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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993



ENROLLED

SENATE BILL NO. 502

(By Senator Blackmire)



PASSED April 10, 1993

In Effect 90 days from Passage

E N R O L L E D

Senate Bill No. 502

(BY SENATOR BRACKENRICH)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen and sixteen, article thirty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections nine-a, nine-b and nine-c, all relating to definitions; powers and duties of the director of health; asbestos management planner's license required; asbestos abatement project designer's license required; asbestos contractor's license required; asbestos abatement supervisor's license required; asbestos inspector's license required; asbestos worker's license required; asbestos analytical laboratory license required; asbestos clearance air monitor license required; resilient floor covering worker license required; special revenue account; notification; waivers; exemptions; approval of asbestos abatement courses; reciprocity; reprimands; suspensions or revocation of license; violations; orders; hearings; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen and sixteen, article

thirty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections nine-a, nine-b and nine-c, all to read as follows:

ARTICLE 32. ASBESTOS ABATEMENT.

§16-32-2. Definitions.

1 (a) "Asbestos" means the asbestiform varieties of
2 chrysolite (serpentine), crocidolite (riebeckite), amosite
3 (cummintonite-grunerite), anthophyllite, tremolite
4 and actinolite.

5 (b) "Asbestos analytical laboratory" means a facility
6 or place which analyzes asbestos bulk samples or
7 asbestos air samples.

8 (c) "Asbestos abatement project designer" means a
9 person who specifies engineering controls, methods
10 and work practices to be used during asbestos abate-
11 ment projects.

12 (d) "Asbestos abatement supervisor" means a person
13 responsible for direction of asbestos abatement
14 projects.

15 (e) "Asbestos clearance air monitor" means a person
16 who performs air monitoring to confirm clearance
17 levels to establish that an area is safe for reoccupancy
18 after an asbestos abatement project.

19 (f) "Asbestos-containing material" means any mate-
20 rial or product which contains more than one percent
21 asbestos by weight.

22 (g) "Asbestos contractor" means a person who
23 enters into contract for an asbestos abatement project.

24 (h) "Asbestos inspector" means a person employed
25 to inspect for the presence of asbestos containing
26 materials, evaluate the condition of such materials and
27 collect samples for asbestos content confirmation.

28 (i) "Asbestos management planner" means a person
29 employed to interpret survey results, make hazard
30 assessment, evaluation, and selection of control options

31 or develop an operation and maintenance plan.

32 (j) "Asbestos abatement project" means an activity
33 involving the repair, removal, enclosure or encapsula-
34 tion of asbestos-containing material.

35 (k) "Asbestos worker" means a person who works
36 on an asbestos abatement project.

37 (l) "Contained work area" means designated rooms,
38 spaces or other areas where asbestos abatement
39 activities are being performed, including decontamina-
40 tion structures. The contained work area shall be
41 separated from the uncontaminated environment by
42 polyethylene sheeting or other materials used in
43 conjunction with the existing floors, ceilings and walls
44 of the structure.

45 (m) "Director" means the director of the division of
46 health or the director's duly authorized representative.

47 (n) "Division" means the division of health of the
48 department of health and human resources.

49 (o) "Encapsulate" means the application of any
50 material onto any asbestos containing material to
51 bridge or penetrate the material to prevent fiber
52 release.

53 (p) "Enclosure" means the permanent confinement
54 of friable asbestos containing materials with an air-
55 tight barrier in an area not used or designed as an air
56 plenum.

57 (q) "Friable" means material which is capable of
58 being crumbled, pulverized or reduced to powder by
59 hand pressure of which under normal use or mainte-
60 nance emits or can be expected to emit asbestos fibers
61 into the air.

62 (r) "Good faith report" means a report of conduct
63 defined in this article as wrongdoing or waste which is
64 made without malice or consideration of personal
65 benefit and which the person making the report has
66 reasonable cause to believe is true.

67 (s) "License" means a document authorizing a

68 person to perform certain specific asbestos related
69 work activities.

70 (t) "Person" means a corporation, partnership, sole
71 proprietorship, firm, enterprise, franchise, association
72 or any individual or entity.

73 (u) "Resilient floor covering" means floor tile, sheet
74 vinyl and associated adhesives which contain more
75 than one percent asbestos by weight

76 (v) "Resilient floor covering worker" means a
77 person who is employed to remove resilient floor
78 covering in single family dwellings.

79 (w) "Waste" means an employer's conduct or omis-
80 sions which result in substantial abuse, misuse, des-
81 truction or loss of funds or resources belonging to or
82 derived from federal, state or political subdivision
83 sources.

84 (x) "Wrongdoing" means a violation which is not of
85 a merely technical or minimal nature of a federal or
86 state statute or regulation, of a political subdivision
87 ordinance or regulation or of a code of conduct or
88 ethics designed to protect the interest of the public or
89 the employer.

§16-32-3. Powers and duties of the director of health.

1 The director of health shall administer and enforce
2 this article. The director has the following powers and
3 duties:

4 (a) To issue licenses and assess fees pursuant to this
5 article and the rules promulgated thereunder.

6 (b) To promulgate rules necessary to carry out the
7 requirements of this article in accordance with the
8 provisions of chapter twenty-nine-a of this code, to
9 include, but not limited to, the required training, the
10 prescription of fees and procedures for the issuance
11 and renewal of licenses.

12 (c) To approve the training courses administered to
13 licensure applicants.

§16-32-4. Asbestos management planner's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos management planner's license
3 to design a building's or facility's asbestos manage-
4 ment plan.

5 (b) To qualify for an asbestos management planner's
6 license, an applicant shall:

7 (1) Satisfactorily complete a United States environ-
8 mental protection agency approved training course for
9 asbestos management planners;

10 (2) Possess a valid asbestos inspector's license;

11 (3) Demonstrate to the satisfaction of the director
12 that the applicant is familiar with, and capable of
13 complying fully, with all applicable requirements,
14 procedures and standards of the United States envi-
15 ronmental protection agency, the United States occu-
16 pational safety and health administration and the state
17 departments of health and human resources and
18 commerce, labor and environmental resources cover-
19 ing any part of an asbestos abatement project; and

20 (4) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos management planner's
23 license shall submit an application and a certificate
24 that shows satisfactory completion of the United States
25 environmental protection agency training course for
26 asbestos management planners to the division and
27 shall pay the applicable fee to the division. The
28 director may deny a license if there has been a failure
29 to comply with the application procedures or if the
30 applicant fails to satisfy the application criteria.
31 Written notice of such denial and an opportunity for
32 reapplication shall be afforded to all applicants.

**§16-32-5. Asbestos abatement project designer's license
required.**

1 (a) It is unlawful for any person who does not
2 possess a valid asbestos abatement project designer's
3 license to specify engineering controls, methods and
4 work practices under an asbestos abatement project

5 contract to another person.

6 (b) To qualify for an asbestos abatement project
7 designer's license, an applicant shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 abatement project designers;

11 (2) Demonstrate to the satisfaction of the director
12 that the applicant is familiar with and capable of
13 complying fully with all applicable requirements,
14 procedures and standards of the United States envi-
15 ronmental protection agency, the United States occu-
16 pational safety and health administration and the state
17 departments of health and human resources and
18 commerce, labor and environmental resources cover-
19 ing any part of an asbestos abatement project; and

20 (3) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos abatement project
23 designer's license shall submit an application and a
24 certificate that shows satisfactory completion of the
25 United States environmental protection agency train-
26 ing course for asbestos abatement project designers to
27 the division on the required form and shall pay the
28 applicable fee to the division. The director may deny
29 a license if there has been a failure to comply with the
30 application procedure or if the applicant fails to satisfy
31 the application criteria. Written notice of denial and an
32 opportunity for reapplication shall be afforded to all
33 applicants.

§16-32-6. Asbestos contractor's license required.

1 (a) It is unlawful for any person who does not
2 possess a valid asbestos contractor's license to contract
3 with another person for an asbestos abatement project.

4 (b) To qualify for an asbestos contractor's license, an
5 applicant shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos supervisors;

9 (2) Demonstrate to the satisfaction of the director
10 that the applicant and the applicant's employees or
11 agents are familiar with and are capable of complying
12 fully with all applicable requirements, procedures and
13 standards of the United States environmental protec-
14 tion agency, the United States occupational safety and
15 health administration and the state departments of
16 health and human resources and commerce, labor and
17 environmental resources covering any part of an
18 asbestos abatement project; and

19 (3) Meet the requirements otherwise set forth by the
20 director.

21 (c) Applicants for an asbestos contractor's license
22 shall submit an application and a certificate that shows
23 satisfactory completion of the United States environ-
24 ment protection agency asbestos training course for
25 supervisors to the division on the required form and
26 shall pay the applicable fee to the division. The
27 director may deny a license if there has been a failure
28 to comply with the application procedure or if the
29 applicant fails to satisfy the application criteria.
30 Written notice of denial and an opportunity for
31 reapplication shall be afforded to all applicants.

32 (d) Licensed asbestos contractors shall carry out the
33 following duties:

34 (1) Ensure that each of the contractor's employees or
35 agents who will come into contact with asbestos or
36 who will be responsible for an asbestos abatement
37 project is licensed as required by this article;

38 (2) Ensure that each asbestos project is supervised
39 by a licensed asbestos abatement supervisor;

40 (3) Keep a record of each asbestos abatement project
41 and make the record available to the state depart-
42 ments of health and human resources and commerce,
43 labor and environmental resources upon request.
44 Records required by this section shall be kept for at
45 least thirty years. The records shall include:

46 (A) The name, address and license number of the
47 individual who supervised the asbestos abatement

48 project and each employee or agent who worked on
49 the project;

50 (B) The location and design of the project and the
51 amount of asbestos-containing material that was
52 removed;

53 (C) The starting and completion dates of each
54 project and a summary of the procedures that were
55 used to comply with all federal and state standards;

56 (D) The name and address of each asbestos disposal
57 site where waste containing asbestos was deposited
58 and the disposal site receipts; and

59 (E) Ensure that each contained work area of an
60 asbestos abatement project meets minimum clearance
61 standards established by the director before allowing
62 reoccupancy.

63 (e) The following situations and relationships involv-
64 ing asbestos abatement contractors are prohibited:

65 (1) A financial or proprietary interest of the contrac-
66 tor in a laboratory utilized by the contractor to
67 perform asbestos sample analysis related to asbestos
68 abatement projects performed or contracted for by the
69 contractor;

70 (2) An employer-employee relationship between the
71 contractor and an asbestos clearance air monitor for
72 an asbestos abatement project performed or contracted
73 for by the contractor; and

74 (3) A financial or proprietary interest of the contrac-
75 tor in the firm which performs asbestos clearance air
76 monitoring for an asbestos abatement project per-
77 formed or contracted for by the contractor.

78 (f) Persons who contract to remove resilient floor
79 covering materials in single-family dwellings are not
80 required to be licensed as asbestos contractors: *Pro-*
81 *vided*, That the individuals engaged in removal shall
82 meet the requirements of this article and any rules
83 promulgated hereunder relating to resilient floor
84 covering removal.

§16-32-7. Asbestos abatement supervisor's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos abatement supervisor's license
3 to direct an asbestos abatement project.

4 (b) To qualify for an asbestos abatement supervisor's
5 license, an applicant shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos abatement supervisors;

9 (2) Demonstrate to the satisfaction of the director
10 that the applicant is familiar with and capable of
11 complying fully with all applicable requirements,
12 procedures and standards of the United States envi-
13 ronmental protection agency, United States occupa-
14 tional safety and health administration and the state
15 departments of health and human resources and
16 commerce, labor and environmental resources cover-
17 ing any part of an asbestos abatement project; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos abatement supervisor's
21 license shall submit an application and a certificate
22 that shows satisfactory completion of the United States
23 environmental protection agency training course for
24 asbestos abatement supervisors to the division and
25 shall pay the applicable fee to the division. The
26 director may deny a license if there has been a failure
27 to comply with the application procedures or if the
28 applicant fails to satisfy the application criteria.
29 Written notice of such denial and an opportunity for
30 reapplication shall be afforded to all applicants.

§16-32-8. Asbestos inspector's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos inspector's license to work as
3 an asbestos inspector on an asbestos abatement project.

4 (b) To qualify for an asbestos inspector's license, an
5 applicant shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos inspectors;

9 (2) Demonstrate to the satisfaction of the director
10 that the applicant is familiar with and capable of
11 complying fully with all applicable requirements,
12 procedures and standards of the United States envi-
13 ronmental protection agency, United States occupa-
14 tional safety and health administration and the state
15 departments of health and human resources and
16 commerce, labor and environmental resources cover-
17 ing any part of an asbestos abatement project; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos inspector's license
21 shall submit an application and a certificate that shows
22 satisfactory completion of the United States environ-
23 mental protection agency training course for asbestos
24 inspectors to the division and shall pay the applicable
25 fee to the division. The director may deny a license if
26 there has been a failure to comply with the application
27 procedures or if the applicant fails to satisfy the
28 application criteria. Written notice of such denial and
29 an opportunity for reapplication shall be afforded to all
30 applicants.

§16-32-9. Asbestos worker's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos worker's license to work as an
3 asbestos worker on an asbestos abatement project.

4 (b) To qualify for an asbestos worker's license an
5 individual shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos workers;

9 (2) Demonstrate to the satisfaction of the director
10 that the applicant is familiar with and is capable of
11 complying fully with all applicable requirements,
12 procedures and standards of the United States envi-

13 ronmental protection agency, the United States occu-
14 pational safety and health administration and the state
15 departments of health and human resources and
16 commerce, labor and environmental resources cover-
17 ing any part of an asbestos abatement project; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos worker's license shall
21 submit an application and a certificate that shows
22 satisfactory completion of the United States environ-
23 mental protection agency training course for asbestos
24 workers to the division and shall pay the applicable fee
25 to the division. The director may deny a license if
26 there has been a failure to comply with the application
27 procedures or if the applicant fails to satisfy the
28 application criteria. Written notice of such denial and
29 an opportunity for reapplication shall be afforded to all
30 applicants.

§16-32-9a. Asbestos analytical laboratory license required.

1 (a) After the first day of January, one thousand nine
2 hundred ninety-four, it shall be unlawful for any
3 laboratory that does not possess a valid asbestos
4 analytical laboratory license to analyze asbestos bulk
5 samples or asbestos air monitoring samples.

6 (b) To qualify for an asbestos analytical laboratory
7 license, an applicant shall:

8 (1) Demonstrate to the satisfaction of the director
9 that the applicant is familiar with and capable of
10 complying fully with all applicable requirements,
11 procedures and standards of the United States envi-
12 ronmental protection agency, the United States occu-
13 pational safety and health administration and the state
14 departments of health and human resources and
15 commerce, labor and environmental resources cover-
16 ing analysis of asbestos bulk samples or air monitoring
17 samples; and

18 (2) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos analytical laboratory
21 license shall submit an application to the division and
22 shall pay the applicable fee to the division. The
23 director may deny a license if there has been a failure
24 to comply with the application procedure or if the
25 applicant fails to satisfy the application criteria.
26 Written notice of denial and an opportunity for
27 reapplication shall be afforded to all applicants.

§16-32-9b. Asbestos clearance air monitor license required.

1 (a) After the first day of January, one thousand nine
2 hundred ninety-four, it shall be unlawful for any
3 individual who does not possess a valid asbestos
4 clearance air monitor license to sample asbestos
5 abatement project areas for clearance.

6 (b) To qualify for an asbestos clearance air monitor
7 license, an applicant shall:

8 (1) Satisfactorily complete a course approved by the
9 director for asbestos clearance air monitors;

10 (2) Demonstrate to the satisfaction of the director
11 that the applicant is familiar with and capable of
12 complying fully with all applicable requirements,
13 procedures and standards of the United States envi-
14 ronmental protection agency, the United States occu-
15 pational safety and health administration and the state
16 departments of health and human resources and
17 commerce, labor and environmental resources cover-
18 ing final air clearances for asbestos abatement pro-
19 jects; and

20 (3) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants shall submit an application and a
23 certificate that shows satisfactory completion of a
24 course approved by the director for asbestos air
25 clearance monitors to the division and shall pay the
26 applicable fee to the division. The director may deny
27 a license if there has been a failure to comply with the
28 application procedure or if the applicant fails to satisfy
29 the application criteria. Written notice of such denial
30 and an opportunity for reapplication shall be afforded

31 to all applicants.

§16-32-9c. Resilient floor covering worker license required.

1 (a) After the first day of January, one thousand nine
2 hundred ninety-four, it shall be unlawful for an
3 individual who does not possess a valid resilient floor
4 covering worker's license to be employed as a resilient
5 floor covering worker.

6 (b) To qualify for a resilient floor covering worker's
7 license an individual shall:

8 (1) Satisfactorily complete a training course
9 approved by the director for resilient floor covering
10 workers;

11 (2) Demonstrate to the satisfaction of the director
12 that the applicant is familiar with and is capable of
13 complying fully with all applicable requirements,
14 procedures and standards of the United States occupa-
15 tional safety and health administration and the state
16 departments of health and human resources and
17 commerce, labor and environmental resources cover-
18 ing resilient floor covering removal; and

19 (3) Meet the requirements otherwise set forth by the
20 director.

21 (c) Applicants for a resilient floor covering worker's
22 license shall submit an application and a certificate
23 that shows satisfactory completion of a training course
24 approved by the director for resilient floor covering
25 workers to the division and shall pay the applicable fee
26 to the division. The director may deny a license if
27 there has been a failure to comply with the application
28 procedures or if the applicant fails to satisfy the
29 application criteria. Written notice of denial and an
30 opportunity for reapplication shall be afforded to all
31 applicants.

§16-32-10. Special revenue account.

1 Fees and fines collected under this article and any
2 rules promulgated hereunder shall be deposited in a
3 special revenue account in the state treasury to be
4 used by the director for purposes related to the

5 implementation of of this article.

§16-32-11. Notification; waivers; exemptions.

1 (a) Each owner or other person responsible for the
2 operation of a building or facility where an asbestos
3 abatement project is to occur shall notify the division
4 at least ten working days prior to commencement of
5 each asbestos abatement project and shall comply with
6 other applicable state and federal legal and regulatory
7 notification requirements for asbestos abatement
8 projects.

9 (b) In an emergency that results from a sudden
10 unexpected event that is not a planned renovation or
11 demolition, the director may waive the requirement of
12 ten working days prior notification, but in all cases
13 notification shall be made to the division after the
14 emergency within the specified time required by the
15 director.

16 (c) Asbestos abatement projects involving less than
17 one hundred sixty square feet or two hundred sixty
18 linear feet of asbestos containing material are exempt
19 from the prior notification requirement, unless the
20 project takes place in a school for any of grades
21 kindergarten through twelve. A summary of such
22 projects shall be submitted to the division within a
23 specified time as required by the director.

24 (d) Persons who remove resilient floor covering
25 materials in single-family dwellings are exempt from
26 notification requirements.

§16-32-12. Approval of asbestos abatement courses.

1 A person or organization may apply for department
2 and United States environmental protection agency
3 approval of a course on the health and safety aspects
4 of asbestos abatement, removal, enclosure and encap-
5 sulation, by submitting a full description of the
6 curriculum and a written application on forms pres-
7 cribed by the department.

§16-32-13. Reciprocity.

1 The director may set standards for accepting licenses

2 issued by other states. The director may grant licenses
3 to individuals from other states if that other state has
4 as stringent licensing requirements as West Virginia.

**§16-32-15. Reprimands; suspension or revocation of license;
violations; orders; hearings.**

1 (a) The director may reprimand, suspend or revoke
2 the license of an asbestos analytical laboratory, clear-
3 ance air monitor, contractor, inspector, management
4 planner or worker, or of an asbestos abatement project
5 designer or supervisor, or of a resilient floor covering
6 worker, if the licensee:

7 (1) Fraudulently or deceptively obtains or attempts
8 to obtain a license or knowingly aids another in such
9 fraud or deception;

10 (2) Fails at any time to meet the qualifications for a
11 license or to comply with the requirements of this
12 article or any applicable rules or regulations adopted
13 by the director;

14 (3) Fails to meet applicable federal or state standards
15 for asbestos abatement projects; or

16 (4) Employs or permits an individual not licensed as
17 required by this article to work on an asbestos abate-
18 ment project.

19 (b) The director may investigate all suspected
20 violations of this article or any rules promulgated
21 hereunder. Upon the finding of a violation in connec-
22 tion with any asbestos abatement project, the director
23 shall issue a cease and desist order directing that all
24 work on the project be halted forthwith. Posting of the
25 cease and desist order on the project site shall consti-
26 tute notice of its contents to the property owner and
27 all persons working on the asbestos abatement project.
28 Where practicable, however, the director shall deliver
29 a copy of such order by certified mail, return receipt
30 requested, to the property owner and to the contractor.

31 (c) Hearings regarding violations of this article and
32 any rules promulgated hereunder shall be conducted
33 in accordance with the administrative procedures act

34 of chapter twenty-nine-a of this code.

§16-32-16. Penalties.

1 The director may impose a civil penalty of not less
2 than two hundred fifty dollars and not more than five
3 thousand dollars for each separate violation of this
4 article or any rules promulgated hereunder.

5 Notwithstanding any other provision of this code,
6 any person who violates any provision of this article or
7 any rule or regulation related hereto shall be guilty of
8 a misdemeanor.

9 In any case where a person fails to halt work
10 following the issuance of a cease and desist order by
11 the director, the violation shall be presumed to be
12 willful and shall be assessed a civil penalty by the
13 director of not less than ten thousand dollars nor more
14 than twenty-five thousand dollars for an initial viola-
15 tion and not less than twenty-five thousand dollars nor
16 more than fifty thousand dollars for each subsequent
17 violation.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within is approved this the 12th day of May, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/93

Time 9:10 AM