

No. 1990-194

AN ACT

SB 759

Providing for the accreditation of persons engaged in occupations relating to asbestos; providing for certification standards and procedures; providing for additional duties of the Department of Labor and Industry; establishing the Asbestos Control Advisory Committee and providing for its powers and duties; and providing for enforcement and penalties.

The General Assembly finds that improperly performed asbestos removal and other asbestos control measures create unnecessary and undesirable public health hazards. Exposure to airborne asbestos fibers has been shown to cause significant increases in the incidence of diseases such as asbestosis, lung cancer, mesothelioma and other malignancies. Substantial amounts of asbestos-containing materials have been used in buildings for fireproofing, insulation, soundproofing, decoration and other purposes. The presence of airborne asbestos in concentrations far exceeding background ambient levels has been found in buildings where friable asbestos materials are found, but especially where these materials have become damaged or eroded, or where they have been disturbed by maintenance or renovation work. Efforts to prevent exposure to asbestos by improper removal or other improper remedial measures can result in increased exposure for building occupants and the general public if the work is not done in accordance with procedures designed to prevent human and environmental contamination. It is, therefore, the intent of this act to protect the public by preventing increased exposure to asbestos in buildings by establishing a program to accredit asbestos occupations to insure that persons who design or conduct abatement activities at certain facilities have the necessary skill, training, experience and competence to perform these activities. It is further the intent of this act to establish the necessary standards to accredit training courses to insure that persons who design and perform asbestos abatement activities receive the most up-to-date technology and methods to perform these activities. It is further the intent of this act that the Department of Labor and Industry establish fees for these accreditation activities so that they will become self-sustaining.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Asbestos Occupations Accreditation and Certification Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accreditation.” A certificate issued by the Department of Labor and Industry permitting a person to conduct asbestos occupation training courses.

“Asbestos.” The asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

“Asbestos abatement.” Any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material.

“Asbestos-containing material.” Any material that contains more than 1% asbestos by weight.

“Asbestos occupation.” An inspector, management planner, project designer, contractor, supervisor or worker at an asbestos abatement project.

“Building.” All or part of any public or private building or structure.

“Certification.” A certificate issued by the Department of Labor and Industry permitting a person to work in an asbestos occupation and which contains a recent photograph of that person.

“Department.” The Department of Labor and Industry of the Commonwealth.

“EPA.” The Environmental Protection Agency.

“Friable asbestos material.” Any asbestos-containing material that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure, including an asbestos-containing material that will or can reasonably be expected to become friable as a result of the asbestos abatement activity.

“Person.” An individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, the Commonwealth and any of its agencies or political subdivisions, the Federal Government or any of its agencies or any other entity, public or private, however organized.

“Secretary.” The Secretary of Labor and Industry of the Commonwealth.

Section 3. Certification requirement.

It shall be unlawful for any person to engage in any asbestos occupation in any building without proper certification for that occupation from the department.

Section 4. Accreditation standards and procedures.

(a) Regulations of department.—The department shall by regulation establish standards and procedures for the accreditation of asbestos occupation training courses. These regulations shall be at least as stringent as those established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act of 1986 (Public Law 99-519, 15 U.S.C. § 2641 et seq.) and shall include, but not be limited to:

- (1) The characteristics and uses of asbestos and the potential health effects of exposure to asbestos.

(2) Federal, State and local standards relating to asbestos abatement work practices.

(3) Methods to protect personal and public health from asbestos hazards.

(4) Air monitoring.

(5) Safe and proper asbestos abatement techniques.

(6) Proper disposal of waste containing asbestos.

(b) Training courses.—

(1) In accordance with the criteria and qualifications established by the department under subsection (a), the department shall annually accredit training courses that satisfy initial and renewal training requirements for certification for asbestos occupations.

(2) In addition to the other requirements of this section, any person providing a training course for which accreditation is sought demonstrate to the department's satisfaction his ability and proficiency to conduct the training.

(3) Any person providing accredited asbestos occupation training shall make available to the department, at no cost to the department and at such times as the department may deem necessary, all course materials and records and access to actual training sessions.

(4) The department may allow the use of training courses offered in other states or jurisdictions to satisfy the Pennsylvania training requirements, if the department finds that the training received in the other states or jurisdiction meet the requirement for training courses under this act and the regulations promulgated under this act.

(5) All training courses approved by the Environmental Protection Agency on the effective date of this act shall be deemed to be accredited under this section. However, nothing in this section shall prohibit the department from requiring any training provider to comply with its renewal requirements in order to have its accreditation renewed.

(6) Upon the effective date of this act, the requirements of the Environmental Protection Agency's Model Accreditation Program contained in 40 CFR Part 763, Subpart E, Appendix C, establishing the Federal requirements for certification of training courses are adopted as the initial interim standards under this act. These interim accreditation requirements shall remain in effect until the department promulgates regulations under subsection (a).

Section 5. Certification standards and procedures.

(a) Regulation of the department.—The department shall establish by regulation standards and procedures for the certification of persons involved in asbestos occupations. Such standards and procedures shall be at least as stringent as those established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act of 1986 (Public Law 99-519, 15 U.S.C. § 2641 et seq.) and shall include, but not be limited to, the following requirements:

(1) Successful completion of a training course on Pennsylvania's laws and regulations regarding asbestos.

(2) Passing a written examination administered or approved by the department which tests the person's knowledge of Federal and Pennsylvania laws and regulations as they apply to that person's asbestos occupation.

(b) Asbestos occupations.—Any person meeting the requirements established under subsection (a) may be certified by the department to perform asbestos occupations.

(c) Certification in another jurisdiction.—

(1) The department may certify for an asbestos occupation any person who has been certified by another state or territory of the United States or any other jurisdiction which has requirements at least as stringent as those promulgated under subsection (a).

(2) The department shall, within 120 days after the effective date of this act, publish in the Pennsylvania Bulletin a list of those jurisdictions which meet the requirements of paragraph (1) and with which reciprocity will be granted. As the department adds and deletes jurisdictions, it shall publish revised lists.

(3) Except as provided in paragraph (4), any person receiving reciprocal certification under this subsection shall be required to pay the appropriate fee established under section 7 and shall obtain a Pennsylvania certificate.

(4) Any person accredited by a city of the first class or a county of the second class shall be deemed to be certified under this section. In addition, any person certified by a city of the first class or a county of the second class shall not be required to obtain a Pennsylvania certification, provided that such person has been issued a certificate which contains a recent photograph. If the certificate issued by a city of the first class or a county of the second class does not contain a photograph, the person shall reimburse the department for the cost of the issuance of a Pennsylvania accreditation certificate.

(d) Interim certification.—Until the department promulgates regulations establishing a certification program under subsection (a), any person who has successfully completed an EPA-approved training course shall be deemed to be certified in this Commonwealth upon payment of the appropriate fee under section 7 and upon submission of a copy of the appropriate documentation from the EPA-approved training course. Interim certification issued under this section shall be valid for a one-year period.

Section 6. Suspension, revocation, etc.

(a) Grounds.—The department may reprimand, suspend, deny or revoke any accreditation or certification issued under this act to any person who:

(1) Fraudulently or deceptively obtains or attempts to obtain accreditation or certification.

(2) Fails at any time to meet the qualification requirements of this act or any regulations adopted thereunder.

(3) Fails to meet any applicable Federal or State standard relating to asbestos abatement.

- (4) Fails to pay the required accreditation or certification fee.
- (5) Fails to notify the department as required under section 8.

(b) Enforcement proceedings.—No action under this section shall preclude the department from proceeding under section 9.

Section 7. Fees.

(a) Schedules.—The department shall establish a schedule of fees for:

- (1) Certification of inspectors, management planners, project designers, contractors, supervisors and workers at asbestos abatement projects.
- (2) Accreditation of training courses.

(b) Costs.—The fees established under this section shall be based upon the costs incurred by the department in carrying out the asbestos occupation certification and training course accreditation programs established under this act.

(c) Deposit offer.—All fees collected under this act shall be deposited in a separate restricted account in the State Treasury. All moneys in this account are hereby appropriated to the department on a continuing basis to carry out the purposes of this act.

(d) Waivers.—In adopting the schedule of fees under this section, the department may include provisions and procedures for granting a waiver of a fee.

(e) Interim schedule.—Upon the effective date of this section, the following fee schedule is adopted as the interim fee schedule which shall remain in effect until the department promulgates fees as provided in subsection (a) by regulation:

- Worker certification - \$50
- Supervisor certification - \$100
- Project designer certification - \$300
- Inspector certification - \$300
- Management planner certification - \$300
- Contractor certification - \$500
- Training course accreditation - \$1,000

Section 8. Contractor notification of abatement projects.

All contractors performing an asbestos abatement project shall report to the department the start of any asbestos abatement project on a form prescribed by the department. This form shall include at least the following information: name, address and certification verification of the contractor; name, address and political subdivision of the location of the asbestos project; name and mailing address of the building owner, if different than the location; estimated amount of asbestos involved in the abatement project; estimated completion date; and name and address of the landfill where the asbestos will be sent for disposal. Nothing in this section shall prohibit the department from requiring additional information that is deemed necessary to develop and maintain information on asbestos abatement activities within this Commonwealth.

Section 9. Enforcement and penalties.

(a) General rule.—

(1) The provisions of this act shall apply to all asbestos abatement projects in this Commonwealth and shall be enforced by the department, the district attorney of any county or the proper enforcement officer of any municipality in which an asbestos abatement project is occurring.

(2) A municipality may require proof of certification from any person engaged in asbestos occupations within its jurisdiction. For the purposes of this paragraph, the certificate issued by the department or its equivalent shall constitute the required proof of certification.

(b) Cities of the first class and counties of the second class.—Nothing in this act shall be construed as affecting ordinances regulating asbestos abatement projects in cities of the first class or counties of the second class or the licensing and accreditation of asbestos occupations in cities of the first class or counties of the second class in so much as such ordinances are at least as stringent as this act. The duly appointed officers of cities of the first class or counties of the second class shall be equally responsible with the secretary for the enforcement of this act and the regulations of the department pertaining to the certification of asbestos occupations and the accreditation of asbestos occupation training courses.

(c) Powers of enforcement officers.—For the purposes of enforcing the provisions of this act, all the officers charged with its enforcement shall have the power to enter any of the buildings or structures enumerated in section 3, and no person shall hinder or delay or interfere with any of the said officers in the performance of their duty nor refuse information necessary to determine compliance with the provisions of this act and the rules and regulations promulgated hereunder.

(d) Penalties.—

(1) Any person as defined in section 2, except a department, board, bureau or agency of the Commonwealth, engaging in unlawful conduct as set forth in this act, shall, for each offense, upon conviction in a summary proceeding, be sentenced to pay a fine of not less than \$100 nor more than \$1,000, plus the costs of prosecution, and, in default thereof, imprisonment for not less than ten days nor more than 30 days.

(2) Any person who willfully violates this act, including, but not limited to, falsifying documents or records required and submitted under this act, commits a misdemeanor of the third degree for the first two violations and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000, plus the costs of prosecution, or to imprisonment for not more than 90 days, or both. For each subsequent violation, a person commits a misdemeanor of the first degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500, plus the costs of prosecution, or to imprisonment for not more than one year, or both.

(e) Civil penalty.—In addition to any other civil remedy or criminal penalty provided for in this act, the department may levy a civil penalty of not more than \$1,000 a day for an initial violation and a civil penalty of not more than \$5,000 a day for each subsequent violation committed within a three-year period and arising from willful violation of this act.

Section 10. Asbestos Control Advisory Committee.

(a) **Advisory committee created.**—The Asbestos Control Advisory Committee is hereby created to advise the secretary with respect to the rules and regulations of the department promulgated pursuant to this act and other procedures, standards, criteria, guidelines or related matters assigned to it by the secretary.

(b) **Advisory committee membership.**—The advisory committee shall be composed of 11 members appointed by the secretary as follows:

(1) The Secretary of Labor and Industry or his designee, who shall act as chairperson.

(2) The Secretary of Environmental Resources or his designee.

(3) The Secretary of Health or his designee.

(4) Two members who shall represent construction contractors and shall each have a minimum of two years' experience in asbestos abatement.

(5) Two members who shall represent construction unions whose members are engaged in asbestos abatement.

(6) Two members who shall represent the public interest and shall be members of environmental organizations with expertise on asbestos issues.

(7) One member who shall represent building owners.

(8) One member who shall be an environmental consultant and shall have a minimum of three years' experience in consulting on asbestos abatement.

(c) **Asbestos abatement.**—The Asbestos Control Advisory Committee shall also study the need for the creation of an asbestos abatement project permitting program and asbestos abatement project contractor licensure program and shall make recommendations to the secretary based on its findings.

Section 11. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 12. Effective date.

This act shall take effect July 1, 1991.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY