

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

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, as amended by Amendment 890, now appearing
19 as Section 111.05 of the Official ReCompilation of
20 the Constitution of Alabama of 1901, as amended,
21 prohibits a general law whose purpose or effect
22 would be to require a new or increased expenditure
23 of local funds from becoming effective with regard
24 to a local governmental entity without enactment by
25 a 2/3 vote unless: it comes within one of a number
26 of 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.

10
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 civil and criminal penalties for a violation; to
21 provide for definitions; to provide criminal penalties for a
22 violation; and in connection therewith would have as its
23 purpose or effect the requirement of a new or increased
24 expenditure of local funds within the meaning of Amendment 621
25 of the Constitution of Alabama of 1901, as amended by
26 Amendment 890, 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 to 22-37A-7, inclusive,
5 Code of Alabama 1975, are amended to read as follows:

6 "§22-37A-2.

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

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

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

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

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

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

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

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

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

18 "(6) INSPECTION. A surface-by-surface investigation
19 to determine the presence of lead-based paint and the
20 provision of a report explaining the results of the
21 investigation.

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

1 "~~(5)~~(8) LEAD HAZARD REDUCTION ACTIVITIES. Activities
2 designed to reduce exposure to lead in residences or public
3 buildings and may include inspections, risk assessments,
4 repair, enclosure, encapsulation, or removal of lead-based
5 paint or lead contamination, or both, and the design and
6 planning of such activities, and other related activities as
7 established in Title IV of Toxic Substances Control Act,
8 Public Law 99-519, 100 Stat. 2970, 15 U.S.C. § 2601 et seq.,
9 as amended, which are to be performed in residences or public
10 buildings.

11 "~~(6)~~(9) PERSON. An individual, firm, partnership,
12 corporation, commission, state agency, county governmental
13 body, municipal corporation, party, company, association, or
14 any other public or private legal entity.

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

25 "a. Business facilities where access is principally
26 limited to employees.

27 "b. Private clubs and residences.

1 "c. Commercial buildings.

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

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

21 ~~"(8)~~(13) SAFE STATE. The Safe State Program, a
22 division of the University of Alabama.

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

25 "§22-37A-3.

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

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

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

11 ~~"(2) Conduct research or participate in research~~
12 ~~within the state.~~

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

14 "(1) Certify all individuals involved in lead-based
15 paint activities.

16 "(2) Issue, reissue, suspend, revoke, or deny the
17 issuance or reissuance of certificates for accredited
18 individuals.

19 "(3) Establish standards for the program.

20 "(4) Ensure compliance with state and federal rules
21 and regulations.

22 "(5) Enforce the certification program.

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

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

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

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

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

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

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

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

1 concerning the fiscal aspects of the powers, duties, programs,
2 and activities of the board under this chapter.

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

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

17 ~~"(11)~~ (14) Establish by rule a fee schedule for
18 performing lead investigations and services, which may not in
19 any case exceed the actual costs.

20 ~~"(12)~~ (15) Subject to the Alabama Administrative
21 Procedure Act, publish guidelines ~~in~~ for performing lead
22 hazard reduction.

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

25 "(c) (1) This chapter shall not apply to any person
26 engaged in smelting and refining or to the operation of
27 facilities for smelting and refining. Smelting and refining or

1 the operation of facilities for smelting and refining are
2 exempt from this chapter.

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

7 "§22-37A-4.

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

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

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

22 "b. Enter any structure, including a residence,
23 where lead-based paint activities have occurred, or are being
24 conducted, by certified or uncertified contractors for the
25 purpose of determining compliance with lead-based paint laws,
26 rules, and regulations, provided the employee obtains the
27 consent of the owner, an adult occupant of the premises, or

1 the owner's or occupant's designee after presenting
2 credentials identifying himself or herself as an employee of
3 the board.

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

7 "§22-37A-5.

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

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

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

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

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

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

20 "(a) An individual may not be certified to engage in
21 lead-based paint activities under this chapter unless the
22 individual has successfully completed the appropriate training
23 program, passed an examination approved by the board for the
24 appropriate category of certification, and completed any
25 additional requirements imposed by the board by rule.

26 "(b) An individual may not perform or represent that
27 he or she is qualified to perform any lead-based paint

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

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

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

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

15 "(c) The board shall adopt rules establishing
16 standards of acceptable professional conduct and work
17 practices for the performance of lead-based paint activities,
18 as well as specific acts and omissions that constitute grounds
19 for any of the following:

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

21 "(2) The suspension, modification, or revocation of
22 a certificate.

23 "(3) The denial of issuance or renewal of a
24 certificate.

25 "(d) The board may issue a corrective action order
26 to any person who violates this chapter or any rule adopted
27 pursuant to this chapter. The order shall specify the

1 provision of this chapter or any rule alleged to have been
2 violated and shall order necessary corrective action be taken
3 within a reasonable time to be prescribed in the order.

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

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

12 "§22-37A-6.

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

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

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

25 "(d) An individual who provides or participates in
26 the lead hazard reduction activities ~~described in Section~~
27 ~~22-37A-5~~ shall obtain valid Safe State registration and

1 certification from the board prior to engaging in such
2 activities.

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

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

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

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

22 "§22-37A-7.

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

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

5 "(a) Any person who violates this chapter or the
6 rules adopted pursuant to this chapter is subject to a civil
7 penalty as follows:

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

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

24 "(3) For a third or subsequent violation, the board
25 may assess a civil penalty of up to two thousand five hundred
26 dollars (\$2,500) per violation for each day during which the

1 act or omission continues or occurs, with a maximum penalty of
2 five thousand dollars (\$5,000) per violation.

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

10 "(c) Whenever an assessment has become final because
11 of a person's failure to appeal the board's assessment, the
12 board may apply to the appropriate court for a judgment and
13 seek execution of the judgment. In such proceedings, the court
14 shall treat a failure to appeal the assessment as a confession
15 of judgment in the amount of the assessment.

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

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

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

23 "(3) The cause of the violation.

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

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

1 "(f) All fees collected and all fines, penalties,
2 and funds of any nature received by the State Health Officer
3 under authority of this chapter shall be remitted to the State
4 Board of Health to the credit of the Lead Reduction Fund. The
5 expenses incurred by the board in carrying out this chapter
6 shall be paid from monies in the Lead Reduction Fund; however,
7 the expenditure from the fund shall be budgeted and allotted
8 in accordance with Sections 41-4-80 through 41-4-96 and
9 Sections 41-19-1 through 41-19-12.

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

17 "(h) In addition to any civil penalty provided under
18 this section, any person violating this chapter shall be
19 guilty of a Class A misdemeanor.

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

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

25 §22-37A-7.1.

26 Notwithstanding the administrative procedure
27 provided in subsections (a), (b), and (c) of Section 22-37A-7,

1 the board may institute proceedings for assessment of a civil
2 penalty in the Circuit Court of Montgomery County, or in the
3 circuit court of the county in which all or part of the
4 violation occurred.

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

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