

1 HB466  
2 199025-1  
3 By Representative Ingram  
4 RFD: Health  
5 First Read: 18-APR-19

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8 SYNOPSIS: Under existing law, the Alabama Lead  
9 Reduction Act of 1997 identifies and reduces the  
10 threat to human health posed by exposure to lead.

11 This bill would amend the Alabama Lead  
12 Reduction Act to add definitions, increase  
13 regulations relating to lead hazard reductions,  
14 increase the authority of the Department of Public  
15 Health to conduct lead inspections and enforce the  
16 act, and increase penalties for violations of the  
17 act.

18 Amendment 621 of the Constitution of Alabama  
19 of 1901, now appearing as Section 111.05 of the  
20 Official Recompilation of the Constitution of  
21 Alabama of 1901, as amended, prohibits a general  
22 law whose purpose or effect would be to require a  
23 new or increased expenditure of local funds from  
24 becoming effective with regard to a local  
25 governmental entity without enactment by a 2/3 vote  
26 unless: it comes within one of a number of  
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates  
2 funds, or provides a local source of revenue, to  
3 the entity for the purpose.

4 The purpose or effect of this bill would be  
5 to require a new or increased expenditure of local  
6 funds within the meaning of the amendment. However,  
7 the bill does not require approval of a local  
8 governmental entity or enactment by 2/3 vote to  
9 become effective because it comes within one of the  
10 specified exceptions contained in the amendment.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT

15  
16 Relating to lead reduction; to amend Sections  
17 22-37A-2, 22-37A-3, 22-37A-4, 22-37A-5, 22-37A-6, and  
18 22-37A-7, Code of Alabama 1975, to add definitions; to  
19 increase regulations relating to lead hazard reductions; to  
20 increase the authority of the Department of Public Health to  
21 conduct lead inspections and enforce the act; and to increase  
22 penalties for violations of the act; to repeal Sections  
23 22-37A-8 and 22-37A-9, Code of Alabama 1975; and in connection  
24 therewith would have as its purpose or effect the requirement  
25 of new or increased expenditure of local funds within the  
26 meaning of Amendment 621 of the Constitution of Alabama of  
27 1901, as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 22-37A-2, 22-37A-3, 22-37A-4,  
3 22-37A-5, 22-37A-6, and 22-37A-7, Code of Alabama 1975, are  
4 amended to read as follows:

5 "§22-37A-2.

6 "As used in this chapter, the following terms have  
7 the following meanings:

8 "(1) ABATEMENT. Any set of measures designed to  
9 eliminate lead-based paint hazards in accordance with  
10 standards developed by the board, including both of the  
11 following:

12 "a. Removal of lead-based paint and lead  
13 contaminated dust, the permanent containment or encapsulation  
14 of lead-based paint, the replacement of lead-painted surfaces  
15 or fixtures, and the removal or covering of lead-contaminated  
16 soil.

17 "b. All preparation, cleanup, disposal, and  
18 post-abatement clearance testing activities associated with  
19 those measures.

20 "~~(1)~~ (2) ACCREDITED INDIVIDUAL. An individual who  
21 engages in lead hazard reduction activities, who has  
22 successfully completed a Safe State accredited lead training  
23 course appropriate for the type or category of lead hazard  
24 reduction activity to be provided, who meets all other  
25 personal accreditation requirements established by Safe State  
26 under this chapter, and who holds a valid registration in the

1 state accreditation registry for the relevant type or category  
2 of lead hazard reduction activity.

3 "~~(2)~~ (3) ACCREDITED LEAD TRAINING COURSE. A course  
4 of instruction which has been reviewed and accredited by Safe  
5 State as meeting or exceeding training requirements  
6 established under Title IV of the Federal Toxic Substances  
7 Control Act (Public Law 99-519, 100 Stat. 2970, 15 U.S.C.  
8 §2601 et seq., as amended).

9 "~~(3)~~ (4) BOARD. The State Board of Health as defined  
10 in Section 22-2-1.

11 "(5) CHILD-OCCUPIED FACILITY. A building, or portion  
12 of a building, constructed prior to 1978, visited regularly by  
13 the same child, six years of age or under, on at least two  
14 different days within the same week, Sunday through Saturday,  
15 provided each day's visit lasts at least three hours and the  
16 combined weekly visits last at least six hours, and the  
17 combined annual visits last at least 60 hours. The term  
18 includes, but are not limited to, day care centers,  
19 preschools, and kindergarten classrooms.

20 "(6) DEPARTMENT. The Alabama Department of Public  
21 Health.

22 "~~(4)~~ (7) INDOOR. The enclosed portions of buildings  
23 including public buildings, residences, and commercial  
24 buildings. For the purposes of this chapter, "indoor" shall  
25 include the exterior surfaces and all common areas of the  
26 structure including any attached or unattached structure

1 located within the same lot line, including but not limited  
2 to, garages, play equipment, and fences.

3 "(8) INSPECTION. A surface-by-surface investigation  
4 to determine the presence of lead-based paint and the  
5 provision of a report explaining the results of the  
6 investigation.

7 "(9) LEAD-BASED PAINT ACTIVITIES. The inspection and  
8 assessment of lead hazards and the planning, implementation,  
9 and inspection of interim controls, renovation, and abatement  
10 activities at target housing and child-occupied facilities.

11 ~~"(5)~~ (10) LEAD HAZARD REDUCTION ACTIVITIES.  
12 Activities designed to reduce exposure to lead in residences  
13 or public buildings and may include inspections, risk  
14 assessments, repair, enclosure, encapsulation, or removal of  
15 lead-based paint or lead contamination, or both, and the  
16 design and planning of such activities, and other related  
17 activities as established in Title IV of Toxic Substances  
18 Control Act, Public Law 99-519, 100 Stat. 2970, 15 U.S.C.  
19 §2601 et seq., as amended, which are to be performed in  
20 residences or public buildings.

21 ~~"(6)~~ (11) PERSON. An individual, firm, partnership,  
22 corporation, commission, state agency, county governmental  
23 body, municipal corporation, party, company, association, or  
24 any other public or private legal entity.

25 ~~"(7) PUBLIC BUILDING. A building designed for public~~  
26 ~~access and maintained for the public benefit through the use~~  
27 ~~of state or local government funds, including public housing,~~

1 ~~schools, day care centers, and government facilities, or any~~  
2 ~~location at which Title IV of the Federal Toxic Substances~~  
3 ~~Control Act, or regulations thereunder, require lead-based~~  
4 ~~paint activities be performed by an accredited individual, as~~  
5 ~~those terms are defined in that act, such as commercial~~  
6 ~~buildings and bridges. This term shall not apply to any of the~~  
7 ~~following:~~

8 ~~"a. Business facilities where access is principally~~  
9 ~~limited to employees.~~

10 ~~"b. Private clubs and residences.~~

11 ~~"c. Commercial buildings.~~

12 "(12) RENOVATION. The modification of any target  
13 housing or child-occupied facility structure or portion  
14 thereof that results in the disturbance of painted surfaces  
15 unless that activity is performed as part of an abatement  
16 activity. The term includes, but is not limited to: The  
17 removal, modification, re-coating, or repair of painted  
18 surfaces or painted components; the removal of building  
19 components; weatherization projects; and interim controls that  
20 disturb painted surfaces. The term also includes a renovation  
21 performed for the purpose of converting a building, or part of  
22 a building, into target housing or a child-occupied facility.  
23 The term does not include minor repair and maintenance  
24 activities.

25 "(13) RISK ASSESSMENT. An on-site investigation to  
26 determine the existence, nature, severity, and location of  
27 lead-based paint hazards and the provision of a report by the

1 individual or the firm conducting the risk assessment,  
2 explaining the results of the investigation and options for  
3 reducing lead-based paint hazards.

4 ~~"(8)~~ (14) SAFE STATE. The Safe State Program, a  
5 division of the University of Alabama.

6 ~~"(9)~~ (15) STATE HEALTH OFFICER. The State Health  
7 Officer as defined in Section 22-2-8.

8 "(16) TARGET HOUSING. Any housing constructed prior  
9 to 1978, except housing for the elderly or persons with  
10 disabilities unless one or more children age six years or  
11 under resides or is expected to reside in that housing for the  
12 elderly or persons with disabilities; or any zero-bedroom  
13 building.

14 "§22-37A-3.

15 ~~"(a) With regard to facilities, the scope of this~~  
16 ~~chapter shall not exceed the requirements of Title IV of the~~  
17 ~~Federal Toxic Substances Control Act.~~

18 ~~"(b) The board may develop~~ shall establish a  
19 statewide program to identify and reduce the threat to human  
20 health posed by exposure to lead. In furtherance of this  
21 purpose, the board may perform each of the following  
22 functions:

23 ~~"(1) Conduct and supervise development programs and~~  
24 ~~studies to determine the source, effect, and hazards of lead.~~

25 ~~"(2) Conduct research or participate in research~~  
26 ~~within the state.~~

27 ~~"(3) Collect and disseminate information.~~



1           "(1) Certify all individuals involved in lead-based  
2 paint abatement activities.

3           "(2) Issue, reissue, suspend, revoke, or deny the  
4 issuance or reissuance of certification for an accredited  
5 individual.

6           "(3) Establish standards for the program.

7           "(4) Ensure compliance with regulations.

8           "(5) Enforce the certification program.

9           "(6) Establish a program for the education of owners  
10 and occupants of target housing and child-occupied facilities  
11 concerning lead-based paint hazards. This program shall  
12 require persons who perform renovation in such facilities for  
13 compensation to provide owners and occupants with a lead  
14 hazard information pamphlet prior to commencing the  
15 renovation. The program shall meet the requirements of the  
16 federal program under the Lead Based Paint Exposure Reduction  
17 Act, 15 U.S.C. §2681 et seq.

18           ~~"(4) (7) Make contracts and execute instruments that~~  
19 ~~are necessary or convenient to the exercise of its powers or~~  
20 ~~the performance of its duties under this chapter.~~

21           ~~"(5) Encourage voluntary cooperation by persons or~~  
22 ~~affected groups to achieve the purposes of this chapter.~~

23           ~~"(6) (8) Assist persons in evaluating existing or~~  
24 ~~potential health hazards from lead, including, but not limited~~  
25 ~~to, health hazards from external sources that infiltrate the~~  
26 ~~indoor environment and those from materials, processes, or~~  
27 ~~human activities in the indoor environment.~~

1           "~~(7)~~ (9) Assist persons in methods to control,  
2 remove, or minimize sources of lead.

3           "~~(8) Advise, consult, and cooperate on matters of~~  
4 ~~common interest in lead hazard reduction with other agencies~~  
5 ~~of the state, political subdivisions of the state, industries,~~  
6 ~~other states, the federal government, and interested persons~~  
7 ~~or groups.~~

8           "~~(9)~~ (10) Represent the state in matters relating to  
9 lead hazard reduction and apply for and receive, on behalf of  
10 the state, matching grants, gifts, donations, foundation  
11 awards, or other legitimate means of support for the intents  
12 and purposes of this chapter, and to make other decisions  
13 concerning the fiscal aspects of the powers, duties, programs,  
14 and activities of the board under this chapter.

15           "(11) Enter into cooperative agreements with, and  
16 accept grant assistance from, the U.S. Environmental  
17 Protection Agency in support of certification provisions of  
18 Title IV of the Federal Toxic Substances Control Act or from  
19 any other agency of government or under other authority to  
20 carry out the intent of this chapter.

21           "~~(10)~~ (12) Enter into cooperative agreements or  
22 contracts to demonstrate practices, methods, technologies, or  
23 processes which may be effective in controlling sources or  
24 potential sources of lead, preventing the occurrence of lead,  
25 and reducing exposure to lead; and accept financial assistance  
26 in the form of grants from public agencies and authorities,

1 nonprofit institutions and organizations, educational  
2 institutions, or other persons.

3 ~~"(11)~~ (13) Establish by rule a fee schedule for  
4 performing lead investigations and services, which may not in  
5 any case exceed the actual costs.

6 ~~"(12)~~ (14) Subject to the Alabama Administrative  
7 Procedure Act, publish guidelines in performing lead hazard  
8 reduction.

9 "(15) The board shall be authorized to adopt all  
10 necessary rules for the implementation and enforcement of this  
11 chapter.

12 "§22-37A-4.

13 "(a) The State Health Officer may conduct  
14 investigations as necessary to administer this chapter, and  
15 the rules adopted and orders issued under this chapter. The  
16 State Health Officer may conduct investigations of general  
17 lead contamination problems or conditions in public buildings,  
18 and upon request of the building owner of commercial  
19 buildings, or upon the request of the owner or occupant of  
20 residential buildings.

21 "(b) The department and its designated staff may  
22 enter the business premises of persons and firms certified to  
23 engage in lead-based paint activities during business hours  
24 upon presenting credentials identifying themselves as  
25 employees of the department.

26 "(c) The department and its designated staff may  
27 enter any structure, including residences, where lead-based

1 paint activities have occurred or are being conducted, for the  
2 purpose of determining compliance with lead-based paint  
3 statutes and regulations, upon obtaining the consent of the  
4 owner, adult occupant of the premises, or his or her designee,  
5 after presenting credentials identifying themselves as  
6 employees of the department.

7 "§22-37A-5.

8 ~~"(a) Before engaging in lead hazard reduction~~  
9 ~~activities, a person, firm, or corporation shall be certified~~  
10 ~~by the board as specified in this chapter. This subsection~~  
11 ~~shall not apply to an individual performing lead abatement on~~  
12 ~~a structure, or the portion of a structure that is used as his~~  
13 ~~or her private residence. Notwithstanding the foregoing, this~~  
14 ~~subsection shall apply to any person contracted by the home~~  
15 ~~owner to perform deleading activities and also applies where~~  
16 ~~the owner performs such activities in or upon another~~  
17 ~~structure which is not his or her private residence or the~~  
18 ~~portion thereof. For the purpose of this subsection, the term~~  
19 ~~"deleading" means activities conducted by a person who offers~~  
20 ~~to eliminate lead-based paint or lead-based paint hazards or~~  
21 ~~to plan such activities.~~

22 ~~"(b) Subject to the Alabama Administrative Procedure~~  
23 ~~Act, the board shall develop and publish certification~~  
24 ~~procedures for each type of contractor in lead hazard~~  
25 ~~reduction activities and specify qualifications, including,~~  
26 ~~but not limited to, training accreditation and blood lead~~  
27 ~~tests for personnel. The satisfaction of these qualifications~~

1 ~~shall be documented by the contractor before the contractor is~~  
2 ~~certified and permitted to engage in the provision of lead~~  
3 ~~hazard reduction activities.~~

4 ~~"(c) The board shall establish decertification and~~  
5 ~~recertification policies and procedures for each type of lead~~  
6 ~~hazard service contractor.~~

7 ~~"(d) The board may establish by rule reasonable and~~  
8 ~~necessary fees for the conduct of the contractor certification~~  
9 ~~program and for the performance of field inspections of~~  
10 ~~abatement projects. The board may adopt rules, including~~  
11 ~~definitions and standards, and issue necessary orders to~~  
12 ~~implement this chapter, which rules and orders shall have the~~  
13 ~~effect of law.~~

14 ~~"(e) The board may enter into cooperative agreements~~  
15 ~~with and accept grant assistance from the U.S. Environmental~~  
16 ~~Protection Agency in support of certification provisions of~~  
17 ~~Title IV of the Federal Toxic Substances Control Act or from~~  
18 ~~any other agency of government or under other authority to~~  
19 ~~carry out the intents of this chapter.~~

20 "(a) No person shall be certified under this chapter  
21 unless that person has successfully completed the appropriate  
22 training program, passed an examination approved by the  
23 department for the appropriate category of certification, and  
24 completed any additional requirements imposed by the board by  
25 rule.

26 "(b) No person shall perform or represent that he or  
27 she is qualified to perform any lead-based paint activities

1 unless the person possesses the appropriate certification as  
2 determined by the board or unless that person is any of the  
3 following:

4 "(1) An owner performing abatement or renovation  
5 upon that person's own residential property.

6 "(2) An employee of a property management company  
7 doing minor repairs and maintenance activities upon property  
8 managed by that company where there is insignificant damage,  
9 wear, or corrosion of existing lead-containing paint or  
10 coating substances.

11 "(3) An owner routinely doing minor repairs and  
12 maintenance activities upon his or her property where there is  
13 insignificant damage to, wear of, or corrosion of existing  
14 lead-containing paint or coating substances.

15 "(c) The board shall adopt rules establishing  
16 standards of acceptable professional conduct and work  
17 practices for the performance of lead-based paint activities,  
18 as well as specific acts and omissions that constitute grounds  
19 for the reprimand of any licensee, the suspension,  
20 modification, or revocation of a license, or the denial of  
21 issuance or renewal of a license.

22 "(d) The board may issue a corrective action order  
23 to any person who violates this chapter or any rule adopted  
24 pursuant to this chapter. The order shall specify the  
25 provision of this chapter or any rule alleged to have been  
26 violated and shall order necessary corrective action be taken  
27 within a reasonable time to be prescribed in the order.

1           "(e) The board is authorized to revoke or suspend  
2 any license, certification, or approval issued under this  
3 chapter, in accordance with the rules adopted pursuant to this  
4 chapter.

5           "(f) It shall be unlawful for any person to provide  
6 training or engage in lead-based paint activities regulated  
7 under this chapter except in such a manner as to conform to  
8 and comply with this chapter and all applicable rules and  
9 orders established under this chapter.

10           "§22-37A-6.

11           "(a) Safe State, a division of the University of  
12 Alabama, is designated as the state accreditation agency for  
13 lead hazard training.

14           "(b) Subject to the Alabama Administrative Procedure  
15 Act, Safe State shall establish a program to review and  
16 accredit lead training courses in accordance with Title IV of  
17 the Federal Toxic Substances Control Act.

18           "(c) Safe State shall establish and maintain a state  
19 registry of accredited individuals who have successfully  
20 completed accredited lead training courses and who meet all  
21 other personal accreditation requirements established by Safe  
22 State under this chapter.

23           "(d) An individual who provides or participates in  
24 ~~the lead hazard reduction activities described in Section~~  
25 ~~22-37A-5~~ shall obtain valid Safe State registration and  
26 certification from the board prior to engaging in such  
27 activities.

1           "(e) Subject to the Alabama Administrative Procedure  
2 Act, Safe State shall develop and publish policies and  
3 procedures governing the accreditation of lead training  
4 courses and the registration of accredited individuals.

5           "(f) Safe State may establish reasonable fees for  
6 the conduct of the accreditation and registration programs and  
7 expend the fees to administer the program.

8           "(g) Safe State may enter into cooperative  
9 agreements with and accept grant assistance from the U.S.  
10 Environmental Protection Agency in support of the training and  
11 accreditation provisions of Title IV of the Federal Toxic  
12 Substances Control Act (Public Law 99-519, 100 Stat. 2970, 15  
13 U.S.C. §2601 et seq., as amended), or from any other agency of  
14 government or under other authority to carry out the intents  
15 of this chapter.

16           "(h) Safe State may negotiate and establish  
17 reciprocity agreements with other states where equivalency of  
18 lead training accreditation or registration of individuals, or  
19 both, can be demonstrated.

20           "§22-37A-7.

21           ~~"(a) Persons engaged in lead hazard reduction~~  
22 ~~activities shall be certified by the board and observe proper~~  
23 ~~removal procedures and precautions, as established by the~~  
24 ~~rules adopted by the board. The board may enforce such rules~~  
25 ~~by order.~~

26           ~~"(b) An owner or operator of an entity engaged in~~  
27 ~~lead hazard reduction activities who fails to comply with~~



1 ~~subsection (a) of this section and rules adopted or orders~~  
2 ~~issued thereunder shall be guilty of a Class C misdemeanor.~~

3 "(a) (1) Any person who violates any provision of  
4 this chapter or the rules adopted pursuant to this chapter  
5 shall be subject to a civil penalty of up to two thousand five  
6 hundred dollars (\$2,500) per day for each day during which the  
7 act or omission continues or occurs.

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

10 "a. The State Health Officer may issue a civil  
11 penalty assessment against any person responsible for the  
12 violation.

13 "b. For a first violation, the State Health Officer  
14 may issue a civil penalty of two hundred fifty dollars (\$250)  
15 per violation per day for each day during which the act or  
16 omission continues or occurs. The violator may opt to  
17 successfully complete an accredited lead training course  
18 appropriate for the type of category of renovation abatement  
19 discipline, undergo registration in the state accreditation  
20 registry, become a department certified firm, and therefore  
21 not be required to pay a fine.

22 "c. For a second violation, the State Health Officer  
23 may assess a civil penalty of five hundred dollars (\$500) per  
24 day for each day during which the act or omission continues or  
25 occurs and mandatory successful completion of an accredited  
26 lead training course appropriate for the type or category of  
27 renovation abatement discipline, registration in the state

1 accreditation registry, and becoming a department certified  
2 firm.

3 "d. For a third violation, the State Health Officer  
4 may assess a civil penalty of two thousand five hundred  
5 dollars (\$2,500) per day for each day during which the act or  
6 omission continues or occurs.

7 "e. Any person against whom an assessment has been  
8 issued may obtain a review of the assessment by filing with  
9 the State Health Officer a written petition setting forth the  
10 grounds and reasons for the objection, and requesting a  
11 hearing. If a petition for review is not filed within 30 days  
12 after the date the assessment is served, the violator shall be  
13 deemed to have consented to the assessment and it shall become  
14 final.

15 "f. Whenever an assessment has become final because  
16 of a person's failure to appeal the State Health Officer's  
17 assessment, the State Health Officer may apply to the  
18 appropriate court for a judgment and seek execution of the  
19 judgment. The court, in such proceedings, shall treat a  
20 failure to appeal the assessment as a confession of judgment  
21 in the amount of the assessment.

22 "g. In lieu of the administrative assessment  
23 procedure, the State Health Officer may also institute  
24 proceedings for assessment of a civil penalty in the circuit  
25 court of Montgomery County, or in the circuit court of the  
26 county in which all or part of the violation occurred.

1           "h. In assessing the civil penalty, the State Health  
2 Officer may consider the following factors:

3           "1. Whether the civil penalty imposed will be a  
4 substantial economic deterrent to the illegal activity.

5           "2. The potential or actual harm posed to people or  
6 the environment by the violation.

7           "3. The cause of the violation.

8           "4. The effectiveness of action taken by the  
9 violator to cease the violation.

10          "5. The economic benefit gained by the violator.

11          "i. All fees collected and all fines, penalties, and  
12 funds of any nature received by the State Board of Health  
13 under authority of this chapter shall be remitted to the State  
14 Board of Health to the credit of the Lead Reduction Fund. The  
15 expenses incurred by the State Board of Health in carrying out  
16 this chapter shall be paid from moneys in the Lead Reduction  
17 Fund; however, the expenditure from the fund shall be budgeted  
18 and allotted pursuant to the Budget Management Act and Article  
19 4 of Chapter 4 of Title 41.

20          "j. If it appears that a person has violated, is  
21 violating, or is threatening to violate this chapter or a rule  
22 adopted or order issued under this chapter, the State Health  
23 Officer or a county health officer, as appropriate, may  
24 institute a civil suit in his or her own name in a circuit  
25 court to obtain injunctive relief to restrain the person from  
26 continuing the violation or threat of violation.

1                   "k. Any person violating the provisions of this  
2 chapter shall be guilty of a Class A misdemeanor.

3                   "(b) In addition to, or in lieu of, any penalties  
4 authorized under this chapter, the State Health Officer may  
5 require any person violating this chapter to complete  
6 additional training."

7                   Section 2. Sections 22-37A-8 and 22-37A-9, Code of  
8 Alabama 1975, relating to injunctive relief and the  
9 distribution of fines and fees collected, are repealed.

10                  Section 3. Although this bill would have as its  
11 purpose or effect the requirement of a new or increased  
12 expenditure of local funds, the bill is excluded from further  
13 requirements and application under Amendment 621, now  
14 appearing as Section 111.05 of the Official Recompilation of  
15 the Constitution of Alabama of 1901, as amended, because the  
16 bill defines a new crime or amends the definition of an  
17 existing crime.

18                  Section 4. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.