

No. 1998-161

AN ACT

HB 1473

Amending the act of December 19, 1990 (P.L.805, No.194), entitled "An act 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," requiring certain contractors to obtain a license.

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

Section 1. The preamble of the act of December 19, 1990 (P.L.805, No.194), known as the Asbestos Occupations Accreditation and Certification Act, is amended to read:

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. *It is also the intent of this act that the Department of Labor and Industry shall establish*

regulations to enforce this act that are as at least as stringent and as consistent as possible with Federal laws and regulations.

Section 2. The definitions of “asbestos abatement” and “friable asbestos material” in section 2 of the act are amended and the section is amended by adding a definition to read:

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:

* * *

“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] *A method, including removal, encapsulation, enclosure, repair and operation and maintenance, that protects human health and the environment from friable asbestos-containing material.*

“Asbestos abatement contractor license.” *A license issued by the department permitting a company, corporation, partnership or sole proprietorship to provide asbestos abatement services.*

* * *

“Friable asbestos-containing material.” Any [asbestos-containing] material [that] *containing more than 1% asbestos which has been applied on ceilings, walls, structural members, piping, ductwork or any other part of a building, which,* when dry, [can] *may be crumbled, pulverized or reduced to powder by hand pressure[, including an]. The term includes nonfriable asbestos-containing material [that will or can reasonably be expected to become friable as a result of the asbestos abatement activity.] after such previously nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized or reduced to powder by hand pressure.*

* * *

Section 3. Sections 4 and 5 of the act are amended to read:

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 *and as consistent as possible* 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] *or those established for certain occupations by the Environmental Protection Agency under the National Emission Standard for Hazardous Air Pollutants (40 CFR Part 41). These regulations 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 shall 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).

(7) All training course providers must notify the department of their intention to commence a training course at least five days prior to the start of the training course. The notification must be in the form or manner prescribed by the department.

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 *and as consistent as possible* 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] *or those established for certain occupations by the Environmental Protection Agency under the National Emission Standard for Hazardous Air Pollutants (40 CFR Part 41). These regulations* 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.

(e) Interim certification requirement.—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 asbestos occupations are adopted as the initial interim standards under this act. These interim certification requirements shall remain in effect until the department promulgates regulations under subsection (a).

Section 4. The act is amended by adding a section to read:

Section 5.1. Asbestos abatement contractor licenses.

(a) Requirement.—A license is required by all contractors whose primary business is asbestos abatement or who in the course of doing business can reasonably expect to perform asbestos abatement projects.

(b) Standards and procedures for licensing.—The department shall establish by regulation standards and procedures for the licensing of companies, corporations, partnerships and sole proprietors who engage in the business of asbestos abatement. These regulations shall include, but not be limited to, the following requirements:

(1) Experience in the field of asbestos abatement.

(2) Knowledge and ability to correctly and safely organize, manage and perform an asbestos abatement project.

(3) Capability to perform asbestos abatement work, including, but not limited to, necessary equipment, trained personnel, organizational structure, landfill availability, financial stability, experience and/or training of key personnel. In determining capability, the department shall consider the applicant's history of fines, citations or other actions taken by regulatory agencies for certification, work practice and licensing violations.

(4) Completion of application and payment of fee.

(5) Employment of a person certified as an asbestos contractor.

(c) Interim standards and procedures.—Pending promulgation of regulations under subsection (b), the department may establish interim standards and procedures by publishing the standards and procedures in the Pennsylvania Bulletin.

(d) Fee.—The department by regulation shall set the license fee. Upon the effective date of this section, the interim fee shall be \$50. This interim fee shall remain in effect until the department promulgates a fee by regulation.

(e) Duration, renewal and transfer of license.—

(1) Unless the department revokes or suspends a license, the license shall remain in effect for one year from the date of issuance.

(2) An asbestos abatement contractor may apply for renewal of a license in the form and manner prescribed by the department.

(f) Suspension, revocation, etc.—*The department may suspend, revoke or deny any license application for the reasons and in the manner set forth for accreditations and certifications under section 6.*

(g) Enforcement and penalties.—*The department shall have the power to enforce this section in the manner set forth for accreditations and certifications under section 9. The civil and criminal penalties set forth in section 9(d) and (e) shall apply to violations of this section.*

Section 5. Sections 6, 8 and 9(a) of the act are amended to read:

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] sections 4 and 8.

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

Section 8. [Contractor notification of abatement projects] *Notification requirements.*

(a) Contractor notification of abatement projects.—All contractors performing an asbestos abatement project shall report to the department *at least five days prior to* the start of any asbestos abatement project on a form *or manner* prescribed by the department. [This form] *The notification* 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.

(b) Contractor notification of projects relating to certain asbestos.—*All contractors performing work on asbestos-containing material not initially determined to be a friable asbestos-containing material as defined under this act shall notify the department at least five days prior to the start of the project. The notification shall include at least the following information: name and address of the contractor or person performing the work; name, address and political subdivision of the location of the worksite; name and address of the building owner, if different from the work location; and the*

estimated completion date of the project. The department may exclude this notification requirement for projects on private single-family residential units.

(c) Emergency projects.—In the case of an emergency project, the department has the authority to waive or modify notification requirements noted in subsections (a) and (b).

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] *shall* require proof of certification from any person engaged in asbestos [occupations] *abatement* 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.

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Section 6. This act shall take effect in 60 days.

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE