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SB-1076 Lead-based paint. (2021-2022)

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Senate Bill No. 1076

CHAPTER 507

An act to amend Section 105254 of, and to add Section 105250.5 to, the Health and Safety Code, relating to lead-based paint.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1076, Archuleta. Lead-based paint.

Existing law requires the State Department of Public Health to implement and administer a residential lead-based paint hazard reduction program, as specified, including adopting regulations regarding accreditation of providers of health and safety training to employees who engage in or supervise lead-related construction work, as defined, and certification of employees who have successfully completed that training. Existing law requires the department to adopt regulations to establish and impose fees for those accreditations and certifications and for licensing entities engaged in lead-related occupations, as specified. Existing law requires those fees to be deposited into the Lead-Related Construction Fund, as specified, and to be available for specified uses upon appropriation by the Legislature.

This bill would require the department to review and amend its regulations governing lead-related construction work, including training and certification for workers and accreditation for trainers in lead-safe work practices, to comply with existing state regulations and the United States Environmental Protection Agency's Lead Renovation, Repair, and Painting Rule, as specified. The bill would require the adoption of those regulations to establish fee provisions for those certifications and accreditations. The bill would require the fees to be deposited into the Lead-Related Construction Fund. The bill would require the department to adopt emergency regulations to implement these provisions, as specified.

Existing law requires certain persons engaged in lead construction work to have a certificate. A violation of that provision is a crime.

This bill, on and after January 1, 2024, would further require a firm, as defined, and at least one person onsite and employed by a firm, doing renovation, repair, or painting work that will disturb lead-based paint or presumed lead-based paint, as defined, to have a certificate. The bill would also make a violation of these provisions punishable by a civil or criminal penalty, as specified. By creating a new crime, the bill would impose a state-mandated local program.

This bill, on or before July 1, 2023, would require the department to develop and implement an education and outreach program for every person and firm that is required to have a certificate, to include information on who is required to have a certificate and the requirements and process to obtain a certificate. The bill would require the department to provide educational and outreach materials to the Contractors State License Board for the board to post on its internet website.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 105250.5 is added to the Health and Safety Code, to read:

105250.5. (a) The department shall review and amend its regulations governing lead-related construction work, including training and certification for workers and accreditation for trainers in lead-safe work practices to comply with regulations adopted pursuant to Sections 105250 and 124160 and the United States Environmental Protection Agency's Lead Renovation, Repair and Painting Rule (40 C.F.R. 745).

(b) The amended regulations adopted pursuant to subdivision (a) shall include, but not be limited to, requiring a copy of the worker and firm certification to be provided before the start of the job to the prime contractor or other employers on the site and to be posted on the job site beside the Division of Occupational Safety and Health Lead-Work Pre-Job Notification required by subdivision (p) of Section 1532.1 of Title 8 of the California Code of Regulations.

(c) Consistent with Section 105250, the department shall also adopt regulations establishing fees for the certifications or accreditations established pursuant to this section. The fees imposed under this section shall be established at levels not exceeding an amount sufficient to cover the costs of developing, administering, and enforcing the standards and regulations adopted under this section. The fees established pursuant to this section shall be deposited into the Lead-Related Construction Fund, established pursuant to Section 105250.

(d) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing these provisions. The department may readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and two readoptions of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the two readoptions of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the two readoptions of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State, and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

SEC. 2. Section 105254 of the Health and Safety Code is amended to read:

105254. (a) The following persons engaged in the following types of lead construction work shall have a certificate:

(1) Persons who receive pay for doing lead hazard evaluations, including, but not limited to, lead inspections, lead risk assessments, or lead clearance inspections, in residential or public buildings.

(2) Persons preparing or designing plans for the abatement of lead-based paint or lead hazards from residential or public buildings.

(3) Persons doing work designed to reduce or eliminate lead hazards on a permanent basis (to last 20 years or more) from residential or public buildings.

(4) Persons inspecting for lead or doing lead abatement activities in a public elementary school, preschool, or day care center.

(5) Persons doing lead-related construction work in a residential or public building that will expose a person to airborne lead at or above the eight-hour permissible exposure limit of 50 micrograms per cubic meter.

(b) On and after January 1, 2024, the following shall also have a certificate: a firm, as defined by Section 745.83 of Title 40 of the Code of Federal Regulations, and at least one person onsite and employed by a firm, doing renovation, repair, or painting work for compensation in a residential or public building that will disturb lead-based paint, as defined in Section 35033 of Title 17 of the California Code of Regulations, or presumed lead-based paint, as defined in Section 35043 of Title 17 of the California Code of Regulations, which regulations were adopted by the State Department of Public Health pursuant to Sections 105250 and 124160.

(c) Persons performing routine maintenance and repairs in housing are not required to have a certificate if they are not performing any of the activities listed under subdivisions (a) and (b).

(d) The department may adopt regulations to modify certification requirements for persons engaged in lead construction work based on changes to state or federal law, or programmatic need.

(e) The department or any local enforcement agency may, consistent with Section 17972, enter, inspect, and photograph any premises where abatement, a lead hazard evaluation, or renovation, repair, or painting is being conducted or has been ordered, enter the place of business of any person who conducts abatement, lead hazard evaluations, or renovation, repair, or painting, and inspect and copy any business record of any person who conducts abatement, lead hazard evaluation, or renovation, repair, or painting to determine whether the person is complying with this section.

(f) (1) A violation of subdivision (a) shall be punishable by a civil penalty of no less than five thousand dollars (\$5,000) per violation per day.

(2) A violation of subdivision (b) shall be punishable by a civil penalty of no less than ten thousand dollars (\$10,000) per violation per day.

(3) Each subsequent violation of this section may be subject to imposition of a civil penalty of no more than thirty-seven thousand five hundred dollars (\$37,500) per violation per day or punishable by imprisonment for no more than six months in the county jail, a fine of no more than one thousand dollars (\$1,000), or by both that imprisonment and fine. In assessing the amount of the criminal or civil penalty, any one or more of the relevant circumstances shall be considered: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the misconduct, and the violator's assets, liabilities, net worth, and other relevant factors.

(g) (1) The State Department of Public Health shall develop and implement an education and outreach program for every person and firm that is required to have a certificate pursuant to subdivisions (a) and (b). The program shall include information on who is required to have a certificate and the requirements and process to obtain a certificate. The program shall be implemented on or before July 1, 2023.

(2) The department shall provide educational and outreach materials to the Contractors State License Board for the board to make the materials available to contractors and consumers on its internet website.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.