

4647

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. for
HOUSE BILL No. 4647

(By Mr. Speaker, Mr. Chambers, & Del. Humphreys)



Passed March 10, 1988

In Effect July 1, 1988 ~~Passage~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4647

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE HUMPHREYS)

[Passed March 10, 1988; in effect July 1, 1988.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-two, relating to public health; legislative finding; definitions; powers and duties of the director of the department of health; licensure of asbestos abatement project designers, inspectors, contractors, management planners, workers and supervisors; special revenue account; exemptions from notification and licensure; approval of asbestos courses; department must provide training courses for licensure; reciprocity; prohibiting employer discrimination; notice to employees; violations; reprimands; suspensions or revocation of license; orders; hearings; and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-two, to read as follows:

ARTICLE 32. LICENSURE OF ASBESTOS ABATEMENT PROJECT DESIGNER, INSPECTORS, CONTRACTORS, MANAGEMENT PLANNERS, WORKERS AND SUPERVISORS.

§16-32-1. Legislative finding.

1 The Legislature hereby finds and declares that
2 asbestos is a dangerous toxic substance and harmful to
3 the citizens of this state. Therefore to ensure the
4 protection of the citizens of this state, persons who come
5 into contact with asbestos through abatement, removal,
6 enclosure or encapsulation, should be trained and
7 licensed professionals who know how to deal with
8 asbestos.

9 It is the intent of the Legislature that this article shall
10 be in addition to all other statutes, rules, and regulations
11 concerning asbestos.

§16-32-2. Definitions.

1 (a) "Asbestos" means the asbestiform varieties of
2 serpentinite (chrysotile), riebeckite (crocidolite), cum-
3 mingtonite-grunerite, anthophyllite, and actinolite-
4 tremolite, and which material contains more than one
5 percent asbestos by weight.

6 (b) "Asbestos abatement project designer" means a
7 person who specifies engineering methods and work
8 practices to be used during asbestos abatement projects.

9 (c) "Asbestos abatement supervisor" means a person
10 responsible for direction of asbestos abatement projects.

11 (d) "Asbestos contractor" means a person who enters
12 into contract for a project to abate, enclose, remove or
13 encapsulate asbestos.

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

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

22 (g) "Asbestos project" means an activity involving the
23 inspection for abatement, removal, enclosure or encap-
24 sulation of asbestos.

25 (h) "Asbestos worker" means a person who works on
26 an asbestos project for abatement, removal, enclosure or
27 encapsulation of asbestos.

28 (i) "Contained work area" means designated rooms,
29 spaces, or other areas where asbestos abatement
30 activities are being performed, including decontamina-
31 tion structures. The contained work area is separated
32 from the uncontaminated environment by polyethylene
33 sheeting or other materials used in conjunction with the
34 existing floors, ceilings and walls of the structure.

35 (j) "Department" means the department of health.

36 (k) "Director" means the director of the department
37 of health or the director's duly authorized
38 representative.

39 (l) "Encapsulate" means the application of any
40 material onto any asbestos containing material to bridge
41 or penetrate the material to prevent fiber release.

42 (m) "Enclosure" means the permanent confinement of
43 friable asbestos containing materials with an airtight
44 barrier in an area not used or designed as an air
45 plenum.

46 (n) "Friable" means material which is capable of
47 being crumbled, pulverized or reduced to powder by
48 hand pressure of which under normal use or mainte-
49 nance emits or can be expected to emit asbestos fibers
50 into the air.

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

56 (p) "License" means a document authorizing a person
57 to perform certain specific asbestos related work
58 activities.

59 (q) "Person" means a corporation, partnership, sole
60 proprietorship, firm, enterprise, franchise, association
61 or any individual or entity.

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

66 (s) "Wrongdoing" means a violation which is not of a
67 merely technical or minimal nature of a federal or state
68 statute or regulation, of a political subdivision ordinance
69 or regulation or of a code of conduct or ethics designed
70 to protect the interest of the public or 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 and regulations promulgated
6 thereunder.

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

13 (c) To approve the training courses administered to
14 licensure applicants and develop an examination and
15 grading system for testing applicants.

16 (d) The director shall implement a plan, which shall
17 be subject to legislative review in accordance with the
18 provisions of chapter twenty-nine-a of this code, for the
19 issuance and renewal of asbestos abatement project
20 designer's, contractor's, inspector's, management plan
21 developer's, worker's and supervisor's licenses by the
22 first day of July, one thousand nine hundred eighty-
23 eight. Such plan shall meet all federal guidelines.

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

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos

4 management planner's license to design a building's or
5 facility's asbestos management plan.

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

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

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

12 (3) Demonstrate to the satisfaction of the director that
13 the applicant is familiar with, and capable of complying
14 fully, with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos 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 that
24 shows satisfactory completion of the United States
25 environmental protection agency training course for
26 asbestos management planners to the department and
27 shall pay the applicable fee. The director may deny a
28 license if there has been a failure to comply with the
29 application procedures or if the applicant fails to satisfy
30 the application criteria. Written notice of such denial
31 and an opportunity for reapplication shall be afforded
32 to all applicants.

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

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for any person
3 who does not possess a valid asbestos abatement project
4 designer's license to specify engineering methods and
5 work practices under asbestos abatement contract to
6 another person.

7 (b) To qualify for an asbestos abatement project

8 designer's license, an applicant shall:

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

12 (2) Demonstrate to the satisfaction of the director that
13 the applicant is familiar with and capable of complying
14 fully with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project.

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 training
26 course for asbestos abatement project designers to the
27 department on the required form and shall pay the
28 applicable fee to the department. 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) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for any person
3 who does not possess a valid asbestos contractor's license
4 to contract with another person to abate, enclose, remove
5 or encapsulate asbestos.

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

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

11 (2) Demonstrate to the satisfaction of the director that

12 the applicant and the applicant's employees or agents
13 are familiar with and are capable of complying fully
14 with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project;

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

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

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

35 (1) Ensure that each of the applicant's employees or
36 agents who will come into contact with asbestos or who
37 will be responsible for an asbestos project is licensed as
38 an asbestos worker;

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

41 (3) Notify the department and all other entities as may
42 be required by state or federal law at least twenty days
43 prior to commencement of each asbestos project.
44 Notification shall be sent by certified mail or hand-
45 delivered to the department;

46 (4) A licensed asbestos contractor shall keep a record
47 of each asbestos project and shall make the record
48 available to the state departments of health, natural
49 resources and labor, and the state air pollution control
50 commission upon request. Records required by this

51 section shall be kept for at least thirty years. The
52 records shall include:

53 (A) The name, address and asbestos worker's license
54 number of the individual who supervised the asbestos
55 project and each employee or agent who worked on the
56 project;

57 (B) The location and a description of the project and
58 the amount of asbestos material that was removed;

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

62 (D) The name and address of each asbestos disposal
63 site where waste containing asbestos was deposited and
64 the disposal site receipts.

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

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos
4 abatement supervisor's license to direct an asbestos
5 abatement project.

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

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

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant is familiar with and capable of complying
13 fully with all applicable requirements, procedures and
14 standards of the United States environmental protection
15 agency, United States occupational safety and health
16 administration, the state departments of health, natural
17 resources and labor, and the state air pollution control
18 commission covering any part of an asbestos project; and

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

21 (c) Applicants for an asbestos inspector's license shall

22 submit an application and a certificate that shows
23 satisfactory completion of the United States environ-
24 mental protection agency training course for asbestos
25 abatement supervisors to the department and shall pay
26 the applicable fee. 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 such denial and
30 an opportunity for reapplication shall be afforded to all
31 applicants.

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

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos
4 inspector's license to work as an asbestos inspector on
5 an asbestos project.

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

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

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant is familiar with and capable of complying
13 fully with all applicable requirements, procedures and
14 standards of the United States environmental protection
15 agency, United States occupational safety and health
16 administration, the state departments of health, natural
17 resources and labor, and the state air pollution control
18 commission covering any part of an asbestos project; and

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

21 (c) Applicants for an asbestos inspector's license shall
22 submit an application and a certificate that shows
23 satisfactory completion of the United States environ-
24 mental protection agency training course for asbestos
25 inspectors to the department and shall pay the applica-
26 ble fee. The director may deny a license if there has been
27 a failure to comply with the application procedures or
28 if the 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.

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

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos worker's
4 license to work as an asbestos worker on an asbestos
5 project.

6 (b) To qualify for an asbestos worker's license an
7 individual shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 asbestos workers.

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant and the applicant's employees or agents
13 are familiar with and are capable of complying fully
14 with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project.

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

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

§16-32-10. Special revenue account.

1 The funds collected from the fees applicable in this
2 article shall be deposited in a special revenue account
3 in the state treasury to be used by the director of the

4 department of health and dedicated to the purposes of
5 this article which include, but are not limited to,
6 licensing, training, enforcement and program develop-
7 ment for asbestos.

§16-32-11. Exemptions from notification and licensure.

1 In an emergency that results from a sudden unex-
2 pected event that is not a planned renovation or
3 demolition, the director may waive the requirement of
4 twenty days prior notification by licensed asbestos
5 contractors.

6 Facilities presently operating under federal O.S.H.A.
7 standards for removing and handling asbestos on owned
8 premises, shall be exempt.

**§16-32-12. Approval of asbestos courses; requiring the
department to provide training courses for
licensure.**

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 of
4 asbestos abatement, removal, enclosure and encapsula-
5 tion, by submitting a full description of the curriculum
6 and a written application on forms prescribed by the
7 department.

8 The department shall make available complete
9 training courses for every license required under this
10 article. During the first year of implementation of this
11 article, the department shall offer all the training
12 courses for licenses in every congressional district in this
13 state. After the first day of July, one thousand nine
14 hundred eighty-nine, the department shall annually
15 offer all the training courses for licenses in at least one
16 location in this state. The director can charge reasonable
17 fees to offset costs of the courses offered.

§16-32-13. Reciprocity.

1 The director may set standards for accepting licenses
2 issued by other state boards of licensure. The director
3 may grant licenses to individuals from other states if
4 that other state has as stringent licensing requirements

5 as West Virginia.

§16-32-14. Prohibiting employer discrimination; notice to employees.

1 (a) No employer may discharge, threaten or otherwise
2 discriminate or retaliate against an employee by
3 changing the employee's compensation, terms, condi-
4 tions, location or privileges of employment because the
5 employee, acting on his own volition, or a person acting
6 on behalf of or under the direction of the employee,
7 makes a good faith report or is about to report, verbally
8 or in writing, to the employer or appropriate authority
9 an instance of wrongdoing or waste; or because the
10 employee is requested or subpoenaed by an appropriate
11 authority to participate in an investigation, hearing or
12 inquiry held by an appropriate authority or in a court
13 action.

14 (b) An employer shall post notices and use other
15 appropriate means to notify employees and keep them
16 informed of protections and obligations set forth in the
17 provisions of this section.

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

1 (a) The director shall reprimand, suspend or revoke
2 the license of an asbestos project designer, inspector,
3 contractor, management planner, worker or supervisor,
4 if the licensee:

5 (1) Fraudulently or deceptively obtains or attempts to
6 obtain a license;

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

11 (3) Fails to meet applicable federal or state standards
12 for abatement, enclosure, removal or encapsulation of
13 asbestos; or

14 (4) Employs or permits an individual without an
15 asbestos worker's license to work on an asbestos project.

16 (b) The director shall investigate all alleged violations
17 reported to the department. Upon the finding of a
18 violation in connection with any project involving the
19 abatement, enclosure, removal, or encapsulation of
20 asbestos, the director shall issue a cease and desist order
21 directing that all work on the project be halted
22 forthwith. Posting of the cease and desist order on the
23 project site shall constitute notice of its contents to the
24 property owner and all persons working on the asbestos
25 removal project. Where practicable, however, the
26 director shall deliver a copy of such order by certified
27 mail, return receipt requested, to the property owner
28 and to the contractor.

29 (c) Hearings regarding violations of this article shall
30 be conducted in accordance with the administrative
31 procedures act of chapter twenty-nine-a of this code.

§16-32-16. Penalties.

1 Notwithstanding any other provision of this code, any
2 person who violates any provision of this article or any
3 rule or regulation related hereto shall be guilty of a
4 misdemeanor.

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

Handwritten signatures and stamps:
- "NOE" (top left)
- "APPROVED" (top right, upside down)
- "J. J. [unclear]" (middle right, upside down)
- "J. J. [unclear]" (bottom left, upside down)

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

Lucas O. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1988.

Judd C. Wilks
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Sam Tomlin
President of the Senate

W. H. C. [Signature]
Speaker of the House of Delegates

The within *appeared* this the *30th*
March day of _____, 1988.

Lucas O. Williams
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/88

Time 4:28 p.m.

RECEIVED

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OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE