

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 668

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RICK MIERA

FOR 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 TRAINING
AND CERTIFICATION CONCERNING LEAD HAZARD ACTIVITIES IN TARGET
HOUSING; PROVIDING FOR ENFORCEMENT; CREATING A FUND; PROVIDING
FOR FEES, SANCTIONS AND PENALTIES; PROVIDING FOR SUNSET OF THE
PROGRAM; MAKING AN APPROPRIATION.**

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**

1 identification, risk assessment, reduction and abatement in
2 target housing;

3 B. establish the legislative and regulatory
4 framework necessary for New Mexico to be eligible for federal
5 funding to identify and abate lead hazards for children and help
6 prevent childhood lead poisoning;

7 C. permit New Mexico to administer and enforce
8 regulations developed pursuant to Title 4 of the federal Toxic
9 Substances Control Act [15 USC 2681 through 15 USC 2692] rather
10 than having the United States environmental protection agency
11 administer and enforce the program in the state;

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

16 E. provide for reciprocity of certification and
17 accreditation with other states.

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

19 A. "child" means a person less than six years of
20 age;

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

22 C. "federal requirements" means:

23 (1) Title 4 of the Toxic Substances Control Act
24 and rules and regulations adopted by the environmental
25 protection agency pursuant to that act as they relate to target

Underscored material = new
[bracketed material] = delete

1 housing; and

2 (2) regulations or requirements adopted by the
3 department of housing and urban development regarding
4 eligibility for grants to states and local governments;

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

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

11 F. "lead-based paint" means paint or other surface
12 coatings that contain lead equal to or in excess of 1.0
13 milligram per square centimeter or 0.5 percent by weight;

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

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

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

24 J. "lead hazard identification" means the on-site
25 inspection of target housing for the presence of actual or

1 potential lead hazards;

2 K. "lead hazard reduction" means actions designed to
3 minimize lead hazards in target housing, including lead hazard
4 abatement and interim control activities;

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

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

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

12 O. "target housing" means:

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

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

Underscored material = new
[bracketed material] = delete

1 (3) all structures attached to target housing
2 and the real property upon which target housing stands that may
3 include a lead hazard; and

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

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

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

14 B. The department shall:

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

19 (2) adopt and promulgate rules and regulations
20 that:

21 (a) require certification of individuals
22 and firms that offer to perform lead hazard activities in target
23 housing;

24 (b) set training requirements for
25 individuals and firms directly and substantially involved in the

Underscored material = new
[bracketed material] = delete

- 1 performance of lead hazard activities in target housing;
- 2 (c) establish accreditation standards for
- 3 programs that train persons involved in lead hazard activities
- 4 in target housing, including: 1) minimum requirements for the
- 5 accreditation of training providers; 2) minimum training
- 6 curriculum requirements; 3) minimum training hour requirements;
- 7 4) minimum hands-on training requirements; 5) minimum trainee
- 8 competency and proficiency requirements; 6) minimum requirements
- 9 for training program quality control; and 7) criteria and
- 10 procedures for suspension, revocation and modification of
- 11 accredited training programs;
- 12 (d) establish standards for performing
- 13 lead hazard activities in target housing, taking into account
- 14 reliability, effectiveness and safety;
- 15 (e) establish criteria and procedures for
- 16 suspension and revocation of professional certification; and
- 17 (f) provide for enforcement of the Lead
- 18 Hazard Act and the regulations adopted pursuant to that act;
- 19 (3) dedicate suitable staff and acquire
- 20 suitable space, equipment, supplies and other items necessary to
- 21 carry out the provisions of the Lead Hazard Act and regulations
- 22 adopted pursuant to that act; and
- 23 (4) apply for and expend available federal
- 24 funds for lead hazard activities and implementation of the lead
- 25 hazard program.

Underscored material = new
[bracketed material] = delete

1 C. In order to carry out the purposes of the Lead
2 Hazard Act and to insure that lead hazard activities do not
3 create additional health hazards, the department may:

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

9 (2) enter and inspect the facilities of any
10 individual or firm providing lead hazard activities training for
11 the purpose of monitoring training activities and equipment, at
12 reasonable times and without undue delay; and

13 (3) collect information from any individual
14 involved in lead hazard activities or training about lead hazard
15 activities.

16 D. The department may, depending on availability of
17 funding:

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

25 (2) conduct public education programs on the

Underscored material = new
[bracketed material] = delete

1 nature and consequences of lead poisoning, the need for
2 accredited training providers and the need for certified
3 personnel for lead hazard activities.

4 Section 5. COMPLIANCE--ENFORCEMENT.--

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

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

17 C. State enforcement regulations shall make
18 provision for:

19 (1) inspections to determine compliance with
20 regulations and standards developed to the Lead Hazard Act;

21 (2) sampling techniques to determine compliance
22 with regulations and standards developed pursuant to the Lead
23 Hazard Act;

24 (3) follow-up for complaints;

25 (4) sanctions and penalties;

1 (5) flexible remedies; and

2 (6) compliance assistance.

3 Section 6. APPEAL. --

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

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

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

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 14, 1997

Mr. Speaker:

Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
whom has been referred

HOUSE BILL 668

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

James Roger Madalena, Chairman

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Knowles, Picraux, Ryan

Absent: None

M \H0668

Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 4, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 668

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

Underscored material = new
[bracketed material] = delete

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: King, Foy, Luna, Rios, Vaughn

Absent: None

M \H0668

Underscored material = new
[bracketed material] = delete

**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 8, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 668

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Max Coll, Chairman

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Buffett, Coll, Marquardt, Taylor, JP, Watchman

Absent: None

M \H0668

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

Page 17

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 19, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 668

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
FINANCE COMMITTEE.

Respectfully submitted,

Fernando R. Macias, Chairman

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Tsosie

Absent: None

H0668JU1

Underscored material = new
[bracketed material] = delete