

## LEGISLATIVE BILL 1051

Approved by the Governor April 17, 1986

Introduced by Chizek, 31; Wesely, 26; Chronister, 18;  
Smith, 33; Lynch, 13; Hall, 7

AN ACT relating to asbestos; to define terms; to provide for certain licenses; to provide duties; to create a fund; to provide licensure qualifications; to provide licensure requirements; to provide for the disciplining of certain licensees; to provide exceptions; to provide for certification; to provide penalties; and to provide for notice and a hearing.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Asbestos shall mean asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite;

(2) Asbestos project shall mean an activity involving the actual physical removal, enclosure, or encapsulation of asbestos, except that asbestos project shall not include any consulting activity;

(3) Business entity shall mean a partnership, firm, association, corporation, sole proprietorship, public entity, or other public or private business concern;

(4) Certificate shall mean an authorization issued by the department permitting an individual person to work on an asbestos project;

(5) Department shall mean the Department of Health;

(6) Director shall mean the Director of Health or his or her designee; and

(7) License shall mean an authorization issued by the department permitting a business entity to engage in an asbestos project.

Sec. 2. Except as otherwise provided in this section or section 9 of this act, a business entity shall not engage in an asbestos project unless the business entity holds a license for that purpose. A business entity which uses its own employees for an asbestos project for the purpose of renovating, maintaining, or repairing its own facilities shall not

be required to hold a license, but the business entity shall provide a training program to inform the employees of the health and safety aspects of the asbestos project, including the applicable state standards. The training program shall be available for review and approval upon inspection by the department.

Sec. 3. (1) The department shall administer this act.

(2) The director shall adopt and promulgate rules and regulations necessary to carry out this act in accordance with Chapter 84, article 9. The director shall adopt state standards governing asbestos projects and may adopt or incorporate part or all of any federal standards in such state standards.

(3) The director shall prescribe fees for the inspections and the issuance and renewal of licenses and certificates. The fees shall be based on the costs of inspections, licensing, certification, and otherwise administering this act. All such fees collected by the department shall be paid into the state treasury and shall be credited by the State Treasurer to the Asbestos Removal Cash Fund, which is hereby created. The fund shall be used by the department for the purpose of administering this act.

(4) At least once a year during the continuation of an asbestos project, the department shall conduct an onsite inspection of each licensee's procedures for removing, enclosing, or encapsulating asbestos.

(5) The department may enter into agreements or contracts with public agencies or private contractors to conduct any inspections required under this act.

Sec. 4. To qualify for a license, a business entity shall:

(1) Ensure that each employee or agent of the business entity who will come into contact with asbestos or who will be responsible for an asbestos project is certified to work on an asbestos project;

(2) Demonstrate to the satisfaction of the director that the business entity is capable of complying with all applicable requirements, procedures, and standards pertaining to the asbestos project;

(3) Have access to at least one approved asbestos disposal site for deposit of all asbestos waste that the business entity will generate during the term of the license; and

(4) Meet any other standards established by the director pursuant to this act.

Sec. 5. (1) To apply for a license, a

business entity shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include:

(a) The name and address of the business entity;

(b) A description of the protective clothing and respirators that the business entity will use;

(c) The name and address of each asbestos disposal site that the business entity will use;

(d) A description of the site decontamination procedures that the business entity will use;

(e) A description of the removal, enclosure, and encapsulation methods that the business entity will use;

(f) A description of the procedures that the business entity will use for handling waste containing asbestos;

(g) A description of the air monitoring procedures that the business entity will use;

(h) A description of the procedures that the business entity will use in cleaning up the asbestos project;

(i) The signature of the chief executive officer of the business entity or his or her designee; and

(j) Any other information required by the department.

Sec. 6. (1) A license shall expire on the first anniversary of its effective date unless it is renewed for one year as provided in this section.

(2) At least thirty days before the license expires, the department shall send to the licensee at his or her last-known address a renewal notice which states:

(a) The date on which the current license expires;

(b) The date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and

(c) The amount of the renewal fee.

(3) Before the license expires, the licensee may renew it for an additional one-year period if the licensee:

(a) Is otherwise entitled to be licensed;

(b) Submits a renewal application to the department in the form required by the department; and

(c) Pays the renewal fee prescribed by the department.

Sec. 7. The licensee shall keep a record of each asbestos project and shall make the record available to the department at any reasonable time. All such records shall be kept for at least twenty years. Each record shall include:

- (1) The name, address, and certificate number of the individual who supervised the asbestos project and of each employee or agent who worked on the project;
- (2) The location and description of the project and the amount of asbestos material that was removed;
- (3) The starting and completion dates of each instance of removal, enclosure, or encapsulation;
- (4) A summary of the procedures that were used to comply with all applicable standards;
- (5) The name and address of each asbestos disposal site where the waste containing asbestos was deposited; and
- (6) Any other information required by the department.

Sec. 8. (1) The department may deny, refuse to renew, suspend, or revoke a license in accordance with Chapter 84, article 9, if the licensee:

- (a) Fraudulently or deceptively obtains or attempts to obtain a license;
  - (b) Fails at any time to meet the qualifications for a license or to comply with rules and regulations adopted and promulgated by the director pursuant to this act;
  - (c) Fails to meet any applicable state standard for asbestos projects; or
  - (d) Employs or permits an uncertified person to work on an asbestos project.
- (2) Appeals from the denial, refusal to renew, suspension, or revocation of a license shall be governed by section 14 of this act.

Sec. 9. (1) In an emergency that results from a sudden, unexpected event that is not part of a planned renovation or demolition, the director may waive the requirement for a license.

(2) The director may, on a case-by-case basis, approve an alternative to a specific worker protection requirement for an asbestos project if the business entity submits a written description of the alternative procedure and demonstrates to the director's satisfaction that the proposed alternative procedure provides equivalent worker protection.

(3) If the business entity is not primarily engaged in asbestos projects, the director may waive the

requirement for a license if worker protection requirements are met or an alternative procedure is approved pursuant to subsection (2) of this section.

Sec. 10. (1) An individual person shall not be eligible to work on an asbestos project unless the person holds a certificate issued by the department.

(2) To qualify for a certificate, a person shall have (a) successfully completed a basic course, approved by the director, on the health and safety aspects of asbestos projects, including the applicable state standards, and (b) been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator. A certificate shall be valid for one year. To qualify for a renewal certificate, a person shall have successfully completed an annual review course approved by the director and been reexamined and approved by a physician. Each renewal certificate shall be valid for one year.

(3) Applications for certificates and renewal certificates shall be submitted to the department on forms prescribed by the department and shall be accompanied by the prescribed fee.

(4) The department may deny, refuse to renew, suspend, or revoke a certificate in accordance with Chapter 84, article 9, for failure of the holder to comply with applicable departmental health and safety standards and regulations. Orders suspending or revoking a certificate may be appealed in accordance with section 14 of this act.

Sec. 11. No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any asbestos project from a business entity which does not hold a license from the department at the time the bid is submitted.

Sec. 12. (1) A person or business entity which engages in an asbestos project without a valid license, except as otherwise provided in this act, shall be assessed a civil penalty of five thousand dollars for the first offense.

(2) A person who engages in an asbestos project without a valid certificate, except as otherwise provided in this act, shall be assessed a civil penalty of one thousand dollars for the first offense.

(3) Every person or business entity against whom a civil penalty is proposed to be assessed shall be entitled to notice and hearing pursuant to section 14 of this act.

(4) A person or business entity which has been assessed a civil penalty under this section and subsequently engages in an asbestos project without a valid certificate or license, except as otherwise provided in this act:

(a) For a first offense, shall be guilty of a Class I misdemeanor; and

(b) For a second or subsequent offense, shall be guilty of a Class IV felony.

Sec. 13. The director may institute an action in the name of the state for an injunction or other process against any business entity to restrain or prevent any violation of this act or of any rules and regulations adopted and promulgated pursuant to this act.

Sec. 14. (1) Whenever the department proposes to subject a person to the provisions of section 12 of this act or intends to deny, refuse to renew, suspend, or revoke a license or certificate, it shall notify the person in writing: (a) Setting forth the date, facts, and nature of each act or omission with which the person is charged; (b) specifically identifying the particular provision or provisions of the section, rule, or regulation involved in the violation; (c) notifying the person of the time, date, and place at which a full and fair hearing shall be had on such charge; and (d) notifying the person that the department may deny, refuse to renew, suspend, or revoke a license or certificate or impose a civil penalty for engaging in a project without a license or certificate. The notice shall also advise such person that upon failure to pay the civil penalty, if any, subsequently determined by the department, the penalty may be collected by civil action. The notice shall be delivered to each alleged violator not less than ten days before the time set for the hearing by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated.

(2) Hearings held pursuant to subsection (1) of this section shall be held in accordance with rules and regulations adopted and promulgated by the department and shall provide for the alleged violator to present such evidence as may be proper. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules and regulations of the department. A full and complete record shall be kept of the proceedings.

(3) Following the hearing, the director shall determine whether or not the charges are true, and if true, the director may (a) issue a declaratory order finding the charges to be true or (b) deny, refuse to renew, suspend, or revoke a license or certificate or impose a civil penalty prescribed in section 12 of this act. A copy of such decision, setting forth the finding of facts and the particular reasons upon which it is based, shall be sent by either registered or certified mail to the alleged violator. The decision shall become final thirty days after a copy thereof is mailed, unless the alleged violator, within such thirty-day period, appeals the decision as provided in Chapter 84, article 9.

(4) Any civil penalty assessed and unpaid under this act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, transmit any collected civil penalty to the State Treasurer for deposit in the Permanent School Fund.