



# SENATE BILL No. 110

January 17, 1995, Introduced by Senator SHUGARS  
and referred to the Committee on Health Policy  
and Senior Citizens.

A bill to provide for the licensing and regulation of lead abatement contractors; to create the lead abatement contractors licensing board; to establish powers and duties of certain state agencies and officials; to create certain funds and to provide for expenditures from the funds; to provide for certain fees; and to prescribe penalties and provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 101. This act shall be known and may be cited as the  
2 "lead abatement contractors licensing act".

3       Sec. 103. As used in this act:

4       (a) "Administrative procedures act of 1969" means Act  
5 No. 306 of the Public Acts of 1969, being sections 24.201 to  
6 24.328 of the Michigan Compiled Laws.

7       (b) "Board" means the lead abatement contractors licensing  
8 board created in section 201.

1 (c) "Business entity" means an individual, person,  
2 partnership, firm, association, corporation, limited liability  
3 company, sole proprietorship, public or private agency, or other  
4 legal entity.

5 (d) "Construction contractor" means a business entity that,  
6 pursuant to a contract with the owner or lessee of real property,  
7 provides an improvement to that property.

8 (e) "Construction subcontractor" means a business entity  
9 that, pursuant to a contract with a person other than the owner  
10 or lessee of the real property, performs any part of a construc-  
11 tion contractor's contract for an improvement to that property.

12 (f) "Department" means the department of public health.

13 (g) "Lead abatement contractor" means a business entity that  
14 is licensed under this act and that carries on the business of  
15 lead abatement on the premises of another business entity and not  
16 on the lead abatement contractor's premises.

17 (h) "Lead abatement project" means any activity involving  
18 persons working directly with the removal or sealing of surfaces  
19 containing lead.

20 (i) "License" means an authorization issued by the depart-  
21 ment upon recommendation by the board for removal or sealing of  
22 surfaces containing lead.

23 (j) "Neutral party" means a business entity that is not part  
24 of the lead abatement contractor's primary or secondary family  
25 and is not legally associated to any business operated by the  
26 lead abatement contractor.

1 (k) "Removal" means the taking out or stripping of lead from  
2 an existing structure.

3 (l) "Working day" means any day other than a Saturday,  
4 Sunday, or state legal holiday.

5 Sec. 201. (1) The lead abatement contractors licensing  
6 board is created within the department and shall consist of 7  
7 members appointed by the governor with the advice and consent of  
8 the senate. At least 3 members appointed to the board shall rep-  
9 resent lead abatement contractors, 3 shall represent lead abate-  
10 ment laborers, and 1 shall represent the general public and be  
11 experienced in public health areas. A member representing lead  
12 abatement laborers shall not belong to the same labor organiza-  
13 tion as any other member. As used in this section, "labor  
14 organization" means that term as defined in section 2 of Act 176  
15 of the Public Acts of 1939, being section 423.2 of the Michigan  
16 Compiled Laws.

17 (2) The governor shall appoint board members within 90 days  
18 after the effective date of this act, and except as provided in  
19 subsection (3), each member shall serve for a term of 3 years, or  
20 until his or her successor is appointed.

21 (3) The members first appointed to the board shall serve the  
22 following terms:

23 (a) One representative of lead abatement laborers and 1 rep-  
24 resentative of lead abatement contractors shall serve a term of 1  
25 year.

1 (b) One representative of lead abatement laborers and 1  
2 representative of lead abatement contractors shall serve a term  
3 of 2 years.

4 (c) One representative of lead abatement laborers, 1 repre-  
5 sentative of lead abatement contractors, and 1 member representa-  
6 tive of the general public shall serve a term of 3 years.

7 (4) If a vacancy occurs on the board, the governor shall  
8 make an appointment for the balance of the unexpired term in the  
9 same manner as the original appointment.

10 (5) The governor may remove a member of the lead abatement  
11 contractors licensing board for incompetency, dereliction of  
12 duty, malfeasance, misfeasance, or nonfeasance in office, or any  
13 other good cause.

14 (6) The board shall meet within 30 days after all members  
15 have been appointed. At the first meeting, the board shall elect  
16 from among its members a chairperson and other officers as it  
17 considers appropriate or necessary. After the first meeting, the  
18 board shall meet at least quarterly or more frequently at the  
19 call of the chairperson or if requested by 4 or more members. A  
20 special meeting of the board may be called by the chairperson and  
21 shall be called upon the chairperson's receipt of a written  
22 request signed by 2 or more members of the board.

23 (7) A majority of the board constitutes a quorum for the  
24 transaction of business at a meeting of the board. A majority  
25 vote of the members present and serving is required for official  
26 action of the board.

1 (8) The business of the board shall be conducted at a public  
2 meeting of that board held in compliance with the open meetings  
3 act, Act No. 267 of the Public Acts of 1976, being sections  
4 15.261 to 15.275 of the Michigan Compiled Laws.

5 (9) A writing prepared, owned, used, in the possession of,  
6 or retained by the board in the performance of an official func-  
7 tion is subject to the freedom of information act, Act No. 442 of  
8 the Public Acts of 1976, being sections 15.231 to 15.246 of the  
9 Michigan Compiled Laws.

10 (10) Members of the board shall serve without compensation.  
11 However, members of the board may be reimbursed for their actual  
12 and necessary expenses incurred in the performance of their offi-  
13 cial duties as members of the board pursuant to the standard  
14 travel regulations of the department of management and budget.

15 Sec. 205. The board shall do all of the following:

16 (a) Establish rules governing the board's formal and infor-  
17 mal procedures.

18 (b) Make recommendations to the department concerning the  
19 denial, suspension, or revocation of licenses required pursuant  
20 to this act, and other enforcement matters under this act.

21 (c) Upon request by the department, advise the department on  
22 the preparation and distribution of information on lead.

23 (d) Advise the department on the promulgation of administra-  
24 tive rules pursuant to this act.

25 Sec. 207. (1) Except as otherwise provided in subsection  
26 (2), a lead abatement contractor shall not engage in any activity

1 involving the removal or sealing of surfaces containing lead  
2 without first receiving a license from the department.

3 (2) Until June 1, 1999, the licensing requirement of subsec-  
4 tion (1) does not apply to any of the following if engaged in a  
5 lead abatement project that is incidental to the primary licensed  
6 trade and involves not more than 160 square feet or 260 linear  
7 feet of surface area containing lead:

8 (a) A business entity licensed under the electrical adminis-  
9 trative act, Act No. 217 of the Public Acts of 1956, being sec-  
10 tions 338.881 to 338.892 of the Michigan Compiled Laws.

11 (b) A business entity licensed under the Forbes mechanical  
12 contractors act, Act No. 192 of the Public Acts of 1984, being  
13 sections 338.971 to 338.988 of the Michigan Compiled Laws.

14 (c) A business entity licensed under Act No. 266 of the  
15 Public Acts of 1929, being sections 338.901 to 338.917 of the  
16 Michigan Compiled Laws.

17 (d) A business entity licensed as a residential builder or a  
18 residential maintenance and alteration contractor under article  
19 24 of the occupational code, Act No. 299 of the Public Acts of  
20 1980, being sections 339.2401 to 339.2412 of the Michigan  
21 Compiled Laws.

22 Sec. 209. (1) To apply for or renew a license, a lead  
23 abatement contractor shall do all of the following:

24 (a) Submit a completed application to the department on  
25 forms provided by the department. The lead abatement contractor  
26 shall state on the application whether or not that contractor has  
27 liability insurance.

1 (b) Pay the fee required by subsection (2).

2 (c) Submit proof of Michigan workers' disability compensa-  
3 tion insurance.

4 (d) Submit proof that all employees and agents of a lead  
5 abatement contractor who are responsible for, or are involved in,  
6 a lead abatement project have satisfactorily completed training  
7 in a lead abatement program approved by the department.

8 (2) A license or renewal fee shall be paid as follows:

9	Number of employees		
10	to be engaged in		
11	<u>lead abatement projects</u>	<u>License fee</u>	<u>License renewal fee</u>
12	4 or less	\$200.00	\$100.00
13	5 or more	\$400.00	\$300.00

14 Sec. 211. (1) Within 15 working days after receiving a  
15 license application, the department shall acknowledge receipt of  
16 the application and notify the applicant of any deficiency in the  
17 application. Within 60 calendar days after receiving a completed  
18 application, including all additional information requested by  
19 the department, the department shall issue a license by certified  
20 mail or shall deny the license application. The license shall  
21 contain a statement in bold print that the issuance of a license  
22 does not infer lead indemnification coverage.

23 (2) The department shall deny a license application if the  
24 department determines that the applicant has not demonstrated the  
25 ability to comply with either of the following:

1 (a) The applicable requirements and procedures established  
2 by the department and the board pursuant to this act.

3 (b) Other state and federal law pertaining to the health and  
4 safety aspects of lead surface removal or sealing.

5 (3) If the department denies a license, the department shall  
6 return to the applicant the application fee, less \$25.00.

7 (4) Proceedings for the denial of a license pursuant to this  
8 act shall be in accordance with the administrative procedures act  
9 of 1969.

10 Sec. 213. In granting a license, the department may, fol-  
11 lowing review by the director of the department, impose reason-  
12 able terms and conditions to ensure continuous compliance with  
13 this act.

14 Sec. 215. The department may revoke or suspend a license as  
15 provided under the administrative procedures act of 1969.

16 Sec. 217. (1) Unless the department revokes or suspends a  
17 license, the license shall remain in effect for 1 year from the  
18 date of issuance.

19 (2) The department shall renew a license annually if the  
20 lead abatement contractor does all of the following:

21 (a) Submits a completed application for a renewal on forms  
22 provided by the department no sooner than 90 days before the  
23 license expires and not later than 30 days before the license  
24 expires.

25 (b) Pays to the department the license renewal fee as speci-  
26 fied in section 209.



1 (c) Complies with all applicable requirements of this act  
2 and the rules promulgated under this act.

3 Sec. 219. If the contract does not provide for lead abate-  
4 ment, a construction contractor or construction subcontractor who  
5 contracts to provide an improvement to real property shall not be  
6 responsible to provide for the removal of lead discovered in the  
7 course of providing the improvement to the property. This sec-  
8 tion does not apply to construction contractor and construction  
9 subcontractor contracts entered into prior to the effective date  
10 of this act.

11 Sec. 220. (1) Until June 1, 1999, a lead abatement contrac-  
12 tor shall notify the department in writing of all of the follow-  
13 ing at least 10 days before beginning a lead abatement project  
14 exceeding 10 linear feet or 15 square feet, or both, of surfaces  
15 containing lead:

16 (a) The name and address of the owner of the building or  
17 structure.

18 (b) The location of the building or structure where the lead  
19 abatement project will be performed.

20 (c) The schedule for the starting and completion of the lead  
21 abatement project which shall not exceed 1 year in length.

22 (d) The amount of lead that will be removed or sealed.

23 (2) Until June 1, 1999, if during the course of a project  
24 and after a written contract is executed, a business entity that  
25 is exempt from licensure under section 207(2) and whose primary  
26 licensed trade is not that of a lead abatement contractor  
27 discovers that the removal or sealing of a surface containing

1 lead in an amount exceeding 10 linear feet or 15 square feet, or  
2 both, is required, that business entity shall notify the depart-  
3 ment of the lead abatement project before lead removal or sealing  
4 begins. Not more than 10 days after the discovery, the business  
5 entity shall provide written notification to the department that  
6 includes the information described in subsection (1)(a) to (d).

7 (3) Until June 1, 1999, a lead abatement contractor provid-  
8 ing written notification to the department pursuant to  
9 subsection (1) for a lead abatement project shall include a fee  
10 equal to 1% of the price of the contract for the lead abatement  
11 project and shall make available upon the request of the depart-  
12 ment a copy of the contract for the lead abatement project. All  
13 fees collected pursuant to this subsection shall be deposited in  
14 the lead abatement fund created in subsection (5).

15 (4) Until June 1, 1999, the primary licensed trade contrac-  
16 tor of a business entity that removes or seals a surface contain-  
17 ing lead after notice is provided under subsection (2) for a lead  
18 abatement project that is incidental to the business entity's  
19 primary licensed trade shall include a fee of 1% of the lead  
20 abatement project portion of the contract price and shall make  
21 available upon the request of the department a copy of that por-  
22 tion of the contract covering the lead abatement. All fees col-  
23 lected pursuant to this subsection shall be deposited in the lead  
24 abatement fund created in subsection (5).

25 (5) The lead abatement fund is created and, until June 1,  
26 1999, shall exist in the state treasury and shall receive revenue  
27 as provided in this act and other revenue as the legislature may

1 provide. The state treasurer shall direct the investment of the  
2 fund. All interest and earnings of the fund shall be retained by  
3 the fund. Money in the fund at the close of the fiscal year  
4 shall remain in the fund and shall not revert to the general  
5 fund.

6 (6) Money in the lead abatement fund shall be used by the  
7 department only for the lead-related responsibilities of the  
8 department under this act which include, but are not limited to,  
9 the inspection of lead abatement projects and the education of  
10 lead abatement contractors. The department shall not expend  
11 money from the fund for lead abatement projects on state owned  
12 property.

13 (7) Not later than October 1 of each year and until June 1,  
14 1999, the department shall report to the senate and house of rep-  
15 resentatives appropriations committees and standing committees on  
16 occupational issues on the amount of money generated by the fees  
17 charged under this section. The report shall include the number  
18 of lead abatement projects inspected and the number of citations  
19 issued for violations of this act and other applicable laws,  
20 rules, and regulations.

21 (8) Until June 1, 1999, emergency lead abatement projects  
22 resulting from equipment failure or malfunctions are exempt from  
23 the 10-day written advance notice imposed under this section.  
24 The written notice in emergency situations shall be provided  
25 within 48 hours after the commencement of the lead abatement  
26 project except that the business entity shall contact the

1 department telephonically immediately or as soon as possible  
2 after the discovery of the emergency situation.

3       Sec. 221. (1) Until June 1, 1999, except as provided by  
4 this subsection, the owner or lessee of a building or structure  
5 shall have a postabatement lead monitoring check performed by a  
6 qualified neutral party completely independent of the lead abate-  
7 ment contractor at all lead abatement project sites at which lead  
8 levels exceed an amount determined by the department to be safe.  
9 If the lead abatement contractor and the building or structure  
10 owner or lessee agree, the owner or lessee may have the post-  
11 abatement lead monitoring check required by this subsection per-  
12 formed by in-house personnel or by the lead abatement  
13 contractor.

14       (2) Whenever feasible, unless waived by the building or  
15 structure owner or lessee, the postabatement lead monitoring  
16 check required by this section shall make use of testing methods  
17 approved by the department.

18       (3) Upon request by the department, a postabatement lead  
19 monitoring check taken pursuant to this section shall be reported  
20 to the department.

21       (4) After completion of the lead abatement project, the  
22 level of lead per cubic centimeter of surface area at the lead  
23 abatement project site shall not exceed the maximum level deter-  
24 mined by the department to be safe.

25       Sec. 301. The department, with the advice of the board,  
26 shall do all of the following:

1 (a) Administer this act.

2 (b) Issue licenses.

3 (c) Promulgate rules as may be necessary for the orderly  
4 conduct of its affairs in relation to this act and for the admin-  
5 istration of this act pursuant to the administrative procedures  
6 act of 1969, including, but not limited to, all of the  
7 following:

8 (i) The training and periodic refresher training of workers,  
9 inspectors, and other persons involved in lead abatement.

10 (ii) The accreditation of lead abatement training providers,  
11 including the minimum training curriculum, competency, and profi-  
12 ciency requirements each provider must meet.

13 (iii) The establishing of standards for lead abatement  
14 activities.

15 (iv) The establishing of procedures for the enforcement of  
16 this act and rules promulgated under this act.

17 (v) The revision of department procedures to ensure lead  
18 abatement activities in the state comply with the state certifi-  
19 cation program standards and other requirements that may be  
20 promulgated from time to time by federal agencies having juris-  
21 diction over lead hazards.

22 (vi) The facilitation of reciprocity of certification and  
23 accreditation standards between this state and other states.

24 (vii) The cooperation with federal agencies or departments  
25 in overseeing laboratories that provide lead analysis services.

26 (viii) The providing of programs for public education  
27 concerning lead hazards.

1       Sec. 303. The department shall receive or initiate  
2 complaints of alleged violations of this act or rules promulgated  
3 under this act and take action with respect to alleged violations  
4 or complaints as prescribed by this act.

5       Sec. 305. (1) Upon a recommendation by the board or the  
6 written complaint of an aggrieved party, state agency, or politi-  
7 cal subdivision, the department may investigate the acts of a  
8 lead abatement contractor under this act. After an investiga-  
9 tion, the department may deny, suspend, or revoke a license  
10 issued under this act if a lead abatement contractor is found to  
11 be not in compliance with this act or the rules promulgated under  
12 this act. In addition, the department may deny, suspend, or  
13 revoke a license for any of the following:

14       (a) A willful or negligent act that causes any person to be  
15 exposed to lead in violation of this act, a rule promulgated  
16 under this act, or other state or federal law pertaining to the  
17 public health and safety aspects of lead removal or sealing.

18       (b) Falsification of records.

19       (c) Continued failure to obtain or renew a license.

20       (d) Deliberate misrepresentation of an act in applying for a  
21 license.

22       (e) Permitting any person who has not received the proper  
23 training and certification under state or federal law to come in  
24 contact with lead or be responsible for a lead abatement  
25 project.

26       (2) If the license of a business entity is denied,  
27 suspended, or revoked under this act, the denial, suspension, or

1 revocation applies to each partner, trustee, director, officer,  
2 or person exercising control of the business entity.

3       Sec. 306. Upon application by the attorney general or a  
4 party to a contested case, the circuit court may issue a subpoena  
5 requiring a person to appear before a hearings examiner in the  
6 contested case or before the department in an investigation and  
7 be examined with reference to a matter within the scope of that  
8 contested case or investigation and to produce books, papers, or  
9 documents pertaining to that contested case or investigation.

10       Sec. 307. (1) Upon recommendation by the board and pursuant  
11 to the administrative procedures act of 1969, the department  
12 shall promulgate rules establishing a schedule of monetary admin-  
13 istrative penalties of not more than \$10,000.00 for each speci-  
14 fied violation of this act or a rule promulgated under this act.  
15 An administrative penalty may be imposed for each day that a vio-  
16 lation continues.

17       (2) If the department alleges that a person has violated  
18 this act or a rule promulgated under this act, the department may  
19 issue a citation at that time or not later than 90 days after  
20 discovery of the alleged violation. The citation shall be writ-  
21 ten and shall state with particularity the nature of the viola-  
22 tion, including reference to the section of this act or the rule  
23 alleged to have been violated, the administrative penalty estab-  
24 lished for the violation, if any, and the right to appeal the  
25 citation pursuant to section 309. The citation shall be person-  
26 ally delivered or sent by certified mail to the alleged  
27 violator.

1           Sec. 309. (1) Not later than 20 days after receipt of a  
2 citation issued pursuant to section 307, the alleged violator may  
3 petition the department for an administrative hearing which shall  
4 be held before the board or the board's designated representative  
5 within 30 days after receipt of the petition. The department  
6 shall notify the alleged violator's employees or employee repre-  
7 sentative that an administrative hearing will be held and the  
8 date, time, and place of the hearing. The alleged violator shall  
9 permit the attendance of an employee representative at the admin-  
10 istrative hearing. After the administrative hearing, the direc-  
11 tor of the department may affirm, dismiss, or modify the  
12 citation.

13           (2) An alleged violator aggrieved by a decision of the  
14 director of the department under this section may petition the  
15 circuit court of the county in which the violation was alleged to  
16 have occurred for review. The petition shall be filed not later  
17 than 60 days following receipt of the director's final decision.

18           (3) An administrative penalty becomes final if a petition  
19 for an administrative hearing or review is not received within  
20 the time specified in this section. An administrative penalty  
21 imposed under this act shall be payable to the department for  
22 deposit in the general fund. An administrative penalty may be  
23 recovered in a civil action brought in the county in which the  
24 violation occurred or the defendant resides.

25           (4) Administrative hearings under this section shall be con-  
26 ducted pursuant to the administrative procedures act of 1969.



1       Sec. 311. Notwithstanding the provisions of sections 307  
2 and 309, a lead abatement contractor who engages in the trade or  
3 business of lead abatement without a license issued under this  
4 act, or a person who violates this act or a rule promulgated  
5 under this act and who fails to correct the violation after  
6 notice, is guilty of a misdemeanor, punishable by a fine of not  
7 more than \$500.00 for a first offense. Upon conviction for a  
8 subsequent offense, the person is subject to a fine of not more  
9 than \$1,000.00, or imprisonment for not more than 6 months, or  
10 both. A violation of this act may be prosecuted by either the  
11 attorney general or the prosecuting attorney of the judicial dis-  
12 trict in which the violation was committed.

13       Sec. 313. The application of sanctions under this act does  
14 not preclude the application of other sanctions, penalties, or  
15 provisions of any other federal, state, or political  
16 subdivision.

17       Sec. 315. The department shall submit to the governor and  
18 the senate and house of representatives standing committees on  
19 occupational issues an annual report on the status of all of the  
20 following:

21       (a) The licensing of lead abatement contractors.

22       (b) Lead hazard detection and reduction.

23       (c) Certification, accreditation, and enforcement activities  
24 of the department.

25       Sec. 317. The licensing provisions of this act shall take  
26 effect 3 months after the effective date of this act.

1       Sec. 319. This act shall not take effect unless Senate Bill  
2 No. 111 of the  
3 88th Legislature is enacted into law.