

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1118

By: Paulk

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 1991, Sections 451, 452, 453, 454, 455 and 456, which relate to the removal of friable asbestos materials; creating the Oklahoma Asbestos and Lead Paint Control Act; modifying and adding terms; providing authority to perform certain inspection and enter into certain contracts; including lead paint abatement in license requirements; providing for performance evaluations; requiring liability insurance for abatement contractors; modifying and adding powers and duties to Commissioner; authorizing the promulgation of certain rules; providing for reciprocity; modifying certain language; providing Commissioner powers to issue certain orders; providing fines and penalties for violations of act; providing administrative proceedings; providing civil remedies and fines; modifying fines and penalties for violation of act; providing private cause of action; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 1991, Section 451, is amended to read as follows:

Section 451. As used in ~~Sections 451 et seq.~~ of this title the Oklahoma Asbestos and Lead Paint Control Act:

1. "Friable asbestos material" means any material that contains asbestos of one percent (1%) or more that can be crumbled, pulverized or reduced to powder by hand pressure;

2. "Friable asbestos material abatement" means the removal, encapsulation or enclosure of friable asbestos-containing material;

3. "Friable asbestos material encapsulation" means the application of a bonding agent called a sealant, which penetrates and hardens the asbestos material or covers the surface of the material with a protective coating, thus preventing fiber release from the asbestos material;

4. "Friable asbestos material removal" means the actual physical removal of any friable asbestos-containing material from a facility, when the asbestos is either attached to or detached from any device or structure;

5. "~~Contractor~~ Asbestos abatement contractor" means any public or private entity that engages in friable asbestos-containing material abatement in any facility in this state except private residences or apartment houses of less than six family units;

6. "Commissioner" means the Commissioner of Labor;

7. "Department" means the Department of Labor;

8. "National Emissions Standards for Hazardous Air Pollutants" or "NESHAP" means those portions of the regulations contained in 40 CFR Part 61 under the federal Clean Air Act which deal with the demolition and renovation of asbestos facilities. The following list of sections of the CFR are included in the Commissioner's authority but do not limit it: Sections 61.140, 61.141, 61.145, 61.146, 61.148, 61.150, except subsection (a) (4), 61.154, except subsection (d), and 61.156;

9. "Lead" means metallic lead, all inorganic lead, and organic lead soaps. Excluded from this definition are all other organic lead compounds;

10. "Lead paint abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner. Such term includes the removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal and covering of lead-contaminated soil; and all preparation, cleanup, disposal, and post-abatement clearance activities associated with such measures;

11. "Lead paint abatement contractor" means any public or private entity that engages in lead paint abatement in any facility in this state;

12. "Lead-based paint" means paint or other surface coatings, whether or not defective, that contain lead in amounts equal to or greater than one milligram per square centimeter;

13. "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent (1%) asbestos by weight;

14. "Category II nonfriable asbestos-containing material" means any material, excluding category I non-friable asbestos-containing material, containing more than one percent (1%) asbestos by weight that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

15. "Regulated asbestos-containing materials" means friable asbestos-containing material that contains asbestos of one percent (1%) or more, by weight, category I nonfriable asbestos-containing material that has become friable, category I nonfriable asbestos-containing material that will be or has been subjected to sanding,

grinding, cutting, or abrading, or category II nonfriable asbestos-containing material that has a high probability of becoming, or has become, crumbled, pulverized, or reduced to powder by forces expected to act on the material in the course of demolition, renovation, or abatement operations regulated by the Oklahoma Asbestos and Lead Paint Control Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 451.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Department is hereby designated as the proper state agency to perform on-site inspections related to the federal program relating to demolition and renovation of asbestos facilities pursuant to the National Emissions Standards for Hazardous Air Pollutants, and is hereby authorized to contract with the Department of Environmental Quality for such inspections.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 452, is amended to read as follows:

Section 452. A. No contractor shall abate any friable material containing asbestos or lead paint without having first obtained a license to do so from the Commissioner of Labor. The Commissioner shall issue an asbestos or lead paint abatement license to a qualified contractor upon proper application, as determined by the Commissioner. The annual fee for such license shall be Five Hundred Dollars (\$500.00). A nonrefundable initial application fee of One Thousand Dollars (\$1,000.00) shall be charged. The Commissioner may deny a license to applicants whose past abatement performance for abatement of friable asbestos or lead paint does not comply with federal and other states' requirements. The Commissioner may evaluate the asbestos abatement performance of an applicant for a lead paint abatement contractor's license, and may evaluate the lead paint abatement performance of an applicant for an asbestos abatement contractor's license. A minimum waiting period of one

hundred twenty (120) days will be required before issuance of a license to permit the Commissioner to perform a ~~word~~ work performance investigation of the applicant.

The annual fee for ~~examining and certifying~~ licensing workers employed by a contractor for asbestos abatement shall be Twenty-five Dollars (\$25.00). Uncertified workers shall not be used on any asbestos or lead paint abatement projects.

B. The state and political subdivisions thereof, counties and political subdivisions thereof and municipalities and political subdivisions thereof, and their supervisors and employees, shall be exempt from any certification fees required by this section when such entities act as a contractor. Any contractor not performing abatement work which falls under the jurisdiction of the Commissioner during the period of the issued license shall be considered a new applicant for purposes of licensing and training.

C. A fee of Six Hundred Dollars (\$600.00) shall be paid by contractors to the Department of Labor, to be deposited in the General Revenue Fund, for each separate containment area of any asbestos abatement project. There shall be a minimum of three (3) inspections of each containment area. For projects which are not a part of a definite containment area, or are performed with multiple glovebags or miniature containments, a fee of Two Hundred Dollars (\$200.00), plus Five Dollars (\$5.00) per such glovebag or miniature containment, shall be made.

Asbestos abatement projects performed on properties owned by the state or any political subdivision thereof shall be exempt from this fee.

D. Any asbestos abatement contractor transporting asbestos-containing material shall be required to provide to the Commissioner a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of environmental impairment insurance. Any asbestos

or lead paint abatement contractor shall be required to provide the Commissioner a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of asbestos or lead paint abatement liability insurance.

E. No state agency or political subdivision thereof, county or political subdivision thereof, or municipalities or political subdivisions thereof shall solicit or receive any estimate or bid for abatement of asbestos from any person or party who is not a licensed asbestos abatement contractor.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 453, is amended to read as follows:

Section 453. A. The Commissioner of Labor shall have the ~~following powers and duties~~ power and duty to:

1. ~~To develop~~ Develop and adopt standards for the abatement of friable asbestos materials and lead paint which shall be consistent with general industry standards;

2. ~~To instruct~~ Instruct and examine contractors, employees and supervisors on the safe abatement of friable asbestos materials and lead paint. The Commissioner may designate a training location which shall be a state vocational educational school;

3. ~~To hire~~ Hire sufficient personnel to carry out the provisions of this act consistent with funds allocated and full-time-equivalent employees authorized;

4. ~~To inspect~~ Inspect all asbestos and lead paint abatement projects, to issue, modify and revoke orders; to issue cease and desist orders; and to require mandamus and seek injunctive relief for enforcement of orders; ~~and~~

5. ~~To exercise~~ Inspect and investigate private property upon request of the owner or for the protection of the public health and safety or the health and safety of any workers for the presence of friable asbestos materials or lead paint upon presenting appropriate

credentials to the owner, operator, or agent in charge. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have the power to seek an order compelling such entry or inspection pursuant to the provisions of the Oklahoma Asbestos and Lead Paint Control Act;

6. Collect and analyze samples to determine the presence and condition of friable asbestos materials and lead paint;

7. Recommend appropriate abatement measures for regulated asbestos-containing materials and lead paint;

8. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under the Oklahoma Asbestos and Lead Paint Control Act including, but not limited to, contracts with the United States, other states, agencies, and political subdivisions of this state;

9. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable;

10. Supervise, administer, and enforce the provisions of the Oklahoma Asbestos and Lead Paint Control Act regulations promulgated thereto;

11. Receive complaints as to asbestos and lead paint violations;

12. Hold hearings;

13. Institute legal proceedings, including suits for injunctions for the enforcement of the Commissioner's orders, regulations, and for the enforcement of penalties;

14. Investigate any violations of the Oklahoma Asbestos and Lead Paint Control Act;

15. Require that asbestos and lead paint reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of rules promulgated thereto;

16. Establish standardized inspection and reporting methods for the use of state agencies and political subdivisions for the inspection and reporting of asbestos and lead paint;

17. Require municipalities and counties to report to the Commissioner all permits for renovation and demolition of nonresidential structures and apartments of six or more dwelling units, and to require that an asbestos inspection be performed and submitted to municipalities and counties prior to the issuance of a renovation or demolition permit; and

18. Exercise all incidental powers which are necessary to carry out the provisions of this act.

B. The violations of any rule or standard shall be grounds for the Commissioner to evoke any penalties set forth in Section 456 of this title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 453.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner is authorized to promulgate rules and standards which shall be designed to prevent unsafe or unhealthful exposure of asbestos or lead paint to any person, or to the environment.

B. The Commissioner in promulgating rules and in approving variances, and the courts in granting injunctive relief under the provisions of the Oklahoma Asbestos and Lead Paint Control Act, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the rules proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the exposure or potential exposure resulting from such activity.

C. The Commissioner shall promulgate rules necessary to govern the certification and licensing of asbestos and lead paint abatement contractors, asbestos and lead paint inspectors, asbestos and lead paint air monitors, asbestos and lead paint abatement workers, asbestos and lead paint consultants, asbestos and lead paint analytical laboratories, and other persons undertaking asbestos and lead paint abatement activities.

D. The Commissioner is authorized to promulgate rules providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by the Commissioner or a court pursuant to the Oklahoma Asbestos and Lead Paint Control Act and any rules promulgated thereunder.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 453.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Commissioner may establish requirements for reciprocity for accreditation and certification of persons engaged in asbestos and lead paint abatement activities with other states that have established accreditation and certification programs that meet or exceed the standards promulgated pursuant to the Oklahoma Asbestos and Lead Paint Control Act. The Commissioner shall have the authority to issue orders and promulgate rules to carry out this section.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 454, is amended to read as follows:

Section 454. A. In addition to or in lieu of filing an administrative action or civil or criminal complaint for any willful misconduct described in Section 5 of this act, the Commissioner may impose a reprimand or a suspension or revocation of any certificate or license in accordance with this section.

B. If the Commissioner finds that a contractor has violated any of the provisions of this act or any rule promulgated pursuant to this act, the Commissioner may suspend, revoke or refuse to issue the license of the contractor after a hearing held for such purpose. Such hearing shall be held within thirty (30) days after written notice has been sent to the contractor by certified mail. If, after such hearing, the Commissioner finds cause to suspend, revoke or refuse to issue a license, the contractor shall be given written notice of the decision of the Commissioner and the basis therefor. The decision shall become final at the end of thirty (30) days from the date of such notice, unless appealed to the district court. All appeals from the Commissioner's order shall be taken in the manner prescribed by law.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 455, is amended to read as follows:

Section 455. The Commissioner of Labor or an authorized representative shall have the power and authority to enter at reasonable times upon any property for the purpose of inspecting and investigating contractors relating to the abatement of any ~~friable material containing asbestos~~ regulated asbestos-containing materials or lead paint pursuant to the Oklahoma Asbestos and Lead Paint Control Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 455.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall have the power to issue orders to:

1. Owners or contractors who are permitting or causing asbestos or lead paint violations, to cease and desist from such violation;

2. Owners or contractors who have failed to comply with the terms and provisions of any order of the Commissioner, to comply with such terms and provisions;

3. Owners or contractors who have contravened duly adopted asbestos or lead paint standards and rules, to cease such contravention and to comply with air quality standards and policies; and

4. Require any owner to comply with the provisions of the Oklahoma Asbestos and Lead Paint Control Act.

B. Such special orders are to be issued only after a hearing with reasonable notice to the affected owners or contractors of the time, place and purpose thereof, and they shall become effective not less than five (5) days after service as provided in subsection C of this section. Should the Commissioner find that any such owner or contractor is unreasonably affecting the public health, safety or welfare, the health of animal or plant life, or property, after a reasonable attempt to give notice, he shall declare an emergency and may issue without a hearing an emergency special order directing the owner or contractor to cease such pollution immediately, and shall within ten (10) days hold a hearing, after reasonable notice as to the time and place thereof to the owner or contractor to affirm, modify, amend or cancel such emergency special order. If the Commissioner finds that an owner or contractor who has been issued a special order or an emergency special order is not complying with the terms thereof, he may proceed in accordance with Sections 10 through 12 of this act.

C. The owner or contractor to whom such a special order is directed shall be notified by certified mail, return receipt requested, sent to the last-known address of such owner or

contractor, or by personal delivery by an agent of the Commissioner, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section shall limit the Commissioner's authority to proceed against such owner or contractor directly under Sections 10 through 12 of this act without the prior issuance of an order, or otherwise.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 455.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any person found by the Commissioner to have violated any of the provisions of the Oklahoma Asbestos and Lead Paint Control Act or any rule or order of the Commissioner in pursuance thereof or any certificate issued pursuant to the Oklahoma Asbestos and Lead Paint Control Act shall be subject to:

1. A civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) for each violation, such penalty to be assessed and levied by order of the Commissioner after notice and hearing in accordance with subsection C of this section; and

2. A reprimand or a suspension or revocation of any certificate or license issued to the person pursuant to the Oklahoma Asbestos and Lead Paint Control Act, such reprimand, suspension, or revocation to be assessed and levied by order of the Commissioner after notice and hearing as provided in the subsection C of this section.

B. All proceedings and hearings before the Commissioner regarding violations of the Oklahoma Asbestos and Lead Paint Control Act, or any rule, order of the Commissioner, emergency order of the Commissioner or certificate or license issued pursuant to the Oklahoma Asbestos and Lead Paint Control Act and all appeals therefrom shall be conducted in accordance with the Administrative Procedures Act.

C. All penalties and other sums recovered or collected by the Commissioner for and on behalf of the state under this section shall be deposited in the Asbestos Safety Fund.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 455.3 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any owner or contractor violating or failing, neglecting or refusing to obey any asbestos or lead paint abatement rule or order of the Commissioner may be compelled to comply by injunction, mandamus or other judicial or appropriate civil remedy.

B. Without limiting the remedies which may be obtained under this section, any owner or contractor violating or failing, neglecting or refusing to obey any rule or order or any provision of this act shall be subject, in discretion of the court, to a civil penalty not to exceed Twenty-five Thousand Dollars (\$25,000.00) for each violation. Each day of violation shall constitute a separate offense. In determining the amount of civil penalty to be assessed pursuant to this subsection, the court may consider, in addition to such other factors as it may deem appropriate, the size of the owner's or contractor's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Any such penalties shall be paid into the State Treasury.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any asbestos or lead paint regulation or order or any provision of the Oklahoma Asbestos and Lead Paint Control Act, the Commissioner may provide, in any order issued by the Commissioner against the owner or contractor, for the payment of civil charges in specific sums, not to exceed the limit of subsection B of this section. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B of this section and shall be paid into the General Revenue Fund.

SECTION 12. AMENDATORY 40 O.S. 1991, Section 456, is amended to read as follows:

Section 456. A. ~~Any~~ In addition to any administrative or civil penalty, any person who violates any of the provisions of Sections 1 through 5 of this act the Oklahoma Asbestos and Lead Paint Control Act or who violates any rule or order promulgated pursuant ~~to~~ Sections 1 through 5 of this act thereto shall be guilty of a misdemeanor and may be enjoined from continuing such action. Upon conviction thereof, said person shall be punished by imprisonment in the county jail for not more than six (6) months and by a fine of not less than One Hundred Dollars (\$100.00). Each day's violations shall constitute a separate violation.

B. The Attorney General shall, upon request of the Commissioner, bring an action for injunction against any person violating any provision of ~~Sections 1 through 5 of this act~~ the Oklahoma Asbestos and Lead Paint Control Act or violating any order or determination of the Commissioner. In any action for injunction, any finding of the Commissioner, after notice, shall be prima facie evidence of the facts found therein.

C. A district attorney, upon request of the Commissioner, shall prosecute any violation of ~~Sections 1 through 5 of this act~~ the Oklahoma Asbestos and Lead Paint Control Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 456.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Asbestos and Lead Paint Control Act shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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