

1 SB158
2 216339-3
3 By Senator Singleton
4 RFD: Judiciary
5 First Read: 01-FEB-22

1 SB158

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4 ENROLLED, An Act,

5 Relating to lead abatement; to amend Sections
6 22-37A-2 to 22-37A-7, inclusive, Code of Alabama 1975, to
7 further regulate lead hazard reductions; to revise the
8 authority of the State Board of Health to conduct lead
9 inspections, enforce the Alabama Lead Reduction Act of 1997,
10 and increase civil and criminal penalties for a violation; to
11 provide for definitions; to provide criminal penalties for a
12 violation; and in connection therewith would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds within the meaning of Amendment 621
15 of the Constitution of Alabama of 1901, as amended by
16 Amendment 890, now appearing as Section 111.05 of the Official
17 Recompilation of the Constitution of Alabama of 1901, as
18 amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 "§22-37A-2.

23 As used in this chapter, the following terms have
24 the following meanings:

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

5 "a. Removal of lead-based paint or lead contaminated
6 dust, the permanent containment or encapsulation of lead-based
7 paint, the replacement of lead-painted surfaces or fixtures,
8 and the removal or covering of lead contaminated soil.

9 "b. All preparation, cleanup, disposal, and
10 post-abatement clearance testing activities associated with
11 measures described in paragraph a.

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

21 ~~"(2)~~ (3) ACCREDITED LEAD TRAINING COURSE. A course of
22 instruction which has been reviewed and accredited by Safe
23 State as meeting or exceeding training requirements
24 established under Title IV of the Federal Toxic Substances

1 Control Act (Public Law 99-519, 100 Stat. 2970, 15 U.S.C. §
2 2601 et seq., as amended).

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

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

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

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

21 ~~"(5)(8)~~ LEAD HAZARD REDUCTION ACTIVITIES. Activities
22 designed to reduce exposure to lead in residences or public
23 buildings and may include inspections, risk assessments,
24 repair, enclosure, encapsulation, or removal of lead-based
25 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.,
4 as 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 or portion thereof that

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

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

18 ~~(8)~~(13) SAFE STATE. The Safe State Program, a
19 division of the University of Alabama.

20 "(14) TARGET HOUSING. The term as defined in 40
21 C.F.R. § 745.103.

22 "§22-37A-3.

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

1 ~~"(b) (a)~~ The board may develop shall establish a
2 statewide program to identify and reduce the threat to human
3 health posed by exposure to lead. In furtherance of this
4 purpose, the board may perform each of the following
5 functions:

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

8 ~~"(2) Conduct research or participate in research~~
9 ~~within the state.~~

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

11 "(1) Certify all individuals involved in lead-based
12 paint activities.

13 "(2) Issue, reissue, suspend, revoke, or deny the
14 issuance or reissuance of certificates for accredited
15 individuals.

16 "(3) Establish standards for the program.

17 "(4) Ensure compliance with state and federal rules
18 and regulations.

19 "(5) Enforce the certification program.

20 "(6) Establish a program for the education of owners
21 and occupants of target housing and child-occupied facilities
22 concerning lead-based paint hazards. This program shall
23 require persons who perform renovation in such facilities for
24 compensation to provide owners and occupants with a lead
25 hazard information pamphlet prior to commencing the

1 renovation. The program shall meet the requirements of the
2 federal program under the Lead Based Paint Exposure Reduction
3 Act, 15 U.S.C. § 2681 et seq.

4 ~~(4)(7) Make contracts and execute~~ Execute contracts
5 and other instruments that are necessary or convenient to the
6 exercise of ~~its~~ the board's powers or the performance of ~~its~~
7 the board's duties under this chapter.

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

10 ~~"(6)(9)~~ Assist persons in evaluating existing or
11 potential health hazards from lead, including, but not limited
12 to, health hazards from external sources that infiltrate the
13 indoor environment and those from materials, processes, or
14 human activities in the indoor environment.

15 ~~"(7)(10)~~ Assist persons in methods to control,
16 remove, or minimize sources of lead.

17 ~~"(8) Advise, consult, and cooperate on matters of~~
18 ~~common interest in lead hazard reduction with other agencies~~
19 ~~of the state, political subdivisions of the state, industries,~~
20 ~~other states, the federal government, and interested persons~~
21 ~~or groups.~~

22 ~~"(9)(11)~~ Represent the state in matters relating to
23 lead hazard reduction and apply for and receive, on behalf of
24 the state, matching grants, gifts, donations, foundation
25 awards, or other legitimate means of support for the intents

1 and purposes of this chapter, and to make other decisions
2 concerning the fiscal aspects of the powers, duties, programs,
3 and activities of the board under this chapter.

4 "(12) Enter into cooperative agreements with, and
5 accept grant assistance from, the United States Environmental
6 Protection Agency in support of certification provisions of
7 Title IV of the Federal Toxic Substances Control Act or from
8 any other governmental agency or other authority to carry out
9 the intent of this chapter.

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

18 ~~"(11)~~ (14) Establish by rule a fee schedule for
19 performing lead investigations and services, which may not in
20 any case exceed the actual costs.

21 ~~"(12)~~ (15) Subject to the Alabama Administrative
22 Procedure Act, publish guidelines ~~in~~ for performing lead
23 hazard reduction.

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

1 "(c) (1) This chapter shall not apply to any person
2 engaged in smelting and refining or to the operation of
3 facilities for smelting and refining. Smelting and refining or
4 the operation of facilities for smelting and refining are
5 exempt from this chapter.

6 "(2) This chapter shall not be construed or
7 interpreted to grant the State Board of Health or the
8 Department of Public Health the authority to regulate the
9 smelting and refining industry.

10 "§22-37A-4.

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

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

21 "a. Enter the business premises of a person
22 certified to engage in lead-based paint activities during
23 business hours upon presenting credentials identifying himself
24 or herself as an employee of the board.

1 "b. Enter any structure, including a residence,
2 where lead-based paint activities have occurred, or are being
3 conducted, by certified or uncertified contractors for the
4 purpose of determining compliance with lead-based paint laws,
5 rules, and regulations, provided the employee obtains the
6 consent of the owner, an adult occupant of the premises, or
7 the owner's or occupant's designee after presenting
8 credentials identifying himself or herself as an employee of
9 the board.

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

13 "§22-37A-5.

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

1 ~~to eliminate lead-based paint or lead-based paint hazards or~~
2 ~~to plan such activities.~~

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

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

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

22 ~~"(e) The board may enter into cooperative agreements~~
23 ~~with and accept grant assistance from the U.S. Environmental~~
24 ~~Protection Agency in support of certification provisions of~~
25 ~~Title IV of the Federal Toxic Substances Control Act or from~~

1 ~~any other agency of government or under other authority to~~
2 ~~carry out the intents of this chapter.~~

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

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

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

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

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

1 "(c) The board shall adopt rules establishing
2 standards of acceptable professional conduct and work
3 practices for the performance of lead-based paint activities,
4 as well as specific acts and omissions that constitute grounds
5 for any of the following:

6 "(1) The reprimand of any certificate holder.

7 "(2) The suspension, modification, or revocation of
8 a certificate.

9 "(3) The denial of issuance or renewal of a
10 certificate.

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

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

20 "(f) It shall be a violation of this chapter for any
21 person to provide training or engage in lead-based paint
22 activities regulated under this chapter except in such a
23 manner as to conform to and comply with this chapter and all
24 applicable rules and orders established under this chapter."

25 "§22-37A-6.

1 "(a) Safe State, a division of the University of
2 Alabama, is designated as the state accreditation agency for
3 lead hazard training.

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

8 "(c) Safe State shall establish and maintain a state
9 registry of accredited individuals who have successfully
10 completed accredited lead training courses and who meet all
11 other personal accreditation requirements established by Safe
12 State under this chapter.

13 "(d) An individual who provides or participates in
14 the lead hazard reduction activities ~~described in Section~~
15 ~~22-37A-5~~ shall obtain valid Safe State registration and
16 certification from the board prior to engaging in such
17 activities.

18 "(e) Subject to the Alabama Administrative Procedure
19 Act, Safe State shall develop and publish policies and
20 procedures governing the accreditation of lead training
21 courses and the registration of accredited individuals.

22 "(f) Safe State may establish reasonable fees for
23 the conduct of the accreditation and registration programs and
24 expend the fees to administer the program.

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

9 "(h) Safe State may negotiate and establish
10 reciprocity agreements with other states where equivalency of
11 lead training accreditation or registration of individuals, or
12 both, can be demonstrated."

13 "§22-37A-7.

14 "~~(a) Persons engaged in lead hazard reduction~~
15 ~~activities shall be certified by the board and observe proper~~
16 ~~removal procedures and precautions, as established by the~~
17 ~~rules adopted by the board. The board may enforce such rules~~
18 ~~by order.~~

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

23 "(a) Any person who violates this chapter or the
24 rules adopted pursuant to this chapter is subject to a civil
25 penalty as follows:

1 "(1) For a first violation, the board may issue a
2 civil penalty of up to two hundred fifty dollars (\$250) per
3 violation for each day during which the act or omission
4 continues or occurs. The board may waive the penalty upon the
5 person successfully completing an accredited lead abatement
6 training course appropriate for the type of category of
7 renovation abatement discipline, registering in the state
8 accreditation registry, and becoming a board-certified firm.

9 "(2) For a second violation, the board may assess a
10 civil penalty of up to five hundred dollars (\$500) per
11 violation for each day during which the act or omission
12 continues or occurs. The board may require the person to
13 successfully complete an accredited lead abatement training
14 course appropriate for the type or category of renovation
15 abatement discipline, registering in the state accreditation
16 registry, and becoming a board-certified firm.

17 "(3) For a third or subsequent violation, the board
18 may assess a civil penalty of up to two thousand five hundred
19 dollars (\$2,500) per violation for each day during which the
20 act or omission continues or occurs, with a maximum penalty of
21 five thousand dollars (\$5,000) per violation.

22 "(b) Any person against whom a civil penalty has
23 been assessed may obtain a review of the assessment by filing
24 with the board a written petition setting forth the grounds
25 and reasons for the objection and requesting a hearing. If a

1 petition for review is not filed within 30 days after the date
2 the assessment is served, the violator shall be deemed to have
3 consented to the assessment and it shall become final.

4 "(c) Whenever an assessment has become final because
5 of a person's failure to appeal the board's assessment, the
6 board may apply to the appropriate court for a judgment and
7 seek execution of the judgment. In such proceedings, the court
8 shall treat a failure to appeal the assessment as a confession
9 of judgment in the amount of the assessment.

10 "(d) In determining the amount of the civil penalty
11 to assess, the board may consider all of the following
12 factors:

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

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

17 "(3) The cause of the violation.

18 "(4) The effectiveness of action taken by the
19 violator to cease the violation.

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

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

1 shall be paid from monies in the Lead Reduction Fund; however,
2 the expenditure from the fund shall be budgeted and allotted
3 in accordance with Sections 41-4-80 through 41-4-96 and
4 Sections 41-19-1 through 41-19-12.

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) In addition to any civil penalty provided under
13 this section, any person violating this chapter shall be
14 guilty of a Class A misdemeanor.

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

18 Section 2. Section 22-37A-7.1 is added to the Code
19 of Alabama 1975, to read as follows:

20 §22-37A-7.1.

21 Notwithstanding the administrative procedure
22 provided in subsections (a), (b), and (c) of Section 22-37A-7,
23 the board may institute proceedings for assessment of a civil
24 penalty in the Circuit Court of Montgomery County, or in the

1 circuit court of the county in which all or part of the
2 violation occurred.

3 Section 3. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, as amended
7 by Amendment 890, now appearing as Section 111.05 of the
8 Official Recompilation of the Constitution of Alabama of 1901,
9 as amended, because the bill defines a new crime or amends the
10 definition of an existing crime.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB158

Senate 30-MAR-22

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 07-APR-22

By: Senator Singleton