

West's Tennessee Code Annotated Currentness

Title 68. Health, Safety and Environmental Protection

Safety

↳ Chapter 131. Hazardous Substances

→ Part 4. Tennessee Lead-Based Paint Abatement Certification Act of 1997 (Refs & Annos)

§ 68-131-401. Short title

This part shall be known and may be cited as the "Tennessee Lead-Based Paint Abatement Certification Act of 1997."

§ 68-131-402. Certification program for lead abatement professionals; establishment

(a) The department of environment and conservation shall establish a certification program for lead abatement professionals.

(b) The program shall:

(1) Certify all individuals involved in lead-based paint abatement activities;

(2) Accredite training providers;

(3) Establish standards for such program;

(4) Insure compliance with regulations;

(5) Enforce the certification program;

(6) Revise regulations and procedures when necessary; and

(7) Establish reciprocity provisions with other state certification programs.

(c) The program shall conform to certification standards promulgated by the environmental protection agency for such programs, but shall not be more stringent than those standards. Furthermore, it is the intent of the general assembly that in this program the department shall only establish a certification program, and not provide the training for either the trainers or the lead-based paint professionals.

(d) The commissioner shall establish a program for the education of owners and occupants of target housing and child-occupied facilities concerning lead-based paint hazards. This program shall require persons who perform renovation in such facilities for compensation to provide owners and occupants with a lead hazard information pamphlet prior to commencing the renovation. The program shall meet the requirements of the federal program under 15 U.S.C. § 2681 et seq.

§ 68-131-403. Inspections

(a) The commissioner and the commissioner's designated staff have the authority to enter the business premises of persons and firms certified to engage in lead-based paint activities during business hours upon presenting credentials identifying themselves as employees of the department.

(b) The commissioner and the commissioner's designated staff shall have the authority to enter any structure, including residences, where lead-based paint activities have occurred, or are being conducted, for the purpose of determining compliance with lead-based paint abatement requirements, provided they either:

(1) Obtain the consent of the owner or an adult occupant of the premises after presenting credentials identifying themselves as employees of the department; or

(2) Apply for and obtain a warrant from a court with jurisdiction, which shall be issued by the court upon a showing of probable cause that the inhabitants of the dwelling are likely to suffer adverse health effects from continued exposure to a lead-based paint hazard.

§ 68-131-404. Unlawful acts

(a)(1) On and after the effective date of regulations promulgated by the commissioner pursuant to this chapter, no person shall perform or represent that such person is qualified to perform any lead-based paint activities without having received the appropriate certification from the department, unless such person is:

(A) An owner performing abatement upon that person's own residential property;

(B) An employee of a property management company doing routine cleaning and repainting upon property managed by that company, where there is insignificant damage to, wear of, or corrosion of existing lead-containing paint or coating substances; or

(C) An owner routinely cleaning or repainting the owner's property, where there is insignificant damage to, wear of, or corrosion of existing lead-containing paint or coating substances.

(2) "Lead based paint activities," as used in this part has the same meaning as in the rules promulgated by the United States environmental protection agency for the federal lead-based paint program under the Toxic Substances Control Act, [15 U.S.C. §§ 2601 et seq.](#) This includes lead-based paint inspection, risk assessment, and abatement activities, but does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but instead are designed to repair, restore or remodel a structure, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

(b) Failure of a lead-based paint abatement contractor to conduct lead-based paint activities in accordance with the requirements of the rules promulgated pursuant to this chapter is unlawful.

(c) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports required by the rules promulgated under this chapter is unlawful.

(d) Failure or refusal to permit entry or inspection as required by [§ 68-131-403](#) is unlawful.

(e) Failure of anyone, including a renovator of target housing, to comply with the requirements of the rules promulgated under this part is unlawful.

§ 68-131-405. Penalties

(a)(1) Any person who violates any provision of § 68-131-404 or the rules promulgated pursuant to this part is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs.

(2) A civil penalty may be assessed and enforced in the following manner:

(A) The commissioner may issue a civil penalty assessment against any person responsible for the violation;

(B) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing in the matter involved. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(C) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment;

(D) In lieu of the administrative assessment procedure pursuant to this subdivision (a)(2), the commissioner may also institute proceedings for assessment of a civil penalty in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation occurred;

(E) In assessing the civil penalty, the commissioner may consider the following factors:

(i) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(ii) The potential or actual harm posed to people or the environment by the violation;

(iii) The cause of the violation;

(iv) The effectiveness of action taken by the violator to cease the violation; and

(v) The economic benefit gained by the violator; and

(F) All such civil penalties and all fees collected pursuant to this part shall be deposited into a subaccount in the fund created by § 68-203-101 and treated accordingly.

(b) The commissioner may suspend or revoke a certification or accreditation for any person who violates any provision of §§ 68-131-403 -- 68-131-405 or the rules promulgated pursuant to this chapter, in accordance with the procedures set forth in § 4-5-320.

(c) Any person knowingly failing, neglecting, or refusing to comply with any of the provisions of [§ 68-131-404](#), commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.

§ 68-131-406. Promulgation of rules

The commissioner of environment and conservation shall promulgate rules necessary to implement this part.

Current with laws from the 2009 First Reg. Sess., eff. through May 19, 2009.

END OF DOCUMENT