

1 HB121
2 206528-1
3 By Representative Ingram
4 RFD: Health
5 First Read: 02-FEB-21
6 PFD: 01/26/2021

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8 SYNOPSIS: Under existing law, the State Board of
9 Health administers the Alabama Lead Reduction Act
10 of 1997 to identify and reduce the threat to human
11 health posed by exposure to lead.

12 This bill would further regulate lead hazard
13 reductions and revise the authority of the State
14 Board of Health to conduct lead inspections,
15 enforce the Alabama Lead Reduction Act of 1997, and
16 increase penalties for violations of the act.

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

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

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

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11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 Relating to lead abatement; to amend Sections
16 22-37A-2 to 22-37A-7, inclusive, Code of Alabama 1975, to
17 further regulate lead hazard reductions; to revise the
18 authority of the State Board of Health to conduct lead
19 inspections, enforce the Alabama Lead Reduction Act of 1997,
20 and increase penalties for violations of the act; to provide
21 for definitions; and in connection therewith would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds within the meaning of Amendment 621
24 of the Constitution of Alabama of 1901, now appearing as
25 Section 111.05 of the Official Recompilation of the
26 Constitution of Alabama of 1901, as amended.
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 22-37A-2 to 22-37A-7, inclusive,
2 Code of Alabama 1975, are amended to read as follows:

3 "§22-37A-2.

4 As used in this chapter, the following terms have
5 the following meanings:

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

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

14 "b. All preparation, cleanup, disposal, and
15 post-abatement clearance testing activities associated with
16 measures described in paragraph a.

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

26 "~~(2)~~(3) ACCREDITED LEAD TRAINING COURSE. A course of
27 instruction which has been reviewed and accredited by Safe

1 State as meeting or exceeding training requirements
2 established under Title IV of the Federal Toxic Substances
3 Control Act (Public Law 99-519, 100 Stat. 2970, 15 U.S.C.
4 §2601 et seq., as amended).

5 ~~"(3)(4) BOARD. The State Board of Health as defined~~
6 ~~in Section 22-2-1.~~

7 ~~"(4)(5) INDOOR. The enclosed portions of buildings~~
8 ~~including public buildings, residences, and commercial~~
9 ~~buildings. For the purposes of this chapter, "indoor" shall~~
10 ~~include the exterior surfaces and all common areas of the~~
11 ~~structure including any attached or unattached structure~~
12 ~~located within the same lot line, including but not limited~~
13 ~~to, garages, play equipment, and fences.~~

14 "(6) INSPECTION. A surface-by-surface investigation
15 to determine the presence of lead-based paint and the
16 provision of a report explaining the results of the
17 investigation.

18 "(7) LEAD-BASED PAINT ACTIVITIES. The inspection and
19 assessment of lead-based paint hazards and the planning,
20 implementation, and inspection of interim controls,
21 renovation, and abatement activities at target housing and
22 child-occupied facilities.

23 ~~"(5)(8) LEAD HAZARD REDUCTION ACTIVITIES. Activities~~
24 ~~designed to reduce exposure to lead in residences or public~~
25 ~~buildings and may include inspections, risk assessments,~~
26 ~~repair, enclosure, encapsulation, or removal of lead-based~~
27 ~~paint or lead contamination, or both, and the design and~~

1 planning of such activities, and other related activities as
2 established in Title IV of Toxic Substances Control Act,
3 Public Law 99-519, 100 Stat. 2970, 15 U.S.C. §2601 et seq., as
4 amended, which are to be performed in residences or public
5 buildings.

6 "~~(6)~~ (9) PERSON. An individual, firm, partnership,
7 corporation, commission, state agency, county governmental
8 body, municipal corporation, party, company, association, or
9 any other public or private legal entity.

10 "~~(7)~~ (10) PUBLIC BUILDING. A building designed for
11 public access and maintained for the public benefit through
12 the use of state or local government funds, including public
13 housing, schools, day care centers, and government facilities,
14 or any location at which Title IV of the Federal Toxic
15 Substances Control Act, or regulations thereunder, require
16 lead-based paint activities be performed by an accredited
17 individual, as those terms are defined in that act, such as
18 commercial buildings and bridges. This term ~~shall~~ does not
19 apply to any of the following:

20 a. Business facilities where access is principally
21 limited to employees.

22 b. Private clubs and residences.

23 c. Commercial buildings.

24 "(11) RENOVATION. The modification of any target
25 housing or child-occupied facility structure or portion
26 thereof that results in the disturbance of painted surfaces
27 unless that activity is performed as part of an abatement

1 activity. The term includes, but is not limited to, the
2 removal, modification, re-coating, or repair of painted
3 surfaces or painted components; the removal of building
4 components; weatherization projects; and interim controls that
5 disturb painted surfaces. The term also includes a renovation
6 performed for the purpose of converting a building or part of
7 a building into target housing or a child-occupied facility.
8 The term does not include minor repair and maintenance
9 activities.

10 "(12) RISK ASSESSMENT. An on-site investigation to
11 determine the existence, nature, severity, and location of
12 lead-based paint hazards and the provision of a report by the
13 individual or the firm conducting the risk assessment
14 explaining the results of the investigation and options for
15 reducing lead-based paint hazards.

16 ~~"(8)~~ (13) SAFE STATE. The Safe State Program, a
17 division of the University of Alabama.

18 "(14) TARGET HOUSING. The term as defined in 40
19 C.F.R. 745.103.

20 "§22-37A-3.

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

24 ~~"(b)~~ (a) The board may develop shall establish a
25 statewide program to identify and reduce the threat to human
26 health posed by exposure to lead. In furtherance of this

1 purpose, the board may perform each of the following
2 functions:

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

5 ~~"(2) Conduct research or participate in research~~
6 ~~within the state.~~

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

8 "(1) Certify all individuals involved in lead-based
9 paint activities.

10 "(2) Issue, reissue, suspend, revoke, or deny the
11 issuance or reissuance of certificates for accredited
12 individuals.

13 "(3) Establish standards for the program.

14 "(4) Ensure compliance with state and federal rules
15 and regulations.

16 "(5) Enforce the certification program.

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

26 ~~(4)~~ (7) Make contracts and execute Execute contracts
27 and other instruments that are necessary or convenient to the

1 exercise of ~~its~~ the board's powers or the performance of ~~its~~
2 the board's duties under this chapter.

3 ~~"(5)(8)~~ Encourage voluntary cooperation by persons
4 or affected groups to achieve the purposes of this chapter.

5 ~~"(6)(9)~~ Assist persons in evaluating existing or
6 potential health hazards from lead, including, but not limited
7 to, health hazards from external sources that infiltrate the
8 indoor environment and those from materials, processes, or
9 human activities in the indoor environment.

10 ~~"(7)(10)~~ Assist persons in methods to control,
11 remove, or minimize sources of lead.

12 ~~"(8) Advise, consult, and cooperate on matters of~~
13 ~~common interest in lead hazard reduction with other agencies~~
14 ~~of the state, political subdivisions of the state, industries,~~
15 ~~other states, the federal government, and interested persons~~
16 ~~or groups.~~

17 ~~"(9)(11)~~ Represent the state in matters relating to
18 lead hazard reduction and apply for and receive, on behalf of
19 the state, matching grants, gifts, donations, foundation
20 awards, or other legitimate means of support for the intents
21 and purposes of this chapter, and to make other decisions
22 concerning the fiscal aspects of the powers, duties, programs,
23 and activities of the board under this chapter.

24 "(12) Enter into cooperative agreements with, and
25 accept grant assistance from, the United States Environmental
26 Protection Agency in support of certification provisions of
27 Title IV of the Federal Toxic Substances Control Act or from

1 any other governmental agency or other authority to carry out
2 the intent of this chapter.

3 ~~"(10)~~ (13) Enter into cooperative agreements or
4 contracts to demonstrate practices, methods, technologies, or
5 processes which may be effective in controlling sources or
6 potential sources of lead, preventing the occurrence of lead,
7 and reducing exposure to lead; and accept financial assistance
8 in the form of grants from public agencies and authorities,
9 nonprofit institutions and organizations, educational
10 institutions, or other persons.

11 ~~"(11)~~ (14) Establish by rule a fee schedule for
12 performing lead investigations and services, which may not in
13 any case exceed the actual costs.

14 ~~"(12)~~ (15) Subject to the Alabama Administrative
15 Procedure Act, publish guidelines ~~in~~ for performing lead
16 hazard reduction.

17 "(b) The board may adopt rules to implement and
18 enforce this chapter.

19 "§22-37A-4.

20 "(a) The State Health Officer may conduct
21 investigations as necessary to administer this chapter, and
22 the rules adopted and orders issued under this chapter. The
23 State Health Officer may conduct investigations of general
24 lead contamination problems or conditions in public buildings,
25 and upon request of the building owner of commercial
26 buildings, or upon the request of the owner or occupant of
27 residential buildings.

1 "(b) (1) An employee of the board may do both of the
2 following:

3 "a. Enter the business premises of persons and firms
4 certified to engage in lead-based paint activities during
5 business hours upon presenting credentials identifying himself
6 or herself as an employee of the board.

7 "b. Enter any structure, including residences, where
8 lead-based paint activities have occurred, or are being
9 conducted, for the purpose of determining compliance with
10 lead-based paint laws, rules, and regulations, provided he or
11 she obtains the consent of the owner, adult occupant of the
12 premises, or the owner's or occupant's designee after
13 presenting credentials identifying himself or herself as an
14 employee of the board.

15 "(2) Under no circumstances may an employee of the
16 board unlawfully enter any structure to determine compliance
17 with lead-based paint law, rules, or regulations.

18 "§22-37A-5.

19 ~~"(a) Before engaging in lead hazard reduction~~
20 ~~activities, a person, firm, or corporation shall be certified~~
21 ~~by the board as specified in this chapter. This subsection~~
22 ~~shall not apply to an individual performing lead abatement on~~
23 ~~a structure, or the portion of a structure that is used as his~~
24 ~~or her private residence. Notwithstanding the foregoing, this~~
25 ~~subsection shall apply to any person contracted by the home~~
26 ~~owner to perform deleading activities and also applies where~~
27 ~~the owner performs such activities in or upon another~~

1 ~~structure which is not his or her private residence or the~~
2 ~~portion thereof. For the purpose of this subsection, the term~~
3 ~~"deleading" means activities conducted by a person who offers~~
4 ~~to eliminate lead-based paint or lead-based paint hazards or~~
5 ~~to plan such activities.~~

6 ~~"(b) Subject to the Alabama Administrative Procedure~~
7 ~~Act, the board shall develop and publish certification~~
8 ~~procedures for each type of contractor in lead hazard~~
9 ~~reduction activities and specify qualifications, including,~~
10 ~~but not limited to, training accreditation and blood lead~~
11 ~~tests for personnel. The satisfaction of these qualifications~~
12 ~~shall be documented by the contractor before the contractor is~~
13 ~~certified and permitted to engage in the provision of lead~~
14 ~~hazard reduction activities.~~

15 ~~"(c) The board shall establish decertification and~~
16 ~~recertification policies and procedures for each type of lead~~
17 ~~hazard service contractor.~~

18 ~~"(d) The board may establish by rule reasonable and~~
19 ~~necessary fees for the conduct of the contractor certification~~
20 ~~program and for the performance of field inspections of~~
21 ~~abatement projects. The board may adopt rules, including~~
22 ~~definitions and standards, and issue necessary orders to~~
23 ~~implement this chapter, which rules and orders shall have the~~
24 ~~effect of law.~~

25 ~~"(e) The board may enter into cooperative agreements~~
26 ~~with and accept grant assistance from the U.S. Environmental~~
27 ~~Protection Agency in support of certification provisions of~~

1 ~~Title IV of the Federal Toxic Substances Control Act or from~~
2 ~~any other agency of government or under other authority to~~
3 ~~carry out the intents of this chapter.~~

4 "(a) An individual may not be certified under this
5 chapter unless the individual has successfully completed the
6 appropriate training program, passed an examination approved
7 by the board for the appropriate category of certification,
8 and completed any additional requirements imposed by the board
9 by rule.

10 "(b) An individual may not perform or represent that
11 he or she is qualified to perform any lead-based paint
12 activities unless the individual possesses the appropriate
13 certification as determined by the board or unless the
14 individual is any of the following:

15 "(1) An owner performing abatement or renovation
16 upon his or her own residential property.

17 "(2) An employee of a property management company
18 doing minor repairs and maintenance activities upon property
19 managed by that company where there is insignificant damage,
20 wear, or corrosion of existing lead-containing paint or
21 coating substances.

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

26 "(c) The board shall adopt rules establishing
27 standards of acceptable professional conduct and work

1 practices for the performance of lead-based paint activities,
2 as well as specific acts and omissions that constitute grounds
3 for the reprimand of any certificate holder, the suspension,
4 modification, or revocation of a certificate, or the denial of
5 issuance or renewal of a certificate.

6 "(d) The board may issue a corrective action order
7 to any person who violates this chapter or any rule adopted
8 pursuant to this chapter. The order shall specify the
9 provision of this chapter or any rule alleged to have been
10 violated and shall order necessary corrective action be taken
11 within a reasonable time to be prescribed in the order.

12 "(e) The board may revoke or suspend any
13 certification or approval issued under this chapter, in
14 accordance with the rules adopted pursuant to this chapter.

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

20 "§22-37A-6.

21 "(a) Safe State, a division of the University of
22 Alabama, is designated as the state accreditation agency for
23 lead hazard training.

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

1 "(c) Safe State shall establish and maintain a state
2 registry of accredited individuals who have successfully
3 completed accredited lead training courses and who meet all
4 other personal accreditation requirements established by Safe
5 State under this chapter.

6 "(d) An individual who provides or participates in
7 the lead hazard reduction activities ~~described in Section~~
8 ~~22-37A-5~~ shall obtain valid Safe State registration and
9 certification from the board prior to engaging in such
10 activities.

11 "(e) Subject to the Alabama Administrative Procedure
12 Act, Safe State shall develop and publish policies and
13 procedures governing the accreditation of lead training
14 courses and the registration of accredited individuals.

15 "(f) Safe State may establish reasonable fees for
16 the conduct of the accreditation and registration programs and
17 expend the fees to administer the program.

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

26 "(h) Safe State may negotiate and establish
27 reciprocity agreements with other states where equivalency of

1 lead training accreditation or registration of individuals, or
2 both, can be demonstrated."

3 "§22-37A-7.

4 "~~(a) Persons engaged in lead hazard reduction~~
5 ~~activities shall be certified by the board and observe proper~~
6 ~~removal procedures and precautions, as established by the~~
7 ~~rules adopted by the board. The board may enforce such rules~~
8 ~~by order.~~

9 "~~(b) An owner or operator of an entity engaged in~~
10 ~~lead hazard reduction activities who fails to comply with~~
11 ~~subsection (a) of this section and rules adopted or orders~~
12 ~~issued thereunder shall be guilty of a Class C misdemeanor.~~

13 "(a) Any person who violates this chapter or the
14 rules adopted pursuant to this chapter is subject to a civil
15 penalty as follows:

16 "(1) For a first violation, the board may issue a
17 civil penalty of up to two hundred fifty dollars (\$250) per
18 violation per day for each day during which the act or
19 omission continues or occurs. In lieu of paying the fine, a
20 violator may opt to successfully complete an accredited lead
21 abatement training course appropriate for the type of category
22 of renovation abatement discipline, register in the state
23 accreditation registry, and become a board-certified firm.

24 "(2) For a second violation, the board may assess a
25 civil penalty of up to five hundred dollars (\$500) per
26 violation per day for each day during which the act or
27 omission continues or occurs and require mandatory successful

1 completion of an accredited lead abatement training course
2 appropriate for the type or category of renovation abatement
3 discipline, register in the state accreditation registry, and
4 become a board-certified firm.

5 "(3) For a third or subsequent violation, the board
6 may assess a civil penalty of up to two thousand five hundred
7 dollars (\$2,500) per day for each day during which the act or
8 omission continues or occurs.

9 "(b) Any person against whom a civil penalty has
10 been assessed may obtain a review of the assessment by filing
11 with the board a written petition setting forth the grounds
12 and reasons for the objection and requesting a hearing. If a
13 petition for review is not filed within 30 days after the date
14 the assessment is served, the violator shall be deemed to have
15 consented to the assessment and it shall become final.

16 "(c) Whenever an assessment has become final because
17 of a person's failure to appeal the board's assessment, the
18 board may apply to the appropriate court for a judgment and
19 seek execution of the judgment. In such proceedings, the court
20 shall treat a failure to appeal the assessment as a confession
21 of judgment in the amount of the assessment.

22 "(d) In lieu of the administrative procedure
23 provided in subsections (a), (b), and (c), the board may
24 institute proceedings for assessment of a civil penalty in the
25 Circuit Court of Montgomery County, or in the circuit court of
26 the county in which all or part of the violation occurred.

1 "(e) In determining the amount of the civil penalty
2 to assess, the board may consider all of the following
3 factors:

4 "(1) Whether the civil penalty imposed will be a
5 substantial economic deterrent to the unlawful activity.

6 "(2) The potential or actual harm posed to
7 individuals or the environment by the violation.

8 "(3) The cause of the violation.

9 "(4) The effectiveness of action taken by the
10 violation to cease the violation.

11 "(5) The economic benefit gained by the violator.

12 "(f) All fees collected and all fines, penalties,
13 and funds of any nature received by the State Health Officer
14 under authority of this chapter shall be remitted to the State
15 Board of Health to the credit of the Lead Reduction Fund. The
16 expenses incurred by the board in carrying out this chapter
17 shall be paid from moneys in the Lead Reduction Fund; however,
18 the expenditure from the fund shall be budgeted and allotted
19 in accordance with Sections 41-4-80 through 41-4-96 and
20 Sections 41-19-1 through 41-19-12.

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

1 "(h) In addition to civil penalties, any person
2 violating this chapter shall be guilty of a Class A
3 misdemeanor.

4 "(i) In addition to any penalties authorized under
5 this section, the State Health Officer may require any person
6 violating this chapter to complete additional training."

7 Section 2. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended, because the
13 bill defines a new crime or amends the definition of an
14 existing crime.

15 Section 3. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.