

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 650
Committee Substitute Favorable 4/22/93
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Senate Judiciary II Committee Substitute Adopted 6/29/94

Short Title: Asbestos Program Amendments.

(Public)

Sponsors:

Referred to: Finance.

March 29, 1993

A BILL TO BE ENTITLED

1 AN ACT TO AMEND ARTICLE 19 OF CHAPTER 130A OF THE GENERAL
2 STATUTES REGARDING ASBESTOS HAZARD MANAGEMENT AND TO
3 MAKE CERTAIN TECHNICAL CHANGES TO CONFORM WITH RECENT
4 FEDERAL REQUIREMENTS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 130A-22 is amended by adding two new subsections to read:

8 "(b1) The Secretary may impose an administrative penalty on a person who violates
9 Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided
10 in subsection (b2) of this section, the penalty shall not exceed one thousand dollars
11 (\$1,000) per day per violation. Until the Department has notified the person of the
12 violation, a continuing violation shall be treated as one violation. Each day thereafter of
13 a continuing violation shall be treated as a separate violation.

14 In determining the amount of a penalty under this subsection or subsection (b2) of
15 this section, the Secretary shall consider all of the following factors:

- 16 (1) The degree and extent of harm to the natural resources of the State, to
17 the public health, or to private property resulting from the violation.
18 (2) The duration and gravity of the violation.
19 (3) The effect on air quality.
20 (4) The cost of rectifying the damage.
21 (5) The amount of money the violator saved by noncompliance.

- 1 (6) The prior record of the violator in complying or failing to comply with
2 Article 19 of this Chapter or a rule adopted pursuant to that Article.
3 (7) The cost to the State of the enforcement procedures.
4 (8) If applicable, the size of the renovation and demolition involved in the
5 violation.

6 Administrative penalties imposed by the Secretary under this subsection or
7 subsection (b2) of this section shall be credited to the General Fund as nontax
8 revenue.

9 (b2) The penalty for violations of the asbestos NESHAP for renovations and
10 demolitions, as defined in G.S. 130A-444, shall not exceed ten thousand dollars
11 (\$10,000) per day per violation. Until the Department has provided the person with
12 written notification of the violation of the asbestos NESHAP for renovations and
13 demolitions that describes the violation, recommends a general course of action, and
14 establishes a time frame in which to correct the violations, a continuing violation shall
15 be treated as one violation. Each day thereafter of a continuing violation shall be treated
16 as a separate violation. A violation of the asbestos NESHAP for renovations and
17 demolitions is not considered to continue during the period a person who has received
18 the notice of violation is following the general course of action and complying with the
19 time frame set forth in the notice of violation."

20 Sec. 2. G.S. 130A-444 reads as rewritten:

21 "**§ 130A-444. Definitions.**

22 Unless a different meaning is required by the context, the following definitions
23 apply throughout this Article:

- 24 (1) 'AHERA' means Title II, Asbestos Hazard Emergency Response,
25 Response Act of the Toxic Substances Control Act, Pub. L. 99-519, 100
26 Stat. 2970, 15 U.S.C. § 2601, **et seq.**, as amended. ~~amended by the~~
27 Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L.
28 101-637, 104 Stat. 4589 ('ASHARA').
29 (2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine),
30 crocidolite (riebeckite), amosite (cummingtonite-grunerite),
31 anthophyllite, tremolite and actinolite.
32 (3) 'Asbestos containing material' means material which contains more
33 than one percent (1%) ~~asbestos by area, asbestos,~~ including friable
34 asbestos containing material and nonfriable asbestos containing
35 material.
36 (3a) 'Asbestos NESHAP for renovations and demolitions' means Title II,
37 National Emission Standards for Hazardous Air Pollutants, specifically
38 those regulations pertaining to regulation of asbestos in renovations
39 and demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as
40 amended.
41 (4) 'Abatement' means work performed to repair, maintain, remove,
42 isolate, or encapsulate asbestos containing material. The term does not
43 include inspections, preparation of management plans, abatement
44 project design, taking of samples, or project overview.

- 1 (5) 'Friable' means any material that when dry can be broken, crumbled,
 2 pulverized, or reduced to powder by hand pressure, and includes
 3 previously nonfriable material after such material becomes damaged to
 4 the extent that when dry it can be crumbled, pulverized, or reduced to
 5 powder by hand pressure.
- 6 (6) 'Management' means all activities related to asbestos containing
 7 material, including inspections, preparation of management plans,
 8 abatement project design, abatement, project overview, and taking of
 9 samples.
- 10 (6a) 'Person' means an individual, a corporation, a company, an association,
 11 a partnership, a unit of local government, a State or federal agency, or
 12 any other legal entity.
- 13 (7) 'Public area' means those areas in any building other than a residence
 14 that are not covered under the Occupational Safety and Health Act of
 15 1970, Pub. L. 91-596, 84 Stat. 1590, ~~29 U.S.C. § 651 et seq.~~, as amended.
 16 (codified as amended in scattered sections of U.S.C.).
- 17 (8) 'Removal' means stripping, chipping, sanding, sawing, drilling,
 18 scraping, sucking, and other methods of separating material from its
 19 installed location in a building.
- 20 (9) 'Residence' means any single family dwelling or any multi-family
 21 dwelling of fewer than 10 units."

22 Sec. 3. G.S. 130A-447 reads as rewritten:

23 "**§ 130A-447. Accreditation of persons performing asbestos ~~management.~~**
 24 **management and approval of training courses.**

25 (a) No person shall commence or continue to perform asbestos management
 26 activities unless he has been accredited by the Department. No person shall commence
 27 or continue to provide asbestos related training courses unless the course has been
 28 approved by the Department. The Commission shall adopt rules governing the
 29 accreditation of ~~such persons.~~ persons performing asbestos management activities and
 30 the approval of training courses. Such rules shall include categories of accreditation and
 31 shall specify appropriate education, experience, and training requirements. The rules
 32 shall establish separate categories of accreditation for inspectors, management planners,
 33 abatement designers, supervisors, workers, air monitors, and ~~management consultants.~~
 34 supervising air monitors. These rules shall be at least as stringent as the accreditation
 35 plan required under AHERA and regulations adopted pursuant thereto.

36 (b) A person who applies for accreditation in the worker category may engage in
 37 asbestos containing material management activities as though he were accredited in the
 38 worker category for up to 90 days after the date he submits his application. No person
 39 whose application is rejected may continue to engage in asbestos containing material
 40 management activities under this subsection.

41 (c) The following persons are exempt from the accreditation requirements:

- 42 (1) The owner or operator of a building, other than school buildings
 43 subject to the provisions of AHERA, and his permanent employees
 44 when performing ~~asbestos containing material management activities in~~

1 ~~nonpublic areas of the building; small-scale, short duration activities, as~~
2 ~~defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993).~~

3 (2) A person performing asbestos containing material management
4 activities in his personal ~~residence; residence.~~

5 (3) Governmental regulatory personnel performing inspections of asbestos
6 containing material management services under authority of federal,
7 State, or local regulations or rules; and activities solely for the purpose of
8 determining compliance with applicable statutes or regulations.

9 (4) Persons licensed by the General Contractors Licensing Board, State
10 Board of Examiners of Plumbing and Heating Contractors, State Board
11 of Examiners of Electrical Contractors, or the State Board of
12 Refrigeration Examiners when engaged in activities associated with
13 their license when ~~such activities disturb less than 35 cubic feet, 160 square~~
14 ~~feet, or 260 linear feet of asbestos containing material per job, or when~~
15 ~~engaged in such activities under the supervision of an accredited supervisor~~
16 ~~performing small-scale, short duration activities, as defined in 40~~
17 ~~C.F.R. Pt. 763, Subpt. E, Appendix C (1993)."~~

18 Sec. 4. G.S. 130A-448 reads as rewritten:

19 "**§ 130A-448. Asbestos management accreditation fees.** fees and course approval
20 fees.

21 (a) The Department shall establish and collect asbestos containing material
22 management accreditation and annual renewal fees to support the asbestos hazard
23 management program. The fees shall not exceed one hundred dollars (\$100.00) per
24 accreditation category, except that the fee for the abatement worker category shall not
25 exceed twenty-five dollars (\$25.00). A person who is accredited in more than one
26 category shall pay a fee for each category.

27 (b) The Department shall establish and collect fees for approving asbestos
28 management training courses and fees for renewing course approval annually to support
29 the asbestos hazard management program. The fees for approving a training course
30 shall not exceed one thousand five hundred dollars (\$1,500) for each course. The
31 annual renewal fees shall not exceed five hundred dollars (\$500.00) for each course.
32 Each category of a training course shall be subject to a separate fee for its initial
33 approval and a separate fee for its annual renewal."

34 Sec. 5. G.S. 130A-451 reads as rewritten:

35 "**§ 130A-451. Commission to adopt rules.**

36 For the protection of the public health, the Commission shall adopt rules to
37 implement this ~~Article and AHERA.~~ Article, AHERA, and the asbestos NESHAP for
38 renovations and demolitions."

39 Sec. 6. G.S. 143-215.107(a)(5) reads as rewritten:

40 "(5) To develop and adopt ~~such~~ emission control standards as in the
41 judgment of the Commission may be necessary to prohibit, ~~abate~~
42 abate, or control air pollution commensurate with established air
43 quality standards. ~~Such~~ The standards may be applied uniformly to
44 the State as a whole or to any area of the State designated by the

1 Commission. This subdivision does not apply to asbestos
2 NESHAP for renovations and demolitions, defined in G.S. 130A-
3 444, that are subject to regulation by the Commission for Health
4 Services under Article 19 of Chapter 130A of the General
5 Statutes."

6 Sec. 7. Article 19 of Chapter 130A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 130A-452. Local air pollution programs.**

9 (a) The Department may authorize any local air pollution program to enforce the
10 asbestos NESHAP for renovations and demolitions if that program is certified by the
11 North Carolina Environmental Management Commission pursuant to G.S. 143-215.112.
12 The Department shall authorize any local air pollution program to enforce the asbestos
13 NESHAP for renovations and demolitions if the local air pollution program was
14 certified by the North Carolina Environmental Management Commission pursuant to
15 G.S. 143-215.112 prior to October 1, 1994. A local air pollution program shall continue
16 to be authorized by the Department to enforce the asbestos NESHAP for renovations
17 and demolitions so long as the program maintains its certification under G.S. 143-
18 215.112 and complies with any rules adopted by the Commission pursuant to subsection
19 (b) of this section.

20 (b) The Commission shall adopt rules regarding the authorization of local air
21 pollution programs to enforce the asbestos NESHAP for renovations and demolitions."

22 Sec. 8. This act becomes effective October 1, 1994, and applies to violations
23 occurring on or after that date.