

Commercial and Public Building Asbestos Abatement Act

(225 ILCS 207/1)

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Section 1. Short title. This Act may be cited as the Commercial and Public Building Asbestos Abatement Act.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/5)

Section 5. Legislative declaration. The General Assembly finds that:

- (1) Substantial amounts of asbestos materials were used throughout commercial and public buildings during the period from 1946 and 1972 for fireproofing, soundproofing, decorative and other purposes.
- (2) Exposure to asbestos fibers and particles in the air over a long period of time has been linked by reputable medical and scientific authorities to a significant increase in the incidence of disease, such as asbestosis, bronchogenic carcinoma, mesothelioma, and other malignancies.
- (3) Precise scientific data as to the levels at which asbestos materials constitute a hazard to health are not yet available and may not be available for many years to come because of the long period of time that elapses between the onset of

exposure and the appearance of clinically detectable illness; however, mesothelioma has been found among individuals exposed to asbestos in some non-occupational settings.

- (4) When there is a desire of the owner or occupant of a commercial or public building to remove, encapsulate, or enclose asbestos containing material, the removal, encapsulation, or enclosure of the asbestos containing material shall be done in accordance with acceptable State approved criteria and by a response action contractor licensed by the State of Illinois.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/10)

Section 10. Purpose. The purpose of this Act is to provide for the licensing of persons who contain or remove asbestos materials from commercial and public buildings in the State of Illinois.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/15)

Section 15. Definitions. As used in this Act:

"Asbestos abatement contractor" means any entity that provides removal, enclosure, encapsulation, or disposal of asbestos containing materials.

"Asbestos containing building materials" or "ACBM" means surfacing asbestos containing materials or ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a building.

"Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, and actinolite.

"Asbestos inspector" means an individual who performs inspections of commercial and public buildings for the presence of asbestos containing materials.

"Asbestos materials" means any material or product that contains more than 1% asbestos.

"Asbestos consultant" means a person offering expert or professional advice as an asbestos professional or designated person.

"Asbestos professional" means an individual who is licensed by the Department to perform the duties of an inspector, management planner, project designer, project supervisor, project manager, or air sampling professional, as applicable, except project supervisors under the direct employ of a licensed asbestos abatement contractor.

"Asbestos supervisor" means an asbestos abatement contractor, foreman, or person designated as the asbestos abatement contractor's representative who is responsible for the onsite supervision

of the removal, encapsulation, or enclosure of friable or non-friable asbestos-containing materials in a commercial or public building.

"Asbestos worker" means an individual who cleans, removes, encapsulates, encloses, hauls, or disposes of friable asbestos material.

"Building/facility owner" is the legal entity, including a lessee, that exercises control over management and record keeping functions relating to a building or facility in which activities covered by this standard take place.

"Commercial or public building" means the interior space of any building, except that the term does not include any residential apartment building of fewer than 10 units or detached single family homes. The term includes, but is not limited to: industrial and office buildings, residential apartment buildings and condominiums of 10 or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, schools, preschools, stores, warehouses, and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

"Department" means the Department of Public Health.

"Designated person" means a person designated by the local education agency, as defined by the Asbestos Abatement Act, to ensure that the management plan has been properly implemented.

"Director" means the Director of Public Health.

"Encapsulation" means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix that prevents the release of fibers as the encapsulant creates a membrane over the surfaces (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means the construction of airtight walls and ceilings between the asbestos containing material and the building environment, or around surfaces coated with asbestos containing materials, or any other appropriate scientific procedure as determined by the Department that prevents the release of asbestos.

"Friable", when referring to material in a commercial or public building, means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable materials after such previously nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Inspection" means an activity undertaken in a public or commercial building to determine the presence or location, or to assess the condition of, friable or nonfriable asbestos containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material.

"Nonfriable" means material in a commercial or public building which, when dry, may not be crumbled, pulverized, or reduced to powder by hand pressure.

"Person" means any individual, group of individuals, association, trust, partnership, corporation, person doing business under an assumed name, or any other entity.

"Project designer" means an individual who designs response actions for commercial or public buildings.

"Response action" means a method, including removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

"Response action contractor" means any entity that engages in response action services.

"Response action services" means the service of designing and conducting removal, encapsulation, enclosure, repair, or operations and maintenance of friable asbestos containing building materials, inspection of public or commercial buildings, and inspection of asbestos containing materials. The term does not include the design or conducting of response actions that involve removal or possible disturbance of an amount of asbestos containing building material comprising less than 3 square feet or less than 3 lineal feet of other friable asbestos containing building material.

(Source: P.A. 93-894, eff. 8-10-04.)

(225 ILCS 207/20)

Section 20. Powers and Duties of the Department.

- (a) The Department is empowered to promulgate any rules necessary to ensure proper implementation and administration of this Act, and compliance with the federal Asbestos School Hazard Abatement Reauthorization Act of 1990.
- (b) Rules promulgated by the Department shall include, but not be limited to, rules relating to the correct and safe performance of response action services, rules for the assessment of civil penalties for violations of this Act or rules promulgated under it, and rules providing for the training and licensing of persons and firms (i) to perform asbestos inspection, (ii) to perform abatement work, and (iii) to serve as asbestos abatement contractors, response action contractors, and asbestos workers. The Department is empowered to inspect activities regulated by this Act to ensure compliance.

Except as otherwise provided by Department rule, on and after the effective date of this amendatory Act of the 98th General Assembly, any licensing requirement adopted pursuant to this Section that may be satisfied by an industrial hygienist licensed pursuant to the Industrial Hygienists Licensure Act repealed in this amendatory Act may be satisfied by a Certified Industrial Hygienist certified by the American Board of Industrial Hygiene.

- (c) In carrying out its responsibilities under this Act, the Department shall:

- (1) Publish a list of response action contractors licensed under this Act, except that the Department shall not be required to publish a list of licensed asbestos workers; and
 - (2) Adopt rules for the collection of fees for training course approval and for the licensing of inspectors, project designers, contractors, supervisors, and workers.
- (d) The provisions of the Illinois Administrative Procedure Act are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Public Health under this Act, except that in case of conflict between the Illinois Administrative Procedure Act and this Act the provisions of this Act shall control, and except that Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rulemaking does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.
- (e) All final administrative decisions of the Department under this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law and the rules adopted under it. The term "administrative decision" has the meaning ascribed to it in Section 3-101 of the Code of Civil Procedure.
- (f) The Director, after notice and opportunity for hearing to the applicant or license holder, may deny, suspend, or revoke a license or expunge such person from the State list in any case in which he or she finds that there has been a substantial failure to comply with the provisions of this Act or the standards or rules established under it. Notice shall be provided by certified mail, return receipt requested, or by personal service setting forth the particular response for the proposed action and fixing a date, not less than 15 days from the date of such mailing or service, at which time the applicant, asbestos abatement contractor, or license holder shall be given an opportunity to request hearing.

The hearing shall be conducted by the Director or by an individual designated in writing by the Director as Hearing Officer to conduct the hearing. On the basis of any such hearing, or upon default of the asbestos abatement contractor, applicant or license holder, the Director shall make a determination specifying his or her findings and conclusions. A copy of the determination shall be sent by certified mail, return receipt requested, or served personally upon the applicant, contractor, or license holder.

The procedure governing hearings authorized by this Section shall be in accordance with rules promulgated by the Department. A full and complete record shall be kept of all proceedings, including the notice of hearing, complaint, and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director and Hearing Officer. All testimony shall be reported but need not be transcribed unless the decision is

sought to be reviewed under the Administrative Review Law. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing the copy or copies. The Director or Hearing Officer shall, upon his or her own motion or on the written request of any party to the proceeding, issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records, or memoranda. All subpoenas and subpoenas duces tecum issued under this Act may be served by any person of legal age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the courts of this State, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Director or Hearing Officer, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department in its discretion may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum so issued as above stated shall be served in the same manner as a subpoena issued by a circuit court.

Any circuit court of this State, upon the application of the Director, or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the Director or Hearing Officer conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before the court.

The Director or Hearing Officer, or any party in an investigation or hearing before the Department, may cause the depositions of witnesses within this State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and, to that end, compel the attendance of witnesses and the production of books, papers, records, or memoranda.

(Source: P.A. 98-78, eff. 7-15-13.)

(225 ILCS 207/25)

Section 25. Consistency with federal law. Rules issued under this Act, including those governing the preparation of a list of response action contractors and the removal of response action contractors from the list as provided for in Section 20, shall not be inconsistent with rules and regulations promulgated by the United States Environmental Protection Agency under the Toxic Substances Control Act, the Clean Air Act, or other applicable federal statutes.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/30)

Section 30. Response action contractors. The Department annually shall prepare a list of response action contractors familiar with and capable of complying with all applicable federal and State standards for asbestos containment and removal. Additional response action contractors that wish to be placed on this list shall apply to the Department. The Department shall evaluate this request based on the training, experience, and background of the response action contractors and render a decision. If the Department denies a request, the response action contractor may appeal the decision under the provisions of the Administrative Review Law. The list shall be made available to all building/facility owners who request the list. In contracting for response action services, building/facility owners shall select a response action contractor from the Department's list.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/35)

Section 35. Licensing.

- (1) No person may act as an asbestos abatement contractor providing response action services unless the person is licensed as an Asbestos Abatement Contractor by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (2) No person may act as an asbestos supervisor providing response action services unless the person is licensed as a Supervisor by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (3) No person may act as a project designer providing response action services unless the person is licensed as a Project Designer by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (4) No person may act as an asbestos worker providing response action services unless the person is licensed as an Asbestos Worker or a Supervisor by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (5) No person may act as an asbestos inspector unless the person is licensed as an Asbestos Inspector by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (6) No person may act as an air sampling professional unless the person is licensed as an air sampling professional by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.

- (7) No person may act as a project manager unless the person is licensed as a project manager by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (8) No person may act as a management planner unless the person is licensed as a management planner by the Department in accordance with the Asbestos Abatement Act and rules promulgated under it.
- (9) Beginning January 1, 2005, no person may act as an asbestos consultant unless the person is licensed as a consultant by the Department in accordance with this Act and rules promulgated under it. The following are exempt from the licensure requirement of this subsection:
 - (A) An employee of a local education agency who is that local education agency's designated person.
 - (B) An employee of a State agency while he or she is engaged in his or her professional duties for that State agency.
- (10) Individuals and entities that wish to be licensed shall make application on forms prescribed and furnished by the Department. Licenses shall expire annually according to a schedule determined by the Department. Applications for renewal of licenses shall be filed with the Department at least 30 days before the expiration date. When a licensure examination is required, the license application shall be submitted to the Department at least 30 days prior to the date of the scheduled examination. The Department shall evaluate each application based on its minimum standards for licensure, promulgated as rules, and render a decision. Such standards may include a requirement for the successful completion of a course of training approved by the Department. If the Department denies the application, the applicant may appeal the decision under the provisions of the Administrative Review Law.

(Source: P.A. 93-894, eff. 8-10-04.)

(225 ILCS 207/40)

Section 40. Enforcement. Notwithstanding the existence or pursuit of any other remedy, the Director may, in the manner provided by law and in the name of the People of the State and through the State's Attorney or the Attorney General who shall represent the Director in the proceedings, maintain an action for prosecution, injunction, or other relief or process against any Building/Facility Owner or any other person or unit of local government to enforce and compel compliance with the provisions of this Act, the rules promulgated under it and any order entered for any action under this Act and its rules. A person who violates this Act is guilty of a Class A misdemeanor punishable by a fine of \$1,000 for each day the violation exists in addition to other civil penalties or up to 6 months imprisonment or both a fine and imprisonment.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/45)

Section 45. Asbestos abatement contractor's certificate of financial responsibility. Each asbestos abatement contractor that wishes to be placed on the Department's approved list of asbestos abatement contractors shall submit to the Department a certificate documenting that the contractor carries liability insurance from a company with at least an "A" rating accorded by A.M. Best & Co., self insurance, group insurance, or group self insurance in an amount of at least \$1,000,000 for work performed pursuant to this Act and the rules promulgated under it. No asbestos abatement contractor may be placed on the approved list in the absence of such a certificate. All asbestos abatement contractors presently licensed by the Department in accordance with the Asbestos Abatement Act for public and private schools in Illinois who wish to be on the approved list shall submit the certificate within 90 days of the effective date of this Act.

Each asbestos abatement contractor shall maintain on file with the Department a current certificate of financial responsibility throughout the entire length of time the contractor's name appears on the Department's list of approved contractors. An asbestos abatement contractor shall notify the Department of any change in the status of a certificate that has been filed including expiration, renewal, or alteration of the terms of the certificate.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/50)

Section 50. Licensure under the Asbestos Abatement Act. Any person licensed under the Asbestos Abatement Act as a project designer, supervisor, inspector, or asbestos worker shall be considered licensed under this Act.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/55)

Section 55. Civil penalties. The Department is empowered to assess civil penalties for violations of this Act and the rules promulgated under this Act pursuant to rules for such penalties established by the Department.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/60)

Section 60. Illinois School Asbestos Abatement Fund. All fees and penalties collected by the Department pursuant to this Act shall be deposited into the Illinois School Asbestos Abatement Fund created by Section 16 of the Asbestos Abatement Act, and shall be available to the Department as provided in that Act.

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/800)

Section 800. (Amendatory provisions; text omitted).

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/805)

Section 805. (Amendatory provisions; text omitted).

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/810)

Section 810. (Amendatory provisions; text omitted).

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/900)

Section 900. (Amendatory provisions; text omitted; Section occurs twice in Public Act).

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/910)

Section 910. (Amendatory provisions; text omitted).

(Source: P.A. 89-143, eff. 7-14-95.)

(225 ILCS 207/999)

Section 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 89-143, eff. 7-14-95.)