

LEGISLATIVE BILL 923

Approved by the Governor April 7, 1990

Introduced by Health and Human Services Committee,
 Wesely, 26, Chairperson; Byars, 30;
 Crosby, 29; Dierks, 40; Lynch, 13;
 Schellpeper, 18; and Robak, 22;
 Hannibal, 4; Nelson, 35; Chizek, 31;
 Beck, 8

AN ACT relating to asbestos; to amend sections 71-6301, 71-6302, and 71-6312, Revised Statutes Supplement, 1988; to redefine terms; to exempt certain business entities from obtaining a license to engage in an asbestos project; to provide a penalty for business entities which use employees who do not hold certificates; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 71-6301, Revised Statutes Supplement, 1988, be amended to read as follows:

71-6301. As used in For purposes of the Asbestos Control Act, unless the context otherwise requires:

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

(2) Asbestos encapsulation project shall mean activities which include the coating of asbestos-containing surface material with a bridging or penetrating type of sealing material for the intended purpose of preventing the continued release of asbestos fibers from the material into the air. Such project shall not include the repainting of a previously painted nonfriable asbestos-containing surface which is not damaged primarily for improving the appearance of such surface;

(3) Asbestos occupation shall mean an inspector, management planner, project designer, supervisor, or worker;

(4) Asbestos project shall mean an asbestos encapsulation project, an asbestos removal project, an asbestos-related demolition project, or an asbestos-related dismantling project but shall not

include (a) any activities which affect three square feet or less or three linear feet or less of asbestos-containing material on or in a structure or equipment or any appurtenances thereto or (b) any activities physically performed by a homeowner, a member of the homeowner's family, or an unpaid volunteer on or in the homeowner's residential property of four units or less;

(5) Asbestos removal project shall mean activities which include the physical removal or enclosure of friable asbestos-containing material from the surface of a structure or from equipment which is intended to remain in place after the removal or enclosure. Such project shall also include the physical removal of asbestos from a structure or equipment after such structure or equipment has been removed as part of an asbestos-related dismantling project;

(6) Asbestos-related demolition project shall mean activities which include the razing of all or a portion of a structure which contains friable asbestos-containing materials or other asbestos-containing materials which may become friable when such materials are cut, crushed, or broken;

(7) Asbestos-related dismantling project shall mean activities which include the disassembly, handling, and moving of the components of any structure or equipment which has been coated with asbestos-containing material without first removing such material from the structure or from the equipment;

(8) Business entity shall mean a partnership, firm, association, corporation, sole proprietorship, public entity, or other public or private business concern involved in an asbestos project except an entity solely involved as a management planner or project designer;

(9) Certificate shall mean an authorization issued by the department permitting an individual person to work in an asbestos occupation;

(10) Department shall mean the Department of Health;

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

(12) Enclosure shall mean the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air;

(13) Friable asbestos shall mean asbestos in a form which can be crumbled, pulverized, or reduced to powder by hand pressure; - Friable asbestos shall

include nonfriable asbestos which is cut, crushed, or broken during the removal process;

(14) Inspector shall mean an individual who is certified by the department to identify and assess the condition of asbestos-containing material;

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

(16) Management planner shall mean an individual who is certified by the department to assess the hazard of materials containing asbestos, to determine the appropriate response actions, and to write management plans;

(17) Project designer shall mean an individual who is certified by the department to formulate plans and write specifications for conducting asbestos projects;

(18) Project review shall mean review of a licensed business entity's proposed asbestos project;

(19) Supervisor shall mean an individual who is certified by the department to supervise and direct an asbestos project in accordance with the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to such act; and

(20) Worker shall mean an individual who is certified by the department to clean, handle, repair, remove, encapsulate, haul, dispose of, or otherwise work with asbestos material in a nonsupervisory capacity.

Sec. 2. That section 71-6302, Revised Statutes Supplement, 1988, be amended to read as follows:

71-6302. Except as otherwise provided in this section or section 71-6309, a business entity shall not engage in an asbestos project unless the business entity holds a license for that purpose. A business entity which (1) only performs asbestos projects which are less than two hundred sixty linear feet or which are less than one hundred sixty square feet and linear feet in any combination or (2) 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. Business entities not required to hold a license ; but the business entity shall provide a training course to inform the employees of the health and safety aspects of the asbestos project, including the applicable state standards. The training course shall meet the standards for such course as prescribed in sections 71-6310.01 and 71-6310.02 and the rules and regulations adopted and promulgated

pursuant to such sections. The training course shall be available for review and approval upon inspection by the department.

Sec. 3. That section 71-6312, Revised Statutes Supplement, 1988, be amended to read as follows:

71-6312. (1) A person or business entity which engages in an asbestos project without a valid license, except as otherwise provided in the Asbestos Control Act, shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) A person who engages in an asbestos occupation without a valid certificate, except as otherwise provided in the act, shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any business entity which knowingly engages in an asbestos project but which uses employees who do not hold a certificate shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

~~(3)~~ (4) The civil penalties prescribed in subsections (1), and (2), and (3) of this section shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

~~(4)~~ (5) A person or business entity which has been assessed a civil penalty under this section and subsequently engages in an asbestos project or an asbestos occupation without a valid certificate or license or using employees who do not hold a certificate, except as otherwise provided in the Asbestos Control 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. 4. That original sections 71-6301, 71-6302, and 71-6312, Revised Statutes Supplement, 1988, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.