

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

ACT 309 OF 1997  
SENATE BILL 214

4  
5 By: Senator Walker  
6 By: Representative Stalnaker

## For An Act To Be Entitled

7  
8  
9  
10 "AN ACT TO AUTHORIZE THE ARKANSAS DEPARTMENT OF POLLUTION  
11 CONTROL AND ECOLOGY TO LICENSE AND CERTIFY LEAD-BASED  
12 PAINT ACTIVITIES TRAINING PROGRAMS, PROCEDURES, AND  
13 REQUIREMENTS FOR THE LICENSING AND CERTIFICATION OF  
14 CONTRACTORS, CONSULTANTS, INSPECTORS, PROJECT DESIGNERS,  
15 RISK ASSESSORS, SUPERVISORS, AND WORKERS ENGAGED IN LEAD-  
16 BASED PAINT ACTIVITIES, AND TO ESTABLISH WORK PRACTICE  
17 STANDARDS FOR LEAD-BASED PAINT ACTIVITIES, TO AMEND ARK.  
18 CODE ANN. § 20-27-1004, PERTAINING TO THE REMOVAL OF  
19 ASBESTOS MATERIALS, AND TO AMEND ARK. CODE ANN. § 8-7-410,  
20 EMERGENCY RESPONSE FUND."

## Subtitle

21  
22  
23 "TO AUTHORIZE THE DEPARTMENT OF  
24 POLLUTION CONTROL & ECOLOGY TO LICENSE  
25 AND CERTIFY LEAD-BASED PAINT ACTIVITIES  
26 TRAINING PROGRAMS, PROCEDURES, AND  
27 REQUIREMENTS."

28  
29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

30

31 SECTION 1. Arkansas Code Annotated Title 8, Chapter 4 is amended by  
32 adding a new Subchapter 4 to read as follows:

33 "8-4-401. Title.

34 The provisions of this subchapter shall be known and may be cited as  
35 the Lead-based Paint-hazard Act .

36 8-4-402. Legislative intent.

1 In the interest of public health and safety and the environment and to  
2 qualify the Arkansas Department of Pollution Control and Ecology to adopt,  
3 administer, and enforce a program for licensing lead-based paint activities  
4 training programs, procedures, and requirements for the licensing and  
5 certification of individuals and firms engaged in lead-based paint activities,  
6 and work practice standards for performing such activities, the General  
7 Assembly finds that it is necessary to enact the Lead-based Paint-hazard Act.

8 8-4-403. Definitions.

9 (a) Abatement means any measures or set of measures that results in  
10 the permanent elimination of lead-based paint hazards. Abatement includes,  
11 but is not limited to:

12 (1) The removal of lead-based paint and lead-contaminated dust,  
13 the permanent enclosure or encapsulation of lead-based paint, the replacement  
14 of lead-painted surfaces or fixtures, and removal or covering of lead-  
15 contaminated soil; and

16 (2) All preparation, cleanup, disposal, and post-abatement  
17 clearance testing activities associated with such measures;

18 (3) Specifically, abatement includes, but is not limited to:

19 (i) Projects for which there is a written contract or other  
20 documentation, which provides that an individual or firm will be conducting  
21 activities in or to a residential dwelling or child-occupied facility that:

22 (A) Shall result in the permanent elimination of lead-based  
23 paint hazards; or

24 (B) Are designed to permanently eliminate lead-based paint  
25 hazards and are described in paragraphs (1) and (2) of this definition;

26 (ii) Projects resulting in the permanent elimination of  
27 lead-based paint hazards, conducted by licensed consultants or contractors, or  
28 individuals certified in accordance with this act, unless such projects are  
29 covered by section (4) of this definition;

30 (iii) Projects resulting in the permanent elimination of  
31 lead-based paint hazards, conducted by licensed consultants or contractors, or  
32 individuals who, through their company name or promotional literature,  
33 represent, advertise, or hold themselves out to be in the business of  
34 performing lead-based paint activities as identified and defined by this  
35 section, unless such projects are covered by section (4) of this definition;

36 or

1                   (iv) Projects resulting in the permanent elimination of  
2 lead-based paint hazards, that are conducted in response to State or local  
3 abatement orders.

4           (4)(a) Abatement does not include renovations, remodeling, landscaping  
5 or other activities, when such activities are not designed to permanently  
6 eliminate lead-based paint hazards but, instead, are designed to repair,  
7 restore, or remodel a given structure or dwelling, even though these  
8 activities may incidentally result in a reduction or elimination of lead-based  
9 paint hazards. Furthermore, abatement does not include interim controls,  
10 operations, and maintenance activities, or other measures and activities  
11 designed to temporarily, but not permanently, reduce lead-based paint hazards.

12           (b) Certificate means a document issued by ADPC&E to any individual  
13 who satisfactorily completes such training and examination and meets any other  
14 applicable requirements established by the Department.

15           (c) Child-occupied facility means a building, or operation of a  
16 building, constructed prior to 1978, visited regularly by the same child, six  
17 (6) years of age or under, on at least two (2) different days within any week  
18 (Sunday through Saturday period) provided that each day's visit lasts at least  
19 three (3) hours and the combined weekly visit lasts at least six (6) hours.  
20 Child-occupied facilities may include, but are not limited to, day-care  
21 centers, preschools and kindergarten classrooms.

22           (d) Commission means the Arkansas Pollution Control and Ecology  
23 Commission.

24           (e) Consultant means any person or other legal entity, however  
25 organized, that acts as the agent for the owner and performs lead-based paint  
26 activities and meets all other requirements established by the Department.

27           (f) Contractor means a company, partnership, corporation, sole  
28 proprietorship, association, or other business entity that performs lead-based  
29 paint activities as an agent for the owner and meets all other requirements of  
30 the Department.

31           (g) Department means the Arkansas Department of Pollution Control and  
32 Ecology.

33           (h) Director means the Director of the Arkansas Department of  
34 Pollution Control and Ecology.

35           (i) Inspector means an individual who has been trained by an  
36 accredited training program as certified by this act or EPA to conduct

1 inspections and meets all other requirements established by the Department. A  
2 certified inspector also samples for the presence of lead in dust and soil for  
3 the purposes of abatement clearance testing.

4 (j) Lead-based paint means paint or other surface coatings that  
5 contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or more than 0.5 percent by  
6 weight.

7 (k) Lead-based paint activities means, in the case of target housing  
8 and child-occupied facilities, inspection, risk assessment, and abatement, as  
9 defined in this act.

10 (l) Lead-based paint hazard means any condition that causes exposure  
11 to lead from lead-contaminated dust, lead-contaminated soil, or lead-  
12 contaminated paint that is deteriorated or present in accessible surfaces,  
13 friction surfaces, or impact surfaces that would result in adverse human  
14 health effects as established by TSCA Section 403.

15 (m) License means a document issued by the Department to a firm or  
16 training provider who meets all applicable requirements as established by the  
17 Department.

18 (n) Project designer means an individual who has been trained by an  
19 accredited training program as certified by this act or EPA to plan and design  
20 or who plans and designs abatement projects.

21 (o) Risk Assessor means an individual who has been trained by an  
22 accredited training program as certified by this act or EPA to conduct risk  
23 assessments and meets all other requirements established by the Department. A  
24 risk assessor also samples for the presence of lead in dust and soil for the  
25 purposes of abatement clearance testing.

26 (p) Supervisor means an individual who has been trained by an  
27 accredited training program as certified by this act or EPA to supervise and  
28 conduct abatements, and to prepare occupant  
29 protection plans and abatement reports and meets all other requirements  
30 established by the Department.

31 (q) Target Housing means any housing constructed prior to 1978, except  
32 housing for the elderly or persons with disabilities (unless any one or more  
33 children age six (6) years or under resides or is expected to reside in such  
34 housing for the elderly or persons with disabilities) or any 0-bedroom  
35 dwelling.

36 (r) Training provider means any person or other legal entity, however

1 organized, that conducts courses for the purposes of certifying individuals  
2 for purposes of this act and meets all other requirements established by the  
3 Department.

4 (s) Worker means an individual who has been trained by an accredited  
5 training program as certified by this act or EPA and meets to perform  
6 abatements and meets all other requirements established by the Department.

7 8-4-404. Criminal, civil, and administrative penalties.

8 Any person who violates any provision of this act or commits any  
9 unlawful act thereunder or violates any regulation or order of the commission  
10 shall be subject to the penalty provisions provided in the Arkansas Water and  
11 Air Pollution Control Act, as amended, A.C.A. § 8-4-103.

12 8-4-405. Applicability of water pollution provisions.

13 All provisions of §§ 8-4-101 -- 8-4-106 and 8-4-201 -- 8-4-230 relating  
14 to water pollution shall apply to this subchapter, unless manifestly  
15 inconsistent therewith, including, but not limited, to the provisions of §§ 8-  
16 4-205, 8-4-212 -- 8-4-214, and 8-4-218 -- 8-4-229 relating to hearings before  
17 the commission, notice, right to appeal, and procedure, and § 8-4-230 relating  
18 to variances and interim authority.

19 8-4-406. Powers and duties of the department.

20 The department shall be charged with the responsibility of administering  
21 and enforcing this act and is given and charged with the following powers and  
22 duties:

23 (a) To require and regulate training and examinations for individuals  
24 engaged in performing lead-based paint activities pursuant to this act;

25 (b) To establish standards and procedures for the licensing and  
26 certification of firms and individuals engaged in lead-based paint activities,  
27 and training providers engaged in training individuals for certification  
28 pursuant to this act;

29 (c) To enforce regulations necessary or appropriate to the  
30 implementation of this act, including taking legal action in any court of  
31 competent jurisdiction;

32 (d) To issue licenses and certifications to all applicants who satisfy  
33 the requirements of this act and any regulations issued pursuant to this act,  
34 to renew the licenses and certifications, and to suspend or revoke the  
35 licenses and certifications for cause and after notice and opportunity for  
36 hearing; and

1       (e) To establish annual license and certification fees for firms,  
2 training providers, and individuals, and to recover the costs of processing  
3 license applications and the issuance of licenses and certifications, and to  
4 establish such other fees necessary to recover the costs of enforcing this  
5 act.

6       8-4-407. License required - Exceptions.

7       (a) Any consultant, contractor, or training provider shall obtain a  
8 license from the Department to conduct lead-based paint activities prior to  
9 actively engaging in any lead-based paint-hazard activities in this state.

10       (b) The application for a license shall be made in the manner and form  
11 required by the department. An application for license or renewal of a  
12 license shall be accompanied by proof of liability insurance coverage, except  
13 for training providers, in the form and amount required by the department, and  
14 proof of such training and examination as required by the department.

15       (c)(1) The department shall license and certify all applicants for  
16 licenses and certifications under this act who satisfy the requirements of  
17 this act.

18       (2) Licenses and certifications shall be valid for a period of one  
19 (1) year.

20       (3) Licenses and certifications shall be renewable upon application  
21 and upon satisfying the renewal requirements of the department.

22       (d) State and political subdivisions thereof shall be exempt, except for  
23 training providers, from the license requirements of this act.

24       8-4-408. Unlawful acts.

25       It shall be unlawful for any person:

26       (a) To conduct lead-based paint activities without having first obtained  
27 a license and/or certification from the department when acting as a  
28 contractor, consultant, training provider, inspector, project designer, risk  
29 assessor, supervisor, or worker;

30       (b) To violate any provision of this act or any regulation or order  
31 adopted or issued pursuant to this act;

32       (c) To knowingly make any false statement, representation, or  
33 certification in any application, record, report, or other document filed or  
34 required to be maintained under this act or regulations adopted pursuant  
35 thereto, or to falsify, tamper with, or knowingly render inaccurate any  
36 monitoring device or method required to be maintained under this act or any

1 regulations adopted pursuant thereto; or

2 (d) To participate in any lead-based paint-hazard activity contrary to  
 3 the regulations or orders issued pursuant to this act or contrary to the  
 4 provisions of the Arkansas Water and Air Pollution Control Act, 8-4-101 et  
 5 seq., the Arkansas Solid Waste Management Act, 8-6-201 et seq., the Hazardous  
 6 Waste Management Act Section 8-7-201 et seq., and the regulations promulgated  
 7 thereunder, whether such person is required to have a license pursuant to this  
 8 act.

9 8-4-409. Lead-based Paint-hazard Fund.

10 (a) There is established on the books of the Treasurer of State, Auditor  
 11 of State, and the Chief Fiscal Officer of the State, a fund to be known as the  
 12 Lead-based Paint-hazard Fund.

13 (b) This fund shall consist of all moneys recovered pursuant to 8-4-401  
 14 et seq., the Lead-based Paint-hazard Act, and any other moneys received by the  
 15 State as a gift or donation to the fund.

16 (c) The Department of Pollution Control and Ecology is hereby authorized  
 17 to promulgate such rules and regulations necessary to administer the fees,  
 18 rates, tolls, or charges for services established by this section and is  
 19 directed to prescribe and collect such fees, rates, tolls, or charges for the  
 20 services delivered by the Department of Pollution Control and Ecology in such  
 21 manner as may be necessary to support this program as directed by the Governor  
 22 and the General Assembly."

23

24 SECTION 2. Arkansas Code Annotated § 20-27-1004(6), concerning the  
 25 duties of the Department of Pollution Control and Ecology relating to removal  
 26 of asbestos material, is repealed.

27 ~~(6) To establish licensing requirements, standards, and procedures~~  
 28 ~~necessary to regulate the removal of lead-based materials from facilities in~~  
 29 ~~the state, and to establish such fees necessary to recover the costs of~~  
 30 ~~enforcing such requirements, standards, and procedures.~~

31

32 SECTION 3. Arkansas Code Annotated § 8-7-410(b)(1) is amended as  
 33 follows:

34 "(1) There is authorized to be deposited in the Emergency Response Fund  
 35 all moneys recovered pursuant to § 8-7-417, any moneys received by the state  
 36 as a gift or donation to the fund, all interest earned upon moneys deposited

1 in the fund, and all moneys received as penalties pursuant to the Arkansas  
2 Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Hazardous  
3 Waste Management Act, as amended, § 8-7-201 et seq., ~~and~~ the Solid Waste Act,  
4 as amended, § 8-6-201 et seq., and the Lead-based Paint-hazard Act, § 8-4-401  
5 et seq."  
6

7 SECTION 4. All provisions of this act of a general and permanent nature  
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
9 Revision Commission shall incorporate the same in the Code.  
10

11 SECTION 5. If any provision of this act or the application thereof to  
12 any person or circumstance is held invalid, such invalidity shall not affect  
13 other provisions or applications of the act which can be given effect without  
14 the invalid provision or application, and to this end the provisions of this  
15 act are declared to be severable.  
16

17 SECTION 6. All laws and parts of laws in conflict with this act are  
18 hereby repealed.  
19

20 SECTION 7. It is hereby found and determined by the General Assembly  
21 that the authority for the Department of Pollution Control and Ecology to  
22 license and certify firms, training providers, inspectors, risk assessors,  
23 supervisors, project designers, and workers and to establish work practice  
24 standards for lead-based paint-hazard activities is necessary to protect the  
25 lives, health and welfare of the people of Arkansas. Therefore, an emergency  
26 is hereby declared to exist and this act being necessary for the immediate  
27 preservation of the public peace, health and safety shall be in full force and  
28 effect from and after its passage and approval.  
29

30 APPROVED: 2-28-97  
31  
32  
33  
34  
35