

1 HB408
2 189309-1
3 By Representative Ingram
4 RFD: Health
5 First Read: 13-FEB-18

2
3
4
5
6
7
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 a 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 a new or increased expenditure of local funds within the
26 meaning of Amendment 621 of the Constitution of Alabama of
27 1901, now appearing as Section 111.05 of the Official

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§22-37A-2.

8 "As used in this chapter, the following terms have
9 the following meanings:

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

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

19 "b. All preparation, cleanup, disposal, and
20 post-abatement clearance testing activities associated with
21 such measures.

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

1 under this chapter, and who holds a valid registration in the
2 state accreditation registry for the relevant type or category
3 of lead hazard reduction activity.

4 "~~(2)~~(3) ACCREDITED LEAD TRAINING COURSE. A course of
5 instruction which has been reviewed and accredited by Safe
6 State as meeting or exceeding training requirements
7 established under Title IV of the Federal Toxic Substances
8 Control Act (Public Law 99-519, 100 Stat. 2970, 15 U.S.C.
9 §2601 et seq., as amended).

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

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

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

23 "~~(4)~~(7) INDOOR. The enclosed portions of buildings
24 including public buildings, residences, and commercial
25 buildings. For the purposes of this chapter, "indoor" shall
26 include the exterior surfaces and all common areas of the
27 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. Renovation 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 such housing for the
12 elderly or person with disabilities, or any zero-bedroom
13 dwelling.

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) Certify all individuals involved in lead-based
24 paint abatement activities.

25 "(2) Issue, reissue, suspend, revoke, or deny the
26 issuance or reissuance of certificates for accredited
27 individuals.

1 "(3) Establish standards for the program.

2 "(4) Insure compliance with regulations.

3 "(5) Enforce the certification program.

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

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

15 ~~"(2) Conduct research or participate in research~~
16 ~~within the state.~~

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

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

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

25 "(b) The department and its designated staff may
26 enter any structure, including residences, where lead-based
27 paint activities have occurred, or are being conducted, for

1 the purpose of determining compliance with lead-based paint
2 abatement requirements, provided they do either of the
3 following:

4 "(1) Obtain the consent of the owner or an adult
5 occupant of the premises after presenting credentials
6 identifying themselves as employees of the department.

7 "(2) Apply for and obtain a warrant from a court
8 with jurisdiction, which shall be issued by the court upon a
9 showing of probable cause that the inhabitants of a dwelling
10 are likely to suffer adverse health effects from continued
11 exposure to a lead-based paint hazard.

12 "§22-37A-5.

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

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

10 ~~"(c) The board shall establish decertification and~~
11 ~~recertification policies and procedures for each type of lead~~
12 ~~hazard service contractor.~~

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

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

26 "(a) No person shall be certified under this chapter
27 unless that person has successfully completed the appropriate

1 training program, passed an examination approved by the
2 department for the appropriate category of certification, and
3 completed any additional requirements imposed by the board by
4 rule.

5 "(b) No person shall perform or represent that he or
6 she is qualified to perform any lead-based paint activities
7 unless the person possesses the appropriate certification as
8 determined by the board or unless that person is any of the
9 following:

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

12 "(2) An employee of a property management company
13 doing minor repairs and maintenance activities upon property
14 managed by that company where there is insignificant damage,
15 wear, or corrosion of existing lead-containing paint or
16 coating substances.

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

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

1 "(d) The board is authorized to issue a corrective
2 action order to any person who violates this chapter or any
3 rule adopted pursuant to this chapter. The order shall specify
4 the provision of this chapter or any rule alleged to have been
5 violated and shall order necessary corrective action be taken
6 within a reasonable time to be prescribed in the order.

7 "(e) The board is authorized to revoke or suspend
8 any license, certification, or approval issued under this
9 chapter, in accordance with the rules adopted pursuant to this
10 chapter.

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

16 "§22-37A-6.

17 "(a) Safe State, a division of the University of
18 Alabama, is designated as the state accreditation agency for
19 lead hazard training.

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

24 "(c) Safe State shall establish and maintain a state
25 registry of accredited individuals who have successfully
26 completed accredited lead training courses and who meet all

1 other personal accreditation requirements established by Safe
2 State under this chapter.

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

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

12 "(f) Safe State may establish reasonable fees for
13 the conduct of the accreditation and registration programs and
14 expend the fees to administer the program.

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

23 "(h) Safe State may negotiate and establish
24 reciprocity agreements with other states where equivalency of
25 lead training accreditation or registration of individuals, or
26 both, can be demonstrated.

27 "§22-37A-7.

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

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

10 "(a) (1) Any person who violates any provision of
11 this chapter or the rules adopted pursuant to this chapter is
12 subject to a civil penalty of up to ten thousand dollars
13 (\$10,000) per day for each day during which the act or
14 omission continues or occurs.

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

17 "a. The State Health Officer may issue a civil
18 penalty assessment against any person responsible for the
19 violation.

20 "b. Any person against whom an assessment has been
21 issued may obtain a review of the assessment by filing with
22 the State Health Officer a written petition setting forth the
23 grounds and reasons for the objection, and requesting a
24 hearing. If a petition for review is not filed within 30 days
25 after the date the assessment is served, the violator shall be
26 deemed to have consented to the assessment and it shall become
27 final.

1 "c. Whenever an assessment has become final because
2 of a person's failure to appeal the department's assessment,
3 the State Health Officer may apply to the appropriate court
4 for a judgment and seek execution of the judgment. The court,
5 in such proceedings, shall treat a failure to appeal the
6 assessment as a confession of judgment in the amount of the
7 assessment.

8 "d. In lieu of the administrative assessment
9 procedure, the State Health Officer may also institute
10 proceedings for assessment of a civil penalty in the circuit
11 court of Montgomery County, or in the circuit court of the
12 county in which all or part of the violation occurred.

13 "e. In assessing the civil penalty, the State Health
14 Officer may consider the following factors:

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

17 "2. The potential or actual harm posed to people or
18 the environment by the violation.

19 "3. The cause of the violation.

20 "4. The effectiveness of action taken by the
21 violation to cease the violation.

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

23 "f. All fees collected and all fines, penalties, and
24 funds of any nature received by the State Board of Health
25 under authority of this chapter shall be remitted to the State
26 Board of Health to the credit of the Lead Reduction Fund. The
27 expenses incurred by the State Board of Health in carrying out

1 this chapter shall be paid from moneys in the Lead Reduction
2 Fund; however, the expenditure from the fund shall be budgeted
3 and allotted pursuant to the Budget Management Act and Article
4 4 of Chapter 4 of Title 41.

5 "g. If it appears that a person has violated, is
6 violating, or is threatening to violate this chapter or a rule
7 adopted or order issued under this chapter, the State Health
8 Officer or a county health officer, as appropriate, may
9 institute a civil suit in his or her own name in a circuit
10 court to obtain injunctive relief to restrain the person from
11 continuing the violation or threat of violation.

12 "h. Any person violating the provisions of this
13 chapter shall be guilty of a Class A misdemeanor.

14 "(b) In addition to, or in lieu of, any penalties
15 authorized under this chapter, the State Health Officer may
16 require any person violating this chapter to complete
17 additional training."

18 Section 2. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended, because the
24 bill defines a new crime or amends the definition of an
25 existing crime.

1 Section 3. Sections 22-37A-8 and 22-37A-9, Code of
2 Alabama 1975, relating to injunctive relief and the
3 distribution of fines and fees collected, are repealed.

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