

CHAPTER 154
FORMERLY
SENATE BILL NO. 139
AS AMENDED BY
SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

WHEREAS: Lead poisoning remains a serious environmental problem and is a preventable disease in children, leading to morbidity, mortality, mental retardation and learning disabilities; and

WHEREAS, nearly 50% of houses in Delaware that were built prior to 1978 have been painted with lead-based paint; and

WHEREAS, hazardous blood-lead levels are estimated to affect hundreds of children each year under seven years of age in Delaware; and

WHEREAS, the monetary and social costs of lead poisoning in children far exceed the costs of monitoring and preventing the disease; and

WHEREAS, some public health experts estimate that children living in older homes are at least 30% more likely to get lead poisoning when renovations and remodeling activities are performed; and

WHEREAS, Adopting this amendment will increase public safety by preventing lead poisoning of children, other susceptible populations, as well as renovation workers; and

WHEREAS, state enforcement of lead-safe renovation work practices, along with public outreach activities, promote public awareness of renovation safety issues; and

WHEREAS, the federal mandate that states adopt the federal Renovation, Repair, and Painting Rule at the state level will influence future federal funding for lead poisoning prevention; and

NOW, THEREFORE:

Section 1. Amend Chapter 1, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§107. Neglect of duty; penalty.

(d) (3) At the discretion of the Department, in lieu of criminal action pursuant to paragraph (1) of this subsection, the Secretary shall be authorized to impose an administrative penalty of up to \$10,000 per violation in accordance with the Administrative Procedures Act against any person or entity who violates the provisions of this chapter or the regulations promulgated pursuant to it. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. Under this paragraph, each day a violation continues constitutes a separate violation.

~~(4) All fees and penalties assessed by the Department under this statute shall be retained by the Department in order to defray costs associated with the Lead-based Paint Poisoning Prevention Program.~~

(4) The Department shall have the authority to collect administrative penalties. All fees and penalties assessed by the Department under this subsection are hereby appropriated to the Department to carry out the purposes of 122(3)(t) of this title.

(5) In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior court for the collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty, the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(6) In the event of nonpayment of the criminal penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior court for the collection of the criminal penalty, including

interest, attorney fees and costs. In a civil action to collect the criminal penalty, the validity, amount and appropriateness of such criminal penalty shall not be subject to review.

§122. Powers and duties of the Department of Health and Social Services.

The Department shall have the following general powers and duties:

t. 1. Establish standards for regulation of lead-based paint hazard control activities, including the training and certification of workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control and the accreditation of lead-based paint hazard training programs.

2. Individuals meeting the minimum qualifications established by regulation who are engaged in lead-based paint activities shall obtain a license issued by the Department of Health and Social Services upon receipt of an application and an annual license fee of \$25 for workers; \$50 for supervisors, dust-wipe technicians, renovators, project designers, contractors, inspectors and risk assessors. As of the date of enactment of implementing regulations, renovators and dust-wipe technicians meeting federal certification requirements must become licensed by the Department upon expiration of their current certification period.

3. All courses offered in Delaware by training providers for individuals engaged in lead-based paint activities shall be approved by the State Department of Health and Social Services. The training provider shall pay an annual fee of \$200 for each type of course for which training will be provided.

4. IN GENERAL.—Not later than 120 days after the date of enactment of an opt-out provision in Federal regulations in the future, and subject to subparagraph (A), in promulgating any regulation relating to renovation or remodeling activities in target housing in which the owner resides, the State of Delaware shall include a provision that permits the owner to authorize the renovation or remodeling contractor to forego compliance with that Federal regulation.

(A) RESTRICTION.—The Administrator shall only permit an owner of target housing to forego compliance with a regulation under this paragraph if—

(i) no pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and

(ii) the owner submits to the renovation or remodeling contractor written certification that—

(I) the renovation or remodeling project is to be carried out at the target housing of the owner;

(II) no pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and

(III) the owner acknowledges that, in carrying out the project, the renovation or remodeling contractor will be exempt from employing the work practices required by a regulation promulgated under this sub-section.

(B) LIMITATION OF CONTRACTOR LIABILITY.—A contractor that receives written certification described in subparagraph (A)(ii) shall be exempt from liability resulting from any misrepresentation of the owner of the target housing.

Approved July 31, 2013