

1 SB143
2 206528-2
3 By Senator Singleton
4 RFD: Healthcare
5 First Read: 02-FEB-21

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§22-37A-2.

1 As used in this chapter, the following terms have
2 the following meanings:

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

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

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

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

23 "~~(2)~~ (3) ACCREDITED LEAD TRAINING COURSE. A course of
24 instruction which has been reviewed and accredited by Safe
25 State as meeting or exceeding training requirements
26 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. For the purposes of this chapter, "indoor" shall
8 include the exterior surfaces and all common areas of the
9 structure including any attached or unattached structure
10 located within the same lot line, including but not limited
11 to, garages, play equipment, and 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
26 planning of such activities, and other related activities as
27 established in Title IV of Toxic Substances Control Act,

1 Public Law 99-519, 100 Stat. 2970, 15 U.S.C. §2601 et seq., as
2 amended, which are to be performed in residences or public
3 buildings.

4 "~~(6)~~(9) PERSON. An individual, firm, partnership,
5 corporation, commission, state agency, county governmental
6 body, municipal corporation, party, company, association, or
7 any other public or private legal entity.

8 "~~(7)~~(10) PUBLIC BUILDING. A building designed for
9 public access and maintained for the public benefit through
10 the use of state or local government funds, including public
11 housing, schools, day care centers, and government facilities,
12 or any location at which Title IV of the Federal Toxic
13 Substances Control Act, or regulations thereunder, require
14 lead-based paint activities be performed by an accredited
15 individual, as those terms are defined in that act, such as
16 commercial buildings and bridges. This term ~~shall~~ does not
17 apply to any of the following:

18 a. Business facilities where access is principally
19 limited to employees.

20 b. Private clubs and residences.

21 c. Commercial buildings.

22 "(11) RENOVATION. The modification of any target
23 housing or child-occupied facility structure or portion
24 thereof that results in the disturbance of painted surfaces
25 unless that activity is performed as part of an abatement
26 activity. The term includes, but is not limited to, the
27 removal, modification, re-coating, or repair of painted

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

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

14 ~~"(8)~~ (13) SAFE STATE. The Safe State Program, a
15 division of the University of Alabama.

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

18 "§22-37A-3.

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

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

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

3 ~~"(2) Conduct research or participate in research~~
4 ~~within the state.~~

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

6 "(1) Certify all individuals involved in lead-based
7 paint activities.

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

11 "(3) Establish standards for the program.

12 "(4) Ensure compliance with state and federal rules
13 and regulations.

14 "(5) Enforce the certification program.

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

24 ~~(4)~~(7) Make contracts and execute Execute contracts
25 and other instruments that are necessary or convenient to the
26 exercise of ~~its~~ the board's powers or the performance of ~~its~~
27 the board's duties under this chapter.

1 "~~(5)~~(8) Encourage voluntary cooperation by persons
2 or affected groups to achieve the purposes of this chapter.

3 "~~(6)~~(9) Assist persons in evaluating existing or
4 potential health hazards from lead, including, but not limited
5 to, health hazards from external sources that infiltrate the
6 indoor environment and those from materials, processes, or
7 human activities in the indoor environment.

8 "~~(7)~~(10) Assist persons in methods to control,
9 remove, or minimize sources of lead.

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

15 "~~(9)~~(11) Represent the state in matters relating to
16 lead hazard reduction and apply for and receive, on behalf of
17 the state, matching grants, gifts, donations, foundation
18 awards, or other legitimate means of support for the intents
19 and purposes of this chapter, and to make other decisions
20 concerning the fiscal aspects of the powers, duties, programs,
21 and activities of the board under this chapter.

22 "(12) Enter into cooperative agreements with, and
23 accept grant assistance from, the United States Environmental
24 Protection Agency in support of certification provisions of
25 Title IV of the Federal Toxic Substances Control Act or from
26 any other governmental agency or other authority to carry out
27 the intent of this chapter.

1 "~~(10)~~(13) Enter into cooperative agreements or
2 contracts to demonstrate practices, methods, technologies, or
3 processes which may be effective in controlling sources or
4 potential sources of lead, preventing the occurrence of lead,
5 and reducing exposure to lead; and accept financial assistance
6 in the form of grants from public agencies and authorities,
7 nonprofit institutions and organizations, educational
8 institutions, or other persons.

9 "~~(11)~~(14) Establish by rule a fee schedule for
10 performing lead investigations and services, which may not in
11 any case exceed the actual costs.

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

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

17 "(c) (1) This chapter shall not apply to any person
18 engaged in smelting and refining or to the operation of
19 facilities for smelting and refining. Smelting and refining or
20 the operation of facilities for smelting and refining is
21 exempt from this chapter.

22 (2) This chapter shall not be construed or
23 interpreted to grant the State Board of Health or the
24 Department of Public Health the authority to regulate smelting
25 and refining.

26 "§22-37A-4.

1 "(a) The State Health Officer may conduct
2 investigations as necessary to administer this chapter, and
3 the rules adopted and orders issued under this chapter. The
4 State Health Officer may conduct investigations of general
5 lead contamination problems or conditions in public buildings,
6 and upon request of the building owner of commercial
7 buildings, or upon the request of the owner or occupant of
8 residential buildings.

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

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

15 "b. Enter any structure, including residences, where
16 lead-based paint activities have occurred, or are being
17 conducted, for the purpose of determining compliance with
18 lead-based paint laws, rules, and regulations, provided he or
19 she obtains the consent of the owner, adult occupant of the
20 premises, or the owner's or occupant's designee after
21 presenting credentials identifying himself or herself as an
22 employee of the board.

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

26 "§22-37A-5.

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

15 ~~"(b) Subject to the Alabama Administrative Procedure~~
16 ~~Act, the board shall develop and publish certification~~
17 ~~procedures for each type of contractor in lead hazard~~
18 ~~reduction activities and specify qualifications, including,~~
19 ~~but not limited to, training accreditation and blood lead~~
20 ~~tests for personnel. The satisfaction of these qualifications~~
21 ~~shall be documented by the contractor before the contractor is~~
22 ~~certified and permitted to engage in the provision of lead~~
23 ~~hazard reduction activities.~~

24 ~~"(c) The board shall establish decertification and~~
25 ~~recertification policies and procedures for each type of lead~~
26 ~~hazard service contractor.~~

1 ~~"(d) The board may establish by rule reasonable and~~
2 ~~necessary fees for the conduct of the contractor certification~~
3 ~~program and for the performance of field inspections of~~
4 ~~abatement projects. The board may adopt rules, including~~
5 ~~definitions and standards, and issue necessary orders to~~
6 ~~implement this chapter, which rules and orders shall have the~~
7 ~~effect of law.~~

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

14 "(a) An individual may not be certified under this
15 chapter unless the individual has successfully completed the
16 appropriate training program, passed an examination approved
17 by the board for the appropriate category of certification,
18 and completed any additional requirements imposed by the board
19 by rule.

20 "(b) An individual may not perform or represent that
21 he or she is qualified to perform any lead-based paint
22 activities unless the individual possesses the appropriate
23 certification as determined by the board or unless the
24 individual is any of the following:

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

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

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

10 "(c) The board shall adopt rules establishing
11 standards of acceptable professional conduct and work
12 practices for the performance of lead-based paint activities,
13 as well as specific acts and omissions that constitute grounds
14 for the reprimand of any certificate holder, the suspension,
15 modification, or revocation of a certificate, or the denial of
16 issuance or renewal of a certificate.

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

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

26 "(f) It shall be unlawful for any person to provide
27 training or engage in lead-based paint activities regulated

1 under this chapter except in such a manner as to conform to
2 and comply with this chapter and all applicable rules and
3 orders established under this chapter.

4 "§22-37A-6.

5 "(a) Safe State, a division of the University of
6 Alabama, is designated as the state accreditation agency for
7 lead hazard training.

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

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

17 "(d) An individual who provides or participates in
18 the lead hazard reduction activities ~~described in Section~~
19 ~~22-37A-5~~ shall obtain valid Safe State registration and
20 certification from the board prior to engaging in such
21 activities.

22 "(e) Subject to the Alabama Administrative Procedure
23 Act, Safe State shall develop and publish policies and
24 procedures governing the accreditation of lead training
25 courses and the registration of accredited individuals.

1 "(f) Safe State may establish reasonable fees for
2 the conduct of the accreditation and registration programs and
3 expend the fees to administer the program.

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

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

16 "§22-37A-7.

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

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

1 "(a) Any person who violates this chapter or the
2 rules adopted pursuant to this chapter is subject to a civil
3 penalty as follows:

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

12 "(2) For a second violation, the board may assess a
13 civil penalty of up to five hundred dollars (\$500) per
14 violation per day for each day during which the act or
15 omission continues or occurs and require mandatory successful
16 completion of an accredited lead abatement training course
17 appropriate for the type or category of renovation abatement
18 discipline, register in the state accreditation registry, and
19 become a board-certified firm.

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

24 "(b) Any person against whom a civil penalty has
25 been assessed may obtain a review of the assessment by filing
26 with the board a written petition setting forth the grounds
27 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 lieu of the administrative procedure
11 provided in subsections (a), (b), and (c), the board may
12 institute proceedings for assessment of a civil penalty in the
13 Circuit Court of Montgomery County, or in the circuit court of
14 the county in which all or part of the violation occurred.

15 "(e) In determining the amount of the civil penalty
16 to assess, the board may consider all of the following
17 factors:

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

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

22 "(3) The cause of the violation.

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

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

26 "(f) All fees collected and all fines, penalties,
27 and funds of any nature received by the State Health Officer

1 under authority of this chapter shall be remitted to the State
2 Board of Health to the credit of the Lead Reduction Fund. The
3 expenses incurred by the board in carrying out this chapter
4 shall be paid from moneys in the Lead Reduction Fund; however,
5 the expenditure from the fund shall be budgeted and allotted
6 in accordance with Sections 41-4-80 through 41-4-96 and
7 Sections 41-19-1 through 41-19-12.

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

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

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

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

1 bill defines a new crime or amends the definition of an
2 existing crime.

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

1
2
3
4
5
6
7
8
9
10

11
12
13
14
15
16
17

Senate

Read for the first time and referred to the Senate
committee on Healthcare..... 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 01-APR-21

Read for the third time and passed as amended 15-APR-21

Yeas 25
Nays 3

Patrick Harris,
Secretary.