

1998 PUBLIC AND LOCAL ACTS

[No. 132]

(SB 894)

AN ACT to amend 1986 PA 135, entitled "An act to provide for the licensing and regulation of asbestos abatement contractors; to create the asbestos abatement contractors licensing board; to establish the powers and duties of the department of public health and the asbestos abatement contractors licensing board; to create an asbestos abatement fund and to provide for expenditures from the fund; to provide for the promulgation of rules; to provide for certain fees; and to provide for penalties and civil fines," by amending the title and sections 103, 207, 211, 217, 220, and 221 (MCL 338.3103, 338.3207, 338.3211, 338.3217, 338.3220, and 338.3221), the title as amended by 1990 PA 2 and sections 103, 207, and 220 as amended and section 221 as added by 1993 PA 55.

The People of the State of Michigan enact:

TITLE

An act to provide for the licensing and regulation of asbestos abatement contractors; to create the asbestos abatement contractors licensing board; to prescribe certain powers and duties of the department of consumer and industry services; to establish the powers and duties of the asbestos abatement contractors licensing board; to create an asbestos abatement fund and to provide for expenditures from the fund; to provide for the promulgation of rules; to provide for certain fees; and to provide for penalties and civil fines.

338.3103 Definitions. [M.S.A. 14.526(103)]

Sec. 103. As used in this act:

- (a) "Administrative procedures act of 1969" means 1969 PA 306, MCL 24.201 to 24.328.
- (b) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.
- (c) "Asbestos abatement contractor" means a business entity that is licensed under this act and that carries on the business of asbestos abatement on the premises of another business entity and not on the asbestos abatement contractor's premises.
- (d) "Asbestos abatement project" means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.
- (e) "Board" means the asbestos abatement contractors licensing board created in section 201.
- (f) "Business entity" means a person, partnership, firm, association, corporation, sole proprietorship, public or private agency, or other legal entity.
- (g) "Construction contractor" means a business entity that, pursuant to a contract with the owner or lessee of real property, provides an improvement to that property.
- (h) "Construction subcontractor" means a business entity that, pursuant to a contract with a person other than the owner or lessee of the real property, performs any part of a construction contractor's contract for an improvement to that property.
- (i) "Demolition" means the razing or taking out of any load-supporting structural member and any related removing or stripping of friable asbestos materials.
- (j) "Department" means the department of consumer and industry services.
- (k) "Encapsulate" means the sealing of friable asbestos materials by means of the spraying of liquid sealant or any other suitable sealing method.

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(l) "Friable asbestos material" means any material that contains more than 1% asbestos by weight and that can be crumbled, pulverized, or reduced to powder when dry, by hand pressure.

(m) "License" means an authorization issued by the department upon recommendation by the board for demolition, renovation, encapsulation, or removal of asbestos.

(n) "Neutral party" means a business entity that is not part of the asbestos abatement contractor's primary or secondary family and is not legally associated to any business operated by the asbestos abatement contractor.

(o) "Removal" means the taking out or stripping of asbestos from an existing structure.

(p) "Renovation" means the removal or stripping of friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. Renovation does not include any of the following:

(i) An operation necessitated by a nonroutine failure of equipment.

(ii) An unplanned operation resulting from a sudden unexpected event.

(iii) An operation in which load-supporting structural members are wrecked or taken out.

(q) "Structural member" means any load-supporting member, including, but not limited to, beams and load-supporting walls, or any nonsupporting member, including, but not limited to, ceilings and nonload-supporting walls.

(r) "Working day" means any day other than a Saturday, Sunday, or state legal holiday.

338.3207 Asbestos abatement contractor; license required; applicability of licensing requirement. [M.S.A. 14.526(207)]

Sec. 207. (1) Except as otherwise provided in subsection (2), an asbestos abatement contractor shall not engage in any activity involving the demolition, renovation, or encapsulation of friable asbestos materials without first receiving a license from the department.

(2) The licensing requirement of subsection (1) does not apply to any of the following if engaged in an asbestos abatement project that is incidental to the primary licensed trade and involves not more than 160 square feet or 260 linear feet of friable asbestos materials:

(a) A business entity licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(b) A business entity licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(c) A business entity licensed under 1929 PA 266, MCL 338.901 to 338.917.

(d) A business entity licensed as a residential builder or a residential maintenance and alteration contractor under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

338.3211 Acknowledging receipt of application; notice of deficiency; issuance of license or denial of application; time; statement in license; grounds for denial of application; return of fee; proceedings for denial of license. [M.S.A. 14.526(211)]

Sec. 211. (1) Within 15 working days after receiving a license application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within 60 calendar days after receiving a completed application, including all additional information requested by the department, the

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department shall issue a license or deny the license application. The license shall contain a statement in bold print that the issuance of a license does not infer asbestos indemnification coverage.

(2) The department shall deny a license application if the department determines that the applicant has not demonstrated the ability to comply with either of the following:

(a) The applicable requirements and procedures established by the department and the board under this act.

(b) Other state and federal law pertaining to the health and safety aspects of asbestos demolition, renovation, and encapsulation.

(3) If the department denies a license, the department shall return to the applicant the application fee, less \$25.00.

(4) Proceedings for the denial of a license under this act shall be in accordance with the administrative procedures act of 1969.

338.3217 Duration of license; conditions to renewal.

[M.S.A. 14.526(217)]

Sec. 217. (1) Unless the department revokes or suspends a license, the license shall remain in effect for 1 year from the date of issuance.

(2) The department shall renew a license annually if the asbestos abatement contractor satisfies the following conditions:

(a) Submits a completed application for a renewal on forms provided by the department no sooner than 90 days before the license expires and not later than 30 days before the license expires. An application for renewal that is received after the time period described in this subdivision shall be treated as an initial application and shall require payment of an initial license fee, rather than a renewal license fee.

(b) Pays to the department the license renewal fee as specified in section 209.

(c) Has complied with all applicable requirements of this act and the rules promulgated under this act.

338.3220 Asbestos abatement project; notice; fees; asbestos abatement fund; report; emergencies. [M.S.A. 14.526(220)]

Sec. 220. (1) An asbestos abatement contractor shall notify the department in writing of all of the following at least 10 days before beginning an asbestos abatement project exceeding 10 linear feet or 15 square feet, or both, of friable asbestos materials:

(a) The name and address of the owner of the building or structure.

(b) The location of the building or structure where the asbestos abatement project will be performed.

(c) The schedule for the starting and completion of the asbestos abatement project which may not exceed 1 year in length.

(d) The amount of friable asbestos materials that will be removed or encapsulated.

(2) If during the course of a project and after a written contract is executed, a business entity that is exempt from licensure under section 207(2) and whose primary licensed trade is not that of an asbestos abatement contractor discovers that the removal or encapsulation of asbestos in an amount exceeding 10 linear feet or 15 square feet, or both, is required, that business entity shall notify the department of the asbestos abatement project before asbestos removal begins. Not more than 10 days after the discovery, the business entity shall provide written notification to the department in the manner described in subsection (1)(a) to (d).

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(3) An asbestos abatement contractor providing written notification to the department pursuant to subsection (1) for an asbestos abatement project shall include a fee equal to 1% of the price of the contract for the asbestos abatement project and shall make available upon the request of the department a copy of the contract for the asbestos abatement project. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(4) In the case of a business entity that provides notice under subsection (2) for an asbestos abatement project that is incidental to the business entity's primary licensed trade and where asbestos is actually removed by that business entity, the primary licensed trade contractor shall include a fee of 1% of the asbestos abatement project portion of the contract price and shall make available upon the request of the department a copy of that portion of the contract covering the asbestos abatement. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(5) The asbestos abatement fund is created and shall exist in the state treasury and shall receive revenue as provided in this act and other revenue as the legislature may provide. The state treasurer shall direct the investment of the fund. All interest and earnings of the fund shall be retained by the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) Money in the asbestos abatement fund created in subsection (5) shall be used by the department only for the asbestos-related responsibilities of the department under this act which includes, but is not limited to, the inspection of asbestos abatement projects and the education of asbestos abatement contractors. It does not include use of the fund by the department for asbestos abatement projects on state owned property.

(7) Not later than October 1 of each year, the department shall report to the legislature and the applicable committees in the house of representatives and the senate on the amount of money generated by the fees charged under this section. The report shall include the number of asbestos abatement projects inspected and the number of citations issued for violations of this act and other applicable laws, rules, and regulations.

(8) Emergency asbestos abatement projects resulting from equipment failure or malfunctions are exempt from the 10-day written advance notice imposed under this section. The written notice in emergency situations shall be provided within 48 hours after the commencement of the asbestos abatement project except that the business entity shall contact the department telephonically immediately or as soon as possible after the discovery of the emergency situation.

338.3221 Post abatement air monitoring check; maximum level of asbestos fibers. [M.S.A. 14.526(221)]

Sec. 221. (1) Except as provided by this subsection, a building or structure owner or lessee shall have a post abatement air monitoring check performed by a qualified neutral party completely independent of the asbestos abatement contractor at all asbestos abatement project sites involving a negative pressure enclosure as specified by 29 C.F.R. 1926.1101(g)(5)(i) that involve 10 or more linear feet or 15 or more square feet of friable asbestos materials. If the asbestos abatement contractor and the building or structure owner or lessee agree, the owner or lessee may have the post abatement air monitoring check required by this subsection performed by in-house personnel or by the asbestos abatement contractor.

(2) Whenever feasible, unless waived by the building or structure owner or lessee, the post abatement air monitoring check required by this section shall make use of aggressive

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air sampling methods as described in unit III.B.7.d. to appendix A to subpart E of part 763 of title 40 of the code of federal regulations, which is adopted in this act by reference.

(3) Upon request by the department, a post abatement air monitoring check taken pursuant to this section shall be reported to the department.

(4) After completion of the asbestos abatement project, the level of asbestos fibers per cubic centimeter of air that are more than 5 micrometers in length when sampled and analyzed according to method 7400 entitled "fibers" issued by the national institute of occupational safety and health (NIOSH) on 2/15/84 and revised on 5/15/89 which was published in the NIOSH manual of analytical methods, 3rd edition, shall not exceed 0.05 asbestos fibers at the asbestos abatement project site.

This act is ordered to take immediate effect.

Approved June 24, 1998.

Filed with Secretary of State June 24, 1998.
