

112TH CONGRESS  
2D SESSION

# S. 2148

To amend the Toxic Substances Control Act relating to lead-based paint renovation and remodeling activities.

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## IN THE SENATE OF THE UNITED STATES

MARCH 1, 2012

Mr. INHOFE (for himself, Mr. VITTER, Mr. COBURN, Mr. GRASSLEY, Mr. BLUNT, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Toxic Substances Control Act relating to lead-based paint renovation and remodeling activities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Lead Exposure Reduc-  
5       tion Amendments Act of 2012”.

6       **SEC. 2. DEFINITIONS.**

7       Section 401 of the Toxic Substances Control Act (15  
8       U.S.C. 2681) is amended—

9               (1) in paragraph (1)—

1 (A) by redesignating subparagraphs (A)  
 2 and (B) as clauses (i) and (ii), respectively, and  
 3 indenting the clauses appropriately;

4 (B) in the first sentence, by striking “The  
 5 term” and inserting the following:

6 “(A) IN GENERAL.—The term”;

7 (C) by striking “Such term includes—”  
 8 and inserting the following:

9 “(B) INCLUSIONS.—The term ‘abatement’  
 10 includes—”; and

11 (D) by adding at the end the following:

12 “(C) EXCLUSIONS.—The term ‘abatement’  
 13 does not include any renovation, remodeling,  
 14 landscaping, or other activity—

15 “(i) the primary purpose of which is  
 16 to repair, restore, or remodel a structure  
 17 or dwelling; and

18 “(ii) that incidentally results in a re-  
 19 duction or elimination of lead-based paint  
 20 hazards.”;

21 (2) by redesignating paragraphs (4) through  
 22 (12) and paragraphs (13) through (17) as para-  
 23 graphs (5) through (13) and paragraphs (15)  
 24 through (19), respectively;

1 (3) by inserting after paragraph (3) the fol-  
 2 lowing:

3 “(4) EMERGENCY RENOVATION.—The term  
 4 ‘emergency renovation’ means a renovation, replace-  
 5 ment, or repair activity that—

6 “(A) was not planned; and

7 “(B) results from a sudden, unexpected  
 8 event that, if not immediately attended to—

9 “(i) presents a risk to the public  
 10 health or safety; or

11 “(ii) threatens to cause significant  
 12 damage to equipment or property.”;

13 (4) by striking paragraph (10) (as redesignated  
 14 by paragraph (2)) and inserting the following:

15 “(10) LEAD-BASED PAINT.—The term ‘lead-  
 16 based paint’ means paint or other surface coatings  
 17 that contain lead—

18 “(A) in excess of—

19 “(i) 1.0 milligrams per centimeter  
 20 squared; or

21 “(ii) 0.5 percent by weight; or

22 “(B) in the case of paint or other surface  
 23 coatings on target housing, the lower level es-  
 24 tablished by the Secretary of Housing and  
 25 Urban Development under section 302(c) of the

1           Lead-Based Paint Poisoning Prevention Act  
2           (42 U.S.C. 4801 et seq.).”;

3           (5) by inserting after paragraph (13) (as redes-  
4           ignated by paragraph (2)) the following:

5           “(14) POST-ABATEMENT CLEARANCE TEST-  
6           ING.—The term ‘post-abatement clearance testing’  
7           means a test that—

8           “(A) is carried out on the completion of  
9           any lead-based paint activity to ensure that—

10           “(i) the reduction is complete; and

11           “(ii) no lead-contaminated dust haz-  
12           ards remain in the dwelling unit or work-  
13           site; and

14           “(B) includes a visual assessment and the  
15           collection and analysis of environmental sam-  
16           ples from the dwelling or worksite.”; and

17           (6) by adding at the end the following:

18           “(20) TEST KIT.—The term ‘test kit’ means a  
19           chemical test that has the ability to determine the  
20           presence of lead in a paint chip, paint powder, or  
21           painted surface at a level that is equal to or in ex-  
22           cess of—

23           “(A) 1.0 milligrams per centimeter  
24           squared; or

25           “(B) 0.5 percent by weight.”.

1 **SEC. 3. LEAD-BASED PAINT ACTIVITIES TRAINING AND**  
2 **CERTIFICATION.**

3 Section 402(c) of the Toxic Substances Control Act  
4 (15 U.S.C. 2682(c)) is amended—

5 (1) by striking paragraph (2) and inserting the  
6 following:

7 “(2) STUDY OF CERTIFICATION.—

8 “(A) IN GENERAL.—Prior to proposing  
9 any new regulation applicable to target housing  
10 or public or commercial buildings constructed  
11 before 1978, the Administrator shall conduct a  
12 study of the extent to which persons engaged in  
13 various types of renovation and remodeling ac-  
14 tivities in the target housing or public or com-  
15 mercial buildings constructed before 1978—

16 “(i) are exposed to lead in the conduct  
17 of those activities; or

18 “(ii) disturb lead and create a lead-  
19 based paint hazard on a regular or occa-  
20 sional basis.

21 “(B) COMPLETION.—The Administrator  
22 shall complete each study under subparagraph  
23 (A) and publish the results of that study not  
24 later than 1 year prior to proposing any new  
25 regulation applicable to a structure or dwelling  
26 described in subparagraph (A).”;

1 (2) in paragraph (3)—

2 (A) in the first sentence, by striking  
3 “Within 4 years” and inserting the following:

4 “(A) IN GENERAL.—Not later than 4  
5 years”;

6 (B) in the second sentence, by striking “In  
7 determining” and inserting the following:

8 “(B) USE OF STUDY.—In determining”;

9 (C) in the third sentence, by striking “If  
10 the Administrator” and inserting the following:

11 “(C) DETERMINATION OF ADMINIS-  
12 TRATOR.—If the Administrator”; and

13 (D) by adding at the end the following:

14 “(D) EXEMPTION.—An emergency renova-  
15 tion shall be exempt from any regulation pro-  
16 mulgated by the Administrator under this para-  
17 graph.

18 “(E) PROHIBITION ON POST-ABATEMENT  
19 CLEARANCE REQUIREMENT.—No regulation  
20 promulgated by the Administrator under this  
21 paragraph shall require post-abatement clear-  
22 ance testing.”; and

23 (3) by adding at the end the following:

24 “(4) TARGET HOUSING OWNERS.—

1           “(A) IN GENERAL.—Not later than 60  
 2           days after the date of enactment of this para-  
 3           graph and subject to subparagraph (B), in pro-  
 4           mulgating any regulation relating to renovation  
 5           or remodeling activities in target housing in  
 6           which the owner resides, the Administrator  
 7           shall include a provision that permits the owner  
 8           to authorize the renovation or remodeling con-  
 9           tractor to forego compliance with that regula-  
 10          tion.

11           “(B) RESTRICTION.—The Administrator  
 12          shall only permit an owner of target housing to  
 13          forgo compliance with a regulation under this  
 14          paragraph if—

15           “(i) no pregnant woman or child  
 16           under the age of 6 resides in the target  
 17           housing as of the date on which the ren-  
 18           ovation or remodeling commences; and

19           “(ii) the owner submits to the renova-  
 20           tion or remodeling contractor written cer-  
 21           tification that—

22           “(I) the renovation or remodeling  
 23           project is to be carried out at the tar-  
 24           get housing of the owner;

1 “(II) no pregnant woman or child  
 2 under the age of 6 resides in the tar-  
 3 get housing as of the date on which  
 4 the renovation or remodeling com-  
 5 mences; and

6 “(III) the owner acknowledges  
 7 that, in carrying out the project, the  
 8 renovation or remodeling contractor  
 9 will be exempt from employing the  
 10 work practices required by a regula-  
 11 tion promulgated under this sub-  
 12 section.

13 “(C) LIMITATION OF CONTRACTOR LIABIL-  
 14 ITY.—A contractor that receives written certifi-  
 15 cation described in subparagraph (B)(ii) shall  
 16 be exempt from liability resulting from any mis-  
 17 representation of the owner of the target hous-  
 18 ing.

19 “(5) TEST KITS.—

20 “(A) IN GENERAL.—In making a certifi-  
 21 cation determination under this subsection, the  
 22 Administrator shall allow contractors to use  
 23 commercially available lead-based paint test kits  
 24 that comply with the positive and negative re-



1            sponse criteria established by the Adminis-  
2            trator.

3            “(B) TEST KIT APPROVAL.—

4            “(i) IN GENERAL.—The Administrator  
5            shall establish a process by which the Ad-  
6            ministrator shall identify and approve a  
7            test kit that—

8            “(I) meets the criteria described  
9            in subparagraph (A);

10           “(II) is inexpensively and com-  
11           mercially available;

12           “(III) does not require special  
13           training to use the test kit; and

14           “(IV) enables users to determine  
15           the presence of lead at the job site in  
16           accordance with the criteria described  
17           in subparagraph (A) without the need  
18           for off-site laboratory analysis.

19           “(ii) SUSPENSION OF REGULA-  
20           TIONS.—

21           “(I) IN GENERAL.—If the Ad-  
22           ministrator is unable to determine  
23           that 1 or more test kits under clause  
24           (i) exists, the Administrator shall sus-  
25           pend the implementation of any appli-

1 cable regulation under this subsection  
2 relating to renovation or remodeling,  
3 except for owners described in para-  
4 graph (4)(B), until the date on which  
5 the Administrator—

6 “(aa) identifies and ap-  
7 proves 1 or more test kits under  
8 clause (i); and

9 “(bb) publishes in the Fed-  
10 eral Register notice of that iden-  
11 tification and approval.

12 “(II) DURATION.—The Adminis-  
13 trator shall remove the suspension  
14 under this clause not earlier than 45  
15 days after the date on which notifica-  
16 tion of the identification and approval  
17 of the test kit is published in the Fed-  
18 eral Register in accordance with sub-  
19 clause (I)(bb).

20 “(III) APPLICABILITY.—This  
21 clause shall—

22 “(aa) only apply to regula-  
23 tions that permit an owner of  
24 target housing to authorize a  
25 renovation or remodeling con-

1 tractor to forego compliance with  
 2 the regulation; and  
 3 “(bb) not affect any other  
 4 regulation issued under this sub-  
 5 section.

6 “(6) APPLICABILITY OF CERTAIN PENALTIES.—  
 7 Any regulation promulgated by the Administrator  
 8 under this section requiring the submission of docu-  
 9 mentation to the Administrator shall provide—

10 “(A) an exemption from penalty for a per-  
 11 son who—

12 “(i) is submitting the required docu-  
 13 mentation for the first time; and

14 “(ii) submits documentation that con-  
 15 tains de minimus or typographical errors,  
 16 as determined by the Administrator; and

17 “(B) a process by which a person described  
 18 in subparagraph (A) may resubmit the required  
 19 documentation.

20 “(7) ACCREDITATION OF RECERTIFICATION  
 21 COURSES.—Subsection (a)(2)(D) shall not apply to  
 22 any certified renovator recertification course that is  
 23 accredited by the Environmental Protection Agen-  
 24 cy.”.

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