11 (3) collect information from a person
12 involved in lead hazard activities or training about lead
13 hazard activities.

14 D. The department may, depending on availability
15 of funding:

16 (1) collect and analyze data on the:
17 (a) extent of lead-based paint hazards
18 in New Mexico;
19 (b) lead hazard activities in New
20 Mexico; and
21 (c) certification, accreditation and
22 enforcement activities of the department; and

23 (2) conduct public education programs on the
24 nature and consequences of lead poisoning, the need for
25 accredited training providers and the need for certified

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1 personnel for lead hazard activities.

2 Section 5. COMPLIANCE-- ENFORCEMENT. --

3 A. Lead hazard activities shall be performed by
4 certified personnel and shall comply with department rules
5 adopted pursuant to the Lead Hazard Act. Lead hazard training
6 providers shall be accredited by the department and comply
7 with department rules.

8 B. The department shall enforce the provisions of
9 the Lead Hazard Act and rules adopted pursuant to that act by
10 issuance of appropriate orders or decisions and through
11 sanctions and penalties established by federal rules and state
12 rules adopted pursuant to the Lead Hazard Act. Penalties
13 collected pursuant to this section shall be deposited in the
14 general fund.

15 C. State enforcement rules shall make provision
16 for:

17 (1) inspections to determine compliance with
18 rules and standards developed pursuant to the Lead Hazard Act;

19 (2) sampling techniques to determine
20 compliance with rules and standards developed pursuant to the
21 Lead Hazard Act;

22 (3) follow-up for complaints;

23 (4) sanctions and penalties;

24 (5) flexible remedies; and

25 (6) compliance assistance.

1 Section 6. APPEAL. --

2 A. A person aggrieved by a sanction or penalty
3 issued pursuant to the Lead Hazard Act or rules adopted
4 pursuant to that act may appeal to the secretary within thirty
5 days after receipt of notice of the sanction or penalty. A
6 hearing shall be held within sixty days on each appeal filed.
7 The secretary shall appoint a hearing officer to hear the
8 appeal and provide for due process. The hearing officer shall
9 report his findings to the secretary, who shall make the final
10 decision. The party may appeal the decision of the secretary
11 to the district court. An appeal to the district court shall
12 be on the record.

13 B. While an appeal is pending, compliance with a
14 sanction or penalty shall not be required unless the secretary
15 determines by a separate finding that the violation was
16 intentional or that there exists a hazardous condition that
17 requires immediate compliance with the sanction or penalty so
18 as to eliminate a public health hazard.

19 Section 7. RECIPROCITY.--The department may establish
20 liaison with other states having lead hazard activities
21 programs to ensure maximum consistency of program requirements
22 to facilitate reciprocity of certification and accreditation
23 with other states.

24 Section 8. FEES.--The department may collect reasonable
25 fees for certification, accreditation and other reviews as may

1 be necessary to carry out the provisions of the Lead Hazard
2 Act and rules adopted pursuant to that act.

3 Section 9. EXPIRATION OF PROGRAM --The lead hazard
4 program established pursuant to the Lead Hazard Act shall
5 expire on June 30, 2004, unless continued by the legislature.

6 Section 10. DELAYED REPEAL. --This act is repealed July
7 1, 2004.

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