

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 545**

BY SENATOR BOSO

[Originating in the Committee on the Judiciary;

reported on February 26, 2016]

1 A BILL to amend and reenact §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as  
2 amended, all relating to asbestos abatement on oil and gas pipelines; defining terms;  
3 requiring requests for waivers and other matters be made to the Commissioner of the  
4 Bureau for Public Health; exempting the removal, repair and maintenance of intact oil and  
5 gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by  
6 bituminous or resinous compounds from asbestos abatement requirements; and providing  
7 specific requirements for that exemption to apply.

*Be it enacted by the Legislature of West Virginia:*

1 That §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

**ARTICLE 32. ASBESTOS ABATEMENT.**

**§16-32-2. Definitions.**

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

3 (b) "Asbestos analytical laboratory" means a facility or place which analyzes asbestos bulk  
4 samples or asbestos air samples.

5 (c) "Asbestos abatement project designer" means a person who specifies engineering  
6 controls, methods and work practices to be used during asbestos abatement projects.

7 (d) "Asbestos abatement supervisor" means a person responsible for direction of asbestos  
8 abatement projects.

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

12 (f) "Asbestos-containing material" means any material or product which contains more  
13 than one percent asbestos by weight.

14 (g) "Asbestos contractor" means a person who enters into contract for an asbestos

15 abatement project.

16 (h) "Asbestos inspector" means a person employed to inspect for the presence of  
17 asbestos-containing materials, evaluate the condition of such materials and collect samples for  
18 asbestos content confirmation.

19 (i) "Asbestos management planner" means a person employed to interpret survey results,  
20 make hazard assessment, evaluation and selection of control options or develop an operation  
21 and maintenance plan.

22 (j) "Asbestos abatement project" means an activity involving the repair, removal, enclosure  
23 or encapsulation of asbestos-containing material. "Asbestos abatement project" does not include  
24 removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains  
25 asbestos fibers encapsulated or coated by bituminous or resinous compounds as described in  
26 subsection (d), section eleven of this article.

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

28 (l) "Bureau" means the Bureau for Public Health of the Department of Health and Human  
29 Resources.

30 (m) "Commissioner" means Commissioner of the Bureau for Public Health or his or her  
31 designee.

32 (n) "Competent person" means one who is capable of identifying existing asbestos  
33 hazards in the workplace and selecting the appropriate control strategy for asbestos exposure  
34 and who has the authority to take prompt corrective measures to eliminate them.

35 (o) "Contained work area" means designated rooms, spaces or other areas where  
36 asbestos abatement activities are being performed, including decontamination structures. The  
37 contained work area shall be separated from the uncontaminated environment by polyethylene  
38 sheeting or other materials used in conjunction with the existing floors, ceilings and walls of the  
39 structure.

40 (m) ~~"Director" means the director of the division of Commissioner of the Bureau for Public~~

41 ~~Health or the director's commissioner's duly authorized representative.~~

42 ~~(n) "Division" means the division of Bureau for Public Health of the Department of Health~~  
43 ~~and Human Resources.~~

44 ~~(o)~~ (p) "Encapsulate" means the application of any material onto any asbestos-containing  
45 material to bridge or penetrate the material to prevent fiber release.

46 ~~(p)~~ (q) "Enclosure" means the permanent confinement of friable asbestos-containing  
47 materials with an airtight barrier in an area not used or designed as an air plenum.

48 ~~(q)~~ (r) "Friable" means material which is capable of being crumbled, pulverized or reduced  
49 to powder by hand pressure of which under normal use or maintenance emits or can be expected  
50 to emit asbestos fibers into the air.

51 ~~(r)~~ (s) "Good faith report" means a report of conduct defined in this article as wrongdoing  
52 or waste which is made without malice or consideration of personal benefit and which the person  
53 making the report has reasonable cause to believe is true.

54 (t) "Intact" means that the asbestos-containing material has not crumbled, been pulverized  
55 or otherwise deteriorated so that the asbestos is no longer likely to be bound with its matrix.

56 ~~(s)~~ (u) "License" means a document authorizing a person to perform certain specific  
57 asbestos-related work activities.

58 ~~(t)~~ (v) "Person" means a corporation, partnership, sole proprietorship, firm, enterprise,  
59 franchise, association or any individual or entity.

60 ~~(u)~~ (w) "Resilient floor covering" means floor tile, sheet vinyl and associated adhesives  
61 which contain more than one percent asbestos by weight.

62 ~~(v)~~ (x) "Resilient floor covering worker" means a person who is employed to remove  
63 resilient floor covering in single-family dwellings.

64 ~~(w)~~ (y) "Waste" means an employer's conduct or omissions which result in substantial  
65 abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal,  
66 state or political subdivision sources.

67           ~~(x)~~(z) "Wrongdoing" means a violation which is not of a merely technical or minimal nature  
68 of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a  
69 code of conduct or ethics designed to protect the interest of the public or the employer.

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

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

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

10           (c) Asbestos abatement projects involving less than one hundred sixty square feet or two  
11 hundred sixty linear feet of asbestos containing material are exempt from the prior notification  
12 requirement, unless the project takes place in a school for any of grades kindergarten through  
13 twelve. A summary of ~~such~~ the projects shall be submitted to the ~~division~~ bureau within a specified  
14 time as required by the ~~director~~ commissioner.

15           (d) Removal, repair and maintenance of oil and gas pipeline asphaltic wrap which contains  
16 asbestos fibers encapsulated or coated by bituminous or resinous compounds is not subject to  
17 the requirements of this article if:

18           (1) The pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by  
19 bituminous or resinous compounds is not friable prior to disturbance along the length of the  
20 pipeline being removed, repaired or maintained;

21           (2) The area disturbed in preparing the pipeline for cutting does not exceed two hundred  
22 sixty linear feet of removed friable asbestos;

23           (3) Before work begins and as needed during the job, a competent person conducts an  
24 inspection of the worksite and determines that the material is intact and will likely remain intact;

25           (4) All employees performing work covered by this subsection are trained in accordance  
26 with OSHA standards, 29 CFR 1926.1101(g)(11)(ii), and all other workers shall remain at a safe  
27 distance from the site;

28           (5) The material is not sanded, abraded or ground. Manual methods which do not render  
29 the material nonintact must be used;

30           (6)All removal or disturbance of pipeline asphaltic wrap is performed using wet methods;  
31 and

32           (7) All pipeline and asbestos-containing material removed from the pipeline is disposed of  
33 in a lawful manner.

34           ~~(d)~~ (e) Persons who remove resilient floor covering materials in single-family dwellings are  
35 exempt from notification requirements.