

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 806

Short Title: Childhood Lead Exposure Control.

(Public)

Sponsors: Senators Conder, Forrester; and Hartsell.

Referred to: Children & Human Resources.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE CONTROL OF LEAD EXPOSURE OF CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. Part 4 of Article 5 of Chapter 130A of the General Statutes is amended by adding the following new sections to read:

"§ 130A-131.7. Definitions.

As used in this Part, unless the context requires otherwise, the term:

(1) 'Abatement' means the elimination or control of lead poisoning hazards by methods approved by the Department.

(2) 'Confirmed elevated blood lead level' means a blood lead concentration of 20 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a six-month period.

(3) 'Day care facility' means a structure or structures used as a school, nursery, child care center, clinic, treatment center, or other facility serving the needs of children under 6 years of age including the grounds, any outbuildings, or other structures appurtenant to the facility.

(4) 'Department' means the Department of Environment, Health, and Natural Resources or its authorized agent.

(5) 'Dwelling' or 'Dwelling unit' means a structure, all or part of which is designed or used for human habitation, including the common areas, the

- 1 grounds, any outbuildings, or other structures appurtenant to the
2 dwelling or dwelling unit.
- 3 (6) 'Lead poisoning hazard' means the presence of readily accessible or
4 mouthable lead-bearing substances measuring 1.0 milligram per square
5 centimeter or greater by X-ray fluorescence or 0.5 percent or greater by
6 chemical analysis; or 15 parts per billion or greater in drinking water; or
7 100 micrograms per square foot or greater for dust on floors; or 500
8 micrograms per square foot or greater for dust on window sills; or 800
9 micrograms per square foot or greater for dust in window troughs, or
10 soil lead concentrations in an amount greater than or equal to 400 parts
11 per million that is determined by the Department to present a hazard in
12 light of (i) the condition and use of the land and (ii) other relevant
13 factors.
- 14 (7) 'Lead-safe housing' is housing that has either been tested by a person
15 that is certified by the Department to perform such testing and found to
16 have no lead-based paint hazards within the meaning of Title X of the
17 Residential Lead-Based Paint Hazard Reduction Act of 1992, 14 U.S.C.
18 § 485(b)(15), or which meets the requirements of the maintenance
19 standard.
- 20 (8) 'Managing agent' means any person who has charge, care, or control of a
21 building or part thereof in which dwelling units or rooming units are
22 leased.
- 23 (9) 'Maintenance standard' means the following:
- 24 a. Repairing and repainting areas of deteriorated paint inside a
25 residential housing unit;
- 26 b. Cleaning the interior of the unit to remove dust that may contain
27 hazardous amounts of lead as defined by the Department;
- 28 c. Adjusting doors and windows to minimize friction or impact on
29 surfaces;
- 30 d. Subject to the occupant's approval, appropriately cleaning any
31 carpets;
- 32 e. Taking such steps as are necessary to ensure that all interior
33 surfaces on which dust might collect are readily cleanable; and
- 34 f. Providing the occupant or occupants all information required to
35 be provided under the Residential Lead-Based Paint Hazard
36 Reduction Act of 1992, and amendments thereto.
- 37 (10) 'Mouthable lead-bearing substance' means any substance on surfaces or
38 fixtures five feet or less from the floor or ground that form a protruding
39 corner or similar edge, or protrude one-half inch or more from a flat
40 wall surface, or are freestanding, containing lead-contaminated dust at a
41 level that constitutes a lead poisoning hazard. Mouthable surfaces or
42 fixtures include toys, vinyl miniblinds, doors, door jams, stairs, stair
43 rails, windows, windowsills, and baseboards.

- 1 (11) 'Persistent elevated blood lead level' means a blood lead concentration
2 of 15-19 micrograms per deciliter determined by the lowest of three
3 consecutive blood tests. The first two blood tests shall be performed
4 within a six-month period, and the third blood test shall be performed at
5 least 12 weeks and not more than six months after the second blood test.
- 6 (12) 'Readily accessible lead-bearing substance' means any substance
7 containing lead at a level that constitutes a lead poisoning hazard which
8 can be ingested or inhaled by a child under 6 years of age. Readily
9 accessible substances include deteriorated paint that is peeling,
10 chipping, cracking, flaking, or blistering to the extent that the paint has
11 separated from the substrate. Readily accessible substances also include
12 soil, water, and paint that is chalking.
- 13 (13) 'Regularly visits' means presence at a dwelling, dwelling unit, school, or
14 day care facility for at least two days a week for more than three hours
15 per day.
- 16 (14) 'Supplemental address' means a dwelling, dwelling unit, school, or day
17 care facility where a child with a persistent elevated blood lead level or
18 a confirmed elevated blood lead level regularly visits or attends.
19 Supplemental address also means a dwelling, school, or day care facility
20 where a child resided, regularly visited, or attended within the six
21 months immediately preceding the determination of a persistent
22 elevated blood lead level or a confirmed elevated blood lead level.

23 **"§ 130A-131.8. Reports of blood levels in children.**

24 All laboratories doing business in this State shall report to the Department blood lead
25 levels of one microgram per deciliter or greater for children less than 6 years of age and
26 for individuals whose ages are unknown at the time of testing. Reports shall be made
27 within five working days after test completion on forms provided by the Department or
28 on self-generated forms containing: the child's full name, date of birth, sex, race, address,
29 and Medicaid number, if any; the name, address, and telephone number of the requesting
30 health care provider; the name, address, and telephone number of the testing laboratory;
31 the laboratory results, the specimen type – venous or capillary; the laboratory sample
32 number, and the dates the sample was collected and analyzed. Such reports may be made
33 by electronic submissions.

34 **"§ 130A-131.9. Examination and testing.**

35 When the Department has a reasonable suspicion that a child less than 6 years of age
36 has a persistent elevated blood lead level or a confirmed elevated blood lead level, the
37 Department shall require that child to be examined and tested within 30 days. The
38 Department shall require from the owner, managing agent, or tenant of the dwelling,
39 dwelling unit, school, or day care facility information on each child who resides in,
40 regularly visits, or attends, or, who has within the past six months, resided in, regularly
41 visited, or attended the dwelling or facility. The information required shall include each
42 child's name and date of birth, the names and addresses of each child's parents, legal

1 guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the
2 required information within 10 days of receipt of the request from the Department.

3 **"§ 130A-131.9A. Investigation to identify lead poisoning hazards.**

4 (a) When the Department learns of a persistent elevated blood lead level or a
5 confirmed elevated blood lead level, the Department shall conduct an investigation to
6 identify the lead poisoning hazards to children. The Department shall investigate the
7 dwelling, dwelling unit, school, or day care facility where the child with the persistent
8 elevated blood lead level or the confirmed elevated blood lead level resides, regularly
9 visits, or attends. The Department shall also investigate the supplemental addresses of
10 the child who has a persistent elevated blood lead level or a confirmed elevated blood
11 lead level.

12 (b) The Department shall also conduct an investigation when it reasonably
13 suspects that a lead poisoning hazard to children exists in a dwelling, dwelling unit,
14 school, or day care facility occupied, regularly visited, or attended by a child less than 6
15 years of age.

16 (c) In conducting an investigation, the Department may take samples of surface
17 materials, or other materials suspected of containing lead, for analysis and testing. If
18 samples are taken, chemical determination of the lead content of the samples shall be by
19 atomic absorption spectroscopy or equivalent methods approved by the Department.

20 **"§ 130A-131.9B. Notification.**

21 Upon determination that a lead poisoning hazard exists, the Department shall give
22 written notice of the lead poisoning hazard to the owner or managing agent of the
23 dwelling, dwelling unit, school, or day care facility and to all persons residing in or
24 attending the dwelling or facility. The written notice to the owner or managing agent
25 shall include a list of possible methods of abatement of the lead poisoning hazard.

26 **"§ 130A-131.9C. Abatement.**

27 (a) Upon determination that a child less than 6 years of age has a confirmed
28 elevated blood lead level of 20 micrograms per deciliter or greater and that child resides
29 in, attends, or regularly visits, a dwelling, dwelling unit, school, or day care facility
30 containing lead poisoning hazards, the Department shall require abatement of the lead
31 poisoning hazards. The Department shall also require the abatement of the lead
32 poisoning hazards identified at the supplemental addresses of a child less than 6 years of
33 age with a confirmed elevated blood lead level of 20 micrograms per deciliter or greater.

34 (b) When abatement is required under subsection (a) of this section, the owner or
35 managing agent shall submit a written lead poisoning hazard abatement plan to the
36 Department within 14 days of receipt of the lead poisoning hazard notification and shall
37 obtain written approval of the plan prior to initiating abatement. The lead poisoning
38 hazard abatement plan shall comply with subsections (g), (h), and (i) of this section.

39 (c) If the abatement plan submitted fails to meet the requirements of this section,
40 the Department shall issue an abatement order requiring submission of a modified
41 abatement plan. The order shall indicate the modifications which shall be made to the
42 abatement plan and the date by which the plan as modified shall be submitted to the
43 Department.

1 (d) If the owner or managing agent does not submit an abatement plan within 14
2 days, the Department shall issue an abatement order requiring submission of an
3 abatement plan within five days of receipt of the order.

4 (e) The owner or managing agent shall notify the Department and the occupants of
5 the dates of abatement activities at least three days prior to the commencement of
6 abatement activities.

7 (f) Abatement shall be completed within 60 days of the Department's approval of
8 the abatement plan. If the abatement activities are not completed within 60 days as
9 required, the Department shall issue an order requiring completion of abatement
10 activities. An owner or managing agent may apply to the Department for an extension of
11 the deadline for abatement. The Department may issue an order extending the deadline
12 for 30 days upon proper written application by the owner or managing agent.

13 (g) The following methods of abatement of lead poisoning hazards in paint are
14 prohibited:

15 (1) Stripping paint on-site with methylene chloride-based solutions;

16 (2) Torch or flame burning;

17 (3) Heating paint with a heat gun above 1,100 degrees Fahrenheit;

18 (4) Covering with new paint or wallpaper unless all readily accessible lead-
19 based paint has been removed;

20 (5) Uncontrolled abrasive blasting; or

21 (6) Uncontrolled waterblasting.

22 (h) All lead-containing waste and residue of the abatement of lead shall be
23 removed and disposed of by the person performing the abatement in accordance with
24 applicable federal, State, and local laws and rules.

25 (i) All abatement plans shall require that the lead poisoning hazards be reduced to
26 below the following levels:

27 (1) Floor lead dust levels are less than 100 micrograms per square foot;

28 (2) Windowsill lead dust levels are less than 500 micrograms per square
29 foot;

30 (3) Window trough lead dust levels are less than 800 micrograms per square
31 foot;

32 (4) Soil lead levels are less than 400 parts per million or such other level
33 higher than 400 parts per million as determined by the Department to
34 prevent a hazard in light of the condition and use of the land and in light
35 of other relevant factors; and

36 (5) Drinking water lead levels less than 15 parts per billion.

37 (j) The Department shall verify by visual inspection that the approved abatement
38 plan has been completed. The Department may also verify plan completion by residual
39 lead dust monitoring and soil or drinking water lead level measurement. Compliance
40 with the maintenance standard shall be deemed equivalent to meeting the abatement plan
41 requirements as long as exterior surfaces are also addressed.

1 (k) Removal of children from the dwelling, school, or day care facility shall not
2 constitute abatement if the property continues to be used for a dwelling, school, or day
3 care facility.

4 **"§ 130A-131.9D. Effect of compliance with maintenance standard.**

5 Any owner of a residential housing unit constructed prior to 1978 who is sued by a
6 current or former occupant seeking damages for injuries allegedly arising from exposure
7 to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any
8 injuries sustained by that occupant after the owner first complied with the maintenance
9 standard defined under G.S. 130A-131.7(10) provided the owner has repeated the steps
10 provided for in the maintenance standard annually during such occupancy; or (ii) if the
11 owner is able to show that the unit was lead-safe during the period when the injuries were
12 sustained.

13 **"§ 130A-131.9E. Certificate of evidence of compliance.**

14 An owner of a unit who has complied with the maintenance standard may apply
15 annually to the Department for and upon presentation of acceptable proof of compliance
16 shall be provided by the Department a certificate evidencing such compliance. The
17 owner shall be entitled to the liability relief provided for in G.S. 130A-131.9D upon
18 obtaining such certificate or certificates, or other satisfactory documentation that the
19 maintenance standard has been complied with.

20 **"§ 130A-131.9F. Discrimination in financing.**

21 (a) No bank or financial institution in the business of lending money for the
22 purchase, sale, construction, rehabilitation, improvement, or refinancing of real property
23 or the lending of money secured by an interest in real property may refuse to make such
24 loans merely because of the presence of lead-based paint on the residential real property
25 or in the residential dwelling unit provided that the owner is in compliance with the
26 maintenance standard.

27 (b) Nothing in this section shall (i) require a financial institution to extend a loan
28 or otherwise provide financial assistance if it is clearly evident that health-related issues,
29 other than those related to lead-based paint, make occupancy of the housing
30 accommodation an imminent threat to the health or safety of the occupant, or (ii) be
31 construed to preclude a financial institution from considering the fair market value of the
32 property which will secure the proposed loan.

33 (c) Failure to meet the maintenance standard shall not be deemed a default under
34 existing mortgages."

35 Section 2. The Department shall adopt rules under Chapter 150B of the
36 General Statutes to implement this act.

37 Section 3. There is appropriated from the General Fund to the Department of
38 Environment, Health, and Natural Resources the sum of two hundred thirty seven
39 thousand seventy-nine dollars (\$237,079) for the 1997-98 fiscal year and the sum of two
40 hundred ten thousand eight hundred seventy-nine dollars (\$210,879) for the 1998-99
41 fiscal year to carry out the purposes of this act.

42 Section 4. This act becomes effective October 1, 1997.