

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1007

Short Title: Childhood Lead Exposure Control.

(Public)

Sponsors: Representatives Moore, Tallent; and Morris.

Referred to: Human Resources, if favorable, Appropriations.

April 21, 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 lead poisoning' 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', 'Dwelling unit', or 'Residential housing unit' means a structure, all or part of which is designed or used for human habitation,

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- 1 including the common areas, the grounds, any outbuildings, or other
2 structures appurtenant to the dwelling, dwelling unit, or residential
3 housing unit.
- 4 (6) 'Elevated blood lead level' means a blood lead concentration of 10
5 micrograms per deciliter or greater determined by the lower of two
6 consecutive blood tests within a six-month period.
- 7 (7) 'Lead poisoning hazard' means the presence of readily accessible or
8 mouthable lead-bearing substances measuring 1.0 milligram per square
9 centimeter or greater by X-ray fluorescence or 0.5 percent or greater by
10 chemical analysis; or 15 parts per billion or greater in drinking water; or
11 100 micrograms per square foot or greater for dust on floors; or 500
12 micrograms per square foot or greater for dust on window sills; or 800
13 micrograms per square foot or greater for dust in window troughs, or
14 soil lead concentrations in an amount greater than or equal to 400 parts
15 per million that is determined by the Department to present a hazard in
16 light of (i) the condition and use of the land and (ii) other relevant
17 factors.
- 18 (8) 'Lead-safe housing' is housing that was built since 1978 or that has been
19 tested by a person that has been certified by the Department to perform
20 such testing and either found to have no lead-based paint hazards within
21 the meaning of Title X of the Residential Lead-Based Paint Hazard
22 Reduction Act of 1992, 14 U.S.C. § 485(b)(15), or found to meet the
23 requirements of the maintenance standard.
- 24 (9) 'Managing agent' means any person who has charge, care, or control of a
25 building or part thereof in which dwelling units or rooming units are
26 leased.
- 27 (10) 'Maintenance standard' means the following:
- 28 a. Repairing and repainting areas of deteriorated paint inside a
29 residential housing unit;
- 30 b. Cleaning the interior of the unit to remove dust that constitutes a
31 lead poisoning hazard;
- 32 c. Adjusting doors and windows to minimize friction or impact on
33 surfaces;
- 34 d. Subject to the occupant's approval, appropriately cleaning any
35 carpets;
- 36 e. Taking such steps as are necessary to ensure that all interior
37 surfaces on which dust might collect are readily cleanable; and
- 38 f. Providing the occupant or occupants all information required to
39 be provided under the Residential Lead-Based Paint Hazard
40 Reduction Act of 1992, and amendments thereto.
- 41 (11) 'Mouthable lead-bearing substance' means any substance on surfaces or
42 fixtures five feet or less from the floor or ground that form a protruding
43 corner or similar edge, or protrude one-half inch or more from a flat

1 wall surface, or are freestanding, containing lead-contaminated dust at a
2 level that constitutes a lead poisoning hazard. Mouthable surfaces or
3 fixtures include toys, vinyl miniblinds, doors, door jams, stairs, stair
4 rails, windows, windowsills, and baseboards.

5 (12) 'Persistent elevated blood lead level' means a blood lead concentration
6 of 15-19 micrograms per deciliter determined by the lowest of three
7 consecutive blood tests. The first two blood tests shall be performed
8 within a six-month period, and the third blood test shall be performed at
9 least 12 weeks and not more than six months after the second blood test.

10 (13) 'Readily accessible lead-bearing substance' means any substance
11 containing lead at a level that constitutes a lead poisoning hazard which
12 can be ingested or inhaled by a child under 6 years of age. Readily
13 accessible substances include deteriorated paint that is peeling,
14 chipping, cracking, flaking, or blistering to the extent that the paint has
15 separated from the substrate. Readily accessible substances also include
16 soil, water, and paint that is chalking.

17 (14) 'Regularly visits' means presence at a dwelling, dwelling unit, school, or
18 day care facility for at least two days a week for more than three hours
19 per day.

20 (15) 'Supplemental address' means a dwelling, dwelling unit, school, or day
21 care facility where a child with a persistent elevated blood lead level or
22 a confirmed lead poisoning regularly visits or attends. Supplemental
23 address also means a dwelling, school, or day care facility where a child
24 resided, regularly visited, or attended within the six months immediately
25 preceding the determination of a persistent elevated blood lead level or a
26 confirmed lead poisoning.

27 **"§ 130A-131.8. Reports of blood levels in children.**

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

38 **"§ 130A-131.9. Examination and testing.**

39 When the Department has a reasonable suspicion that a child less than 6 years of age
40 has a persistent elevated blood lead level or a confirmed lead poisoning, the Department
41 shall require that child to be examined and tested within 30 days. The Department shall
42 require from the owner, managing agent, or tenant of the dwelling, dwelling unit, school,
43 or day care facility information on each child who resides in, regularly visits, or attends,

1 or, who has within the past six months, resided in, regularly visited, or attended the
2 dwelling or facility. The information required shall include each child's name and date of
3 birth, the names and addresses of each child's parents, legal guardian, or full-time
4 custodian. The owner, managing agent, or tenant shall submit the required information
5 within 10 days of receipt of the request from the Department.

6 **"§ 130A-131.9A. Investigation to identify lead poisoning hazards.**

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

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

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

22 **"§ 130A-131.9B. Notification.**

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

28 **"§ 130A-131.9C. Abatement.**

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

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

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

1 abatement plan and the date by which the plan as modified shall be submitted to the
2 Department.

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

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

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

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

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

18 (2) Torch or flame burning;

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

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

22 (5) Uncontrolled abrasive blasting; or

23 (6) Uncontrolled waterblasting.

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

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

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

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

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

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

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

39 (j) The Department shall verify by visual inspection that the approved abatement
40 plan has been completed. The Department may also verify plan completion by residual
41 lead dust monitoring and soil or drinking water lead level measurement. Compliance
42 with the maintenance standard shall be deemed equivalent to meeting the abatement plan
43 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 and obtained a certificate of
11 compliance under G.S. 130A-131.9E annually during such occupancy; or (ii) if the owner
12 is able to show that the unit was lead-safe housing containing no lead-based paint hazards
13 during the period when the injuries were sustained.

14 **"§ 130A-131.9E. Certificate of evidence of compliance.**

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

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 housing unit provided that the owner is in compliance with the
26 maintenance standard and has obtained a certificate of compliance under G.S. 130A-
27 131.9E annually.

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

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

36 **"§ 130A-191.9G. Application fees for certificates of compliance.**

37 The Department shall establish and collect an application fee for certificates of
38 compliance. These fees shall be used to support the Childhood Lead Exposure Control
39 program in the Department. The application fee shall not exceed ten dollars (\$10.00).

40 **"§ 130A-191.9H. Resident responsibilities.**

41 In any residential housing unit occupied by a child less than six years old who has an
42 elevated blood lead level of 10 micrograms per deciliter or greater, the Department shall
43 advise, in writing, the owner or managing agent and the child's parents or legal guardian

1 as to the importance of carrying out routine cleaning activities in the units they occupy,
2 own, or manage. Such cleaning activities shall include:

3 (1) Wiping clean all window sills with a damp cloth or sponge at least
4 weekly;

5 (2) Regularly washing all surfaces accessible to children;

6 (3) In the case of a leased residential housing unit, identifying any
7 deteriorated paint in the unit and notifying the owner or managing agent
8 of such conditions within 72 hours of discovery; and

9 (4) Identifying and understanding potential lead poisoning hazards in the
10 environment of each child under the age of six in the unit (including
11 toys, vinyl miniblinds, playground equipment, drinking water, soil, and
12 painted surfaces), and taking steps to prevent children from ingesting
13 lead such as encouraging children to wash their face and hands
14 frequently and especially after playing outdoors."

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

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

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