

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2537

By: Cannaday

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5
6 AS INTRODUCED

7 An Act relating to labor; providing method of
8 payment of fees and fines paid to the Department of
9 Labor; authorizing the Department of Labor to
10 charge certain fees; establishing administrative
11 service fee; providing procedure for collection on
12 bogus checks; defining terms; directing the
13 Department to promulgate certain rules; requiring
14 licensing for door-to-door sales businesses;
15 providing for licensing requirements and
16 procedures; providing licensing fees; requiring a
17 bond; authorizing license suspension or revocation
18 or refusal to issue a license; providing for
19 complaints against a door-to-door sales business;
20 providing license is not transferable; prohibiting
21 certain acts; giving enforcement powers to the
22 Department of Labor; providing penalty for
23 violating rules; creating the Door-to-Door Sales
24 Act Revolving Fund; amending 40 O.S. 2001, Section
141.16, as amended by Section 1, Chapter 554,
O.S.L. 2004 (40 O.S. Supp. 2007, Section 141.16),
which relates to the Boiler and Pressure Vessel
Safety Act; increasing certain fees; modifying fund
in which certain fees are deposited; amending 40
O.S. 2001, Section 197.6, which relates to the
Oklahoma Minimum Wage Act; changing the size of
notice; amending 40 O.S. 2001, Sections 403, 412
and 414, which relate to the Oklahoma Occupational
Health and Safety Standards Act of 1970; modifying
accident reporting requirement; creating civil
fines for violations; creating the Public Employee
Occupational Safety and Health Revolving Fund;
establishing criteria for prioritizing requests for
consultation; amending 40 O.S. 2001, Sections 452
and 456, which relate to Oklahoma Asbestos Control

1 Act; increasing fees for certain licenses; creating
2 a fee for the issuance of a duplicate license;
3 creating the Oklahoma Asbestos Control Revolving
4 Fund; authorizing a civil penalty for violations;
5 amending 40 O.S. 2001, Sections 463 and 469, which
6 relate to amusement rides; allowing for waivers of
7 certain inspections; creating a waiver fee;
8 creating fees for certain inspections; increasing
9 certain fees; creating the Safety Standards
10 Revolving Fund; granting the Commissioner certain
11 powers; allowing for administrative fines for
12 violations; providing for certain hearings;
13 providing for codification; and providing an
14 effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 12 of Title 40, unless there
18 is created a duplication in numbering, reads as follows:

19 A. All remittances of fees and fines required to be paid to
20 the Oklahoma Department of Labor pursuant to state law, shall be
21 made to the Department by bank draft, check, cashier's check,
22 money order, cash, or nationally recognized credit card or debit
23 card. If payment is made by credit or debit card, the Department
24 may add an amount equal to the amount of the service charge
incurred by the Department, as a convenience fee for the
acceptance of the credit or debit card. For purposes of this
subsection, "nationally recognized credit or debit card" means any
instrument or device, whether known as a credit card, credit
plate, charge plate, debit card, or by any other name issued with

1 or without fee by an issuer for the use of the cardholder in
2 obtaining goods, service, or anything of value on credit which is
3 accepted by over one thousand merchants in this state. The
4 Department shall promulgate rules to allow for the implementation
5 of payment of fees by credit or debit card.

6 B. All remittances by bank draft, check, cashier's check, or
7 money order, collected pursuant to any law, Department rule, or
8 order, shall be made payable to the Oklahoma Department of Labor.
9 The Department shall issue its receipt for cash or money payment
10 to the remitter. No remittance other than cash shall be in full
11 discharge of liability due the Oklahoma Department of Labor unless
12 and until it shall have been paid in cash. All money collected,
13 including service or convenience fees, shall be deposited with the
14 State Treasurer of this state.

15 C. There shall be assessed, in addition to any other
16 penalties provided for by law, an administrative service fee of
17 Twenty-five Dollars (\$25.00) on each check returned to the
18 Oklahoma Department of Labor or any agent by reason of the refusal
19 of the bank upon which the check was drawn to honor the same.

20 D. Upon the return of any check by reason of the refusal of
21 the bank upon which the check was drawn to honor the same, the
22 Oklahoma Department of Labor may file a bogus check complaint with
23 the appropriate district attorney who shall refer the complaint to
24 the Bogus Check Restitution Program established by Section 111 of

1 Title 22 of the Oklahoma Statutes. Funds collected by the
2 program, after collection of the fee authorized by Section 114 of
3 Title 22 of the Oklahoma Statutes, shall be transmitted to the
4 Oklahoma Department of Labor and credited to the liability for
5 which the returned check was drawn and to the administrative
6 service fee provided by this section.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 62 of Title 40, unless there
9 is created a duplication in numbering, reads as follows:

10 A. As used in this act:

11 1. The "Commissioner" shall mean the Commissioner of Labor or
12 a designee;

13 2. "Department" shall mean the Department of Labor; and

14 3. "Door-to-door sales business" shall mean an individual or
15 business entity performing the sale, lease, or rental of consumer
16 goods or services, whether under single or multiple contracts, in
17 which the seller or representative of the seller personally
18 solicits the sale, including those in response to or following an
19 invitation by the buyer, and the buyer's agreement or offer to
20 purchase is made at a place other than the place of business of
21 the seller. "Door-to-door sales business" shall not include any
22 nonprofit organization organized and operated exclusively for
23 fraternal, religious, civic, charitable or educational purposes.

24

1 "Door-to-door sales business" shall not include any local or
2 nationally recognized newspapers.

3 B. 1. No person shall open, operate or maintain a "door-to-
4 door" sales business in this state without first procuring a
5 license from the Department. Any person who shall open or conduct
6 any such business without first having procured a license shall be
7 guilty of a misdemeanor. Application for the first license to be
8 issued to any business on or after November 1, 2008, shall be
9 accompanied by a fee of Two Hundred Fifty Dollars (\$250.00);
10 renewal applications for a license to be issued to any business
11 shall be accompanied by a fee of Two Hundred Fifty Dollars
12 (\$250.00). The license fee shall not be returnable, and shall be
13 placed in the Door-to-Door Sales Act Revolving Fund.

14 2. Every applicant for a license shall have been a resident
15 of this state for at least one (1) year immediately preceding the
16 filing of such application. In the case of corporation
17 applicants, at least one of the incorporators and one of the
18 principal officers thereof, together with the person who is to be
19 responsible for the general management of the office shall meet
20 the requirement as to Oklahoma residence.

21 3. Every applicant for a license shall file with the
22 Department a written application stating the name and address of
23 the applicant; the street and number of the building in which the
24 business is to be conducted; the name of the person who is to be

1 responsible for the general management of the office; the names
2 and addresses of all those financially interested therein; the
3 name under which the business is to be conducted; whether or not
4 the applicant is pecuniarily interested in any other business or
5 businesses, and if so the nature of same and where carried on.
6 Said applicant shall also state on the application whether or not
7 he is engaged at the time of making application or at any previous
8 time has been engaged or financially interested in a "door-to-
9 door" sales business in Oklahoma or any other state; and, if so,
10 the name and address of such business and the dates he was so
11 engaged or interested. If applicant is now or has previously been
12 employed in any "door-to-door" sales business he shall state the
13 name and address of such business, the name of the person
14 conducting such business, the dates employed, and in what
15 capacity. All applications shall be sworn to, under oath.

16 4. Every applicant for a license shall file with the
17 Department proof of workers' compensation insurance. Any changes
18 or alterations to workers' compensation insurance coverage shall
19 be filed with the Department within thirty (30) days of such
20 change or alteration. Failure to provide adequate proof of
21 workers' compensation insurance or failure to file notice of a
22 change or alteration to workers' compensation insurance shall be
23 grounds for denial, revocation, or suspension of a license.

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1 5. All applicants shall clearly state if they have operated
2 or been employed by a "door-to-door" sales business in Oklahoma or
3 any other state within the past fifteen (15) years and, if so,
4 under what authority; and if ever cited for cause, give the final
5 disposition of said breach of law or regulations charged governing
6 such business or employment. If applicant should be found guilty
7 of perjury as to any material fact, after issuance of a license by
8 the State of Oklahoma, after exhaustion of applicant's right of
9 appeal, the Department shall rescind such license immediately
10 thereafter, and no license shall subsequently be issued to such
11 applicant.

12 6. The applicant shall give as reference the names and
13 addresses of at least three persons of reputed business or
14 professional integrity. If applicant is a corporation, the
15 application shall state the names and addresses of the officers
16 and directors of said corporation and shall be signed and sworn to
17 by the president and secretary, with seal affixed. If applicant
18 is a copartnership, the application shall state the names and
19 addresses of all partners therein and shall be signed and sworn to
20 by all of them. The Department shall be qualified to take sworn
21 statements of applicants, under oath.

22 7. Upon the filing of an application for the first license
23 after the effective date of this act, as herein provided, the
24 Department shall cause an investigation to be made of the

1 applicant and all those financially interested therein, such
2 investigation to be made by appropriate state agencies and other
3 sources of information, and shall finally rule thereon within
4 thirty (30) days after the application is filed. Unless the
5 application shall be rejected by the Department on the grounds
6 that the applicant or associated party or parties have been
7 convicted of a felony, or for other good and sufficient reason
8 within the meaning and purpose of this act, the same shall be
9 granted. If the application is rejected, the Department shall
10 state in the written order the specific reasons for such
11 rejection. That there are already an adequate number of licensed
12 "door-to-door" sales businesses shall not be grounds for rejecting
13 a license application. An appeal from an order of the Department
14 rejecting an application for any reason other than conviction of a
15 felony may be taken to the district court of the county of
16 applicant's residence, in accordance with the general statute of
17 the state governing appeals from decisions of administrative
18 agencies in individual proceedings.

19 8. A detailed report of such investigation and the action
20 taken thereon by the Department shall be made in writing and
21 become a part of the official records in the Department's office.

22 9. Every initial application for a license shall be
23 accompanied by a bond in the sum of Five Thousand Dollars
24 (\$5,000.00), issued by a duly licensed surety company authorized

1 to do business in Oklahoma, to be approved by the Department and
2 filed of record in the Department, which bond shall be conditioned
3 upon the applicant's complying with all the provisions of this
4 act. Upon completion of one (1) year of operation, the amount of
5 the bond shall be reduced to Three Thousand Dollars (\$3,000.00)
6 and shall remain fixed at that amount until the completion of two
7 (2) years of operation, at which time the amount of the bond shall
8 be reduced to One Thousand Dollars (\$1,000.00). The bond shall
9 remain at One Thousand Dollars (\$1,000.00) so long as the business
10 remains under the management of the originally licensed operator.
11 If at any time, in the opinion of the Department, any of the
12 sureties shall become irresponsible, the person holding the
13 license shall, upon written notice and demand from the Department,
14 furnish a new bond, subject to the provisions of this section.
15 Failure to furnish a new bond within thirty (30) days after
16 receipt of such notice and demand shall, in the discretion of the
17 Department, constitute just cause for revocation of such license,
18 and each license when revoked shall be obtained by the Department
19 for cancellation.

20 10. There shall appear on the license the name of the
21 licensee, the location of the office where the "door-to-door"
22 sales business is to be conducted, the name of the person who is
23 to be charged with the general management and the precise name
24 under which the business is to be carried on. In the event of a

1 change in location the Department shall be notified of same within
2 ten (10) days and the license shall be endorsed to show the
3 correct address. Each license shall be numbered and dated and
4 posted in a conspicuous place in the office of the business.

5 11. In the event the services of the person charged with the
6 general management of the business are terminated within the
7 license year, the licensee shall so advise the Department and the
8 name of the person taking over the management shall be substituted
9 on the license for that of the former manager so that at all times
10 the person charged with general management of the employment
11 agency shall be known to the Department and shall appear on the
12 license.

13 12. Every license shall remain in force until the thirtieth
14 day of June after its issuance, unless sooner surrendered,
15 suspended or revoked.

16 13. The Department shall notify all license holders of the
17 expiration date of their initial licenses at least ten (10) days
18 prior thereto. The Department shall not be required to notify
19 license holders of the expiration of renewed licenses.
20 Application for renewal shall be accompanied by the required
21 license fee and bond.

22 14. In the event the Department shall find that a business
23 has violated any of the provisions of this act, or that any other
24 good and sufficient reason therefor has arisen within the meaning

1 and purpose of this act, it may suspend or revoke said license or
2 refuse to grant a new license upon the termination thereof; but in
3 any case no action shall be taken until a written notice has been
4 served on said business specifying the charges against said
5 business, and a fair public hearing, in which the procedure
6 prescribed for individual proceedings by the general
7 administrative procedure acts of the state shall apply wherever
8 not in conflict with the specific procedures herein prescribed,
9 has been given same within thirty (30) days after such written
10 notice has been posted by registered mail to the licensee. If,
11 after such hearing, the Department shall find cause to suspend,
12 revoke or refuse to issue a license, the business shall be given
13 written notice of the Department's decision and the basis
14 therefor, which decision shall become final at the end of thirty
15 (30) days from the date of such notice, unless during the said
16 thirty-day period the licensee shall take an appeal to the
17 district court of the county in which the license was issued from
18 the Department's order, with opportunity for stay as provided in
19 the general statutes of the state governing appeals from
20 administrative orders in individual proceedings. All appeals from
21 the Department's decisions and orders shall be taken in the manner
22 prescribed by law.

23 15. Every complaint against a "door-to-door" sales business
24 shall be made in writing to the Department and shall be thoroughly

1 investigated. A complete record of the investigation and
2 disposition of the complaint shall be made and become a permanent
3 record in the Department's office. Whenever, for any cause, a
4 license is revoked, the Department shall not within two (2) years
5 from the date of such revocation issue another license to the
6 person or business entity whose license has been revoked.

7 16. No license granted under the terms of this act shall be
8 transferable, but a "door-to-door" sales business may, with the
9 approval of the Department, at any time incorporate or admit a
10 partner or partners to the business, or make changes in the
11 corporate name, or sell the business; but no "door-to-door" sales
12 business shall permit any person not mentioned in the application
13 for license to become connected with such agency, either as a
14 partner or as an officer of a corporation, unless the Department's
15 written consent thereto shall first have been obtained. Such
16 consent may be withheld only for any reason for which an original
17 application for license might have been rejected if the person or
18 persons in question had been mentioned therein. Nothing in this
19 act shall be construed to prevent any executor, administrator or
20 heir of a deceased licensee from carrying on the business for the
21 remainder of the period for which licensed, or pending its sale to
22 a qualified purchaser.

23 17. No sale of a franchise for a "door-to-door" sales
24 business in Oklahoma shall be legal, or enforceable in the courts

1 of this state, unless and until the qualifications of such
2 franchise purchaser shall first have been submitted to the
3 Department as a prospective licensee under the provisions of this
4 act, and approved by the Department.

5 C. It shall be the duty of the Department to enforce the
6 provisions of this act. When informed of any violation thereof it
7 shall be the Department's duty to investigate same, and it may
8 institute criminal proceedings for enforcement of this act, or
9 apply to any court of competent jurisdiction or the Attorney
10 General in order to seek injunctive relief on behalf of the state.
11 In order to make more effective the foregoing statutory provisions
12 and rules, the Department is hereby authorized to prepare and
13 promulgate such rules as may from time to time be deemed
14 necessary, not inconsistent with the provisions of this act. A
15 violation of such rules shall be deemed to be a violation of this
16 act, and any person convicted of violating the provisions of this
17 act shall be guilty of a misdemeanor and shall be fined not less
18 than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars
19 (\$500.00), or the fee charged for the service, whichever is
20 greater, for each offense, or be imprisoned in the county jail for
21 a period of not exceeding six (6) months, or both such fine and
22 imprisonment, at the discretion of the court. Any person
23 convicted of a second or subsequent violation of the provisions of
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1 this act shall be fined up to Five Thousand Dollars (\$5,000.00) in
2 addition to any other penalty provided for by law.

3 D. There is hereby created in the State Treasury a revolving
4 fund for the Department of Labor to be designated the "Door-to-
5 Door Sales Act Revolving Fund". The fund shall be a continuing
6 fund, not subject to fiscal year limitations, and shall consist of
7 all monies collected by the Department pursuant to the provisions
8 of this section. Expenditures from said fund shall be made upon
9 warrants issued by the State Treasurer against claims filed as
10 prescribed by law with the Director of State Finance for approval
11 and payment.

12 SECTION 3. AMENDATORY 40 O.S. 2001, Section 141.16, as
13 amended by Section 1, Chapter 554, O.S.L. 2004 (40 O.S. Supp.
14 2007, Section 141.16), is amended to read as follows:

15 Section 141.16

16 A. 1. a. Annual certificate of operation fee shall be as
17 follows:

18	(1) with manway state inspector	\$50.00
19	(2) without manway state inspector	\$25.00
20	(3) any size special - or owner/user	
21	inspector	\$25.00

22 b. Only one certificate of operation fee per year may
23 be charged; except an additional fee equal to the
24 certificate of operation fee may be charged for

witnessing a hydrostatic test required after repairs, provided a fee equal to the total fees identified in division (1) or (2) of subparagraph a of this paragraph, whichever is appropriate, and subparagraph f of paragraph 2 of this subsection may be charged when the pressure-retaining item is not prepared and ready pursuant to rules promulgated by the Commissioner of Labor at the time of the inspection.

2. Other Fees

a.	hydrostatic test of steam pipeline per day	\$150.00
	(for each additional half-day or part thereof)	\$75.00
b.	shop review fees	\$1,250.00
		<u>\$1,750.00</u>
c.	licensing fees	
	(1) repair, service, install (annually)	\$50.00
		<u>\$100.00</u>
	(2) installer technician (one-time issuance)	\$50.00
		<u>\$100.00</u>
	(3) boiler operator (biennially)	\$50.00

1		<u>\$100.00</u>
2	d. certificate of competency fee	\$15.00
3		<u>\$25.00</u>
4	e. examination fee	\$50.00
5	f. boiler or pressure vessel inspection	
6	fee for certificate inspections by	
7	state inspectors	\$100.00
8	g. authorized inspector services for	
9	weld repairs or alterations, per	
10	eight-hour day or part thereof	\$300.00
11	h. a fee as established by rule may be	
12	assessed for the issuance of duplicate	
13	licenses and certificates, not to	
14	exceed	\$10.00

15 B. All institutions owned or operated by the State of
16 Oklahoma or its agencies or by any county, municipality or school
17 district, and such institutions or agencies, and all owners or
18 users of boilers or pressure vessels of historical significance as
19 specified in subsection D of Section 141.5 of this title are
20 exempt from the payment of any fees provided for in this section.

21 C. ~~1-~~ The Commissioner shall account for and ~~transfer~~
22 deposit all fees, ~~except for the fees listed in subparagraphs b,~~
23 ~~g, and h of paragraph 2 of subsection A of this section, so~~
24 ~~received to the State Treasury to the credit of the General~~

1 Revenue Safety Standards Revolving Fund, ~~together with a detailed~~
2 ~~report of same~~ created pursuant to Section 463 of this title.

3 ~~2. Shop review fees, authorized inspector services fees and~~
4 ~~duplicate license and certificate fees shall be deposited to the~~
5 ~~Department of Labor Revolving Fund created pursuant to Section~~
6 ~~141.19 of this title.~~

7 ~~3. The shop review fees, authorized inspector services fees~~
8 ~~and duplicate license and certificate fees shall be used for~~
9 ~~conducting shop reviews, authorized inspector services and for~~
10 ~~administrative costs.~~

11 D. All fees shall be paid directly to the Department of
12 Labor.

13 SECTION 4. AMENDATORY 40 O.S. 2001, Section 197.6, is
14 amended to read as follows:

15 Section 197.6 On and after August 1, 1965, every employer,
16 subject to this act, shall post a notice or notices of the
17 pertinent provisions of this act in such form as may be prescribed
18 and furnished by the Commissioner. Said notice shall be not less
19 than ~~eleven (11)~~ eight and one-half (8.5) inches by ~~seventeen (17)~~
20 eleven (11) inches in size and shall be displayed in such a manner
21 so as to be accessible to all employees in each establishment
22 under the control of the employer. The Commissioner, or ~~his~~ duly
23 authorized representative, may, for the purpose of determining
24 whether such notice has been properly posted, enter, during

1 business hours, upon the premises of any employer subject to this
2 act.

3 SECTION 5. AMENDATORY 40 O.S. 2001, Section 403, is
4 amended to read as follows:

5 Section 403. A. Each employer shall furnish to each of his
6 or her employees employment and a place of employment which are
7 free from recognized hazards that are causing or are likely to
8 cause death or serious physical harm to his or her employees,
9 commensurate with the Occupational Safety and Health Act of 1970.

10 B. No person shall discharge, discriminate or take adverse
11 personnel action against any employee because such employee has
12 filed any complaint, or instituted or caused to be instituted any
13 proceeding under or related to this act, or has testified or is
14 about to testify in any such proceeding, or because of the
15 exercise by such employee on behalf of himself or herself or
16 others of any right affected by this act.

17 C. Within forty-eight (48) hours after the occurrence of an
18 employment accident which is fatal to one or more employees or
19 which results in hospitalization of ~~five~~ three or more employees,
20 the employer of any employees so injured or killed shall report
21 the accident in writing to the Oklahoma City office of the
22 Oklahoma Department of Labor, in a manner prescribed by the
23 Department. The Commissioner of Labor may require such additional
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1 reports as he or she deems necessary, including the official death
2 certificate from the Oklahoma State Department of Health.

3 D. No rule or standard promulgated under this act shall, or
4 shall be deemed to, establish legal standards of conduct or legal
5 duties, the violation of which standards or duties would
6 constitute negligence or gross negligence in any civil proceeding.

7 E. Every employer having twenty-five ~~(25)~~ or more full- or
8 part-time employees shall:

9 1. Designate an employee who shall coordinate all safety
10 programs of the employer;

11 2. Provide safety classes to each type or class of employee
12 no less than quarterly, except that public schools shall only be
13 required to provide safety classes or instruction to their
14 employees during the school year. Provided further, public school
15 employees who are certified personnel and are in compliance with
16 federal OSHA occupational safety and health standards shall be
17 exempt from such safety classes or instruction and shall not be
18 included in the computation of the number of employees set forth
19 in this subsection ~~E of this section~~ for determining the
20 requirement of such safety classes or instruction; and

21 3. Cooperate with the Department of Labor including allowing
22 any announced inspection of the premises for the purpose of
23 determining compliance with this subsection.

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1 The provisions of this subsection shall not apply to any
2 hospital which is subject to the rules of the U.S. Department of
3 Health and Human Services, Health Care Financing Administration
4 (HCFA), as set forth in 42 CFR, Parts 405, 412, 416, 417, 440,
5 441, 456, 482 and 489; Medicare and Medicaid Programs; Conditions
6 of Participation for Hospitals, Final Regulations.

7 SECTION 6. AMENDATORY 40 O.S. 2001, Section 412, is
8 amended to read as follows:

9 Section 412. A. Any person failing to comply with any
10 standard or interfering with, impeding or obstructing in any
11 manner the administration of standards pursuant to the provisions
12 of the Oklahoma Occupational Health and Safety Standards Act, upon
13 conviction, shall be guilty of a misdemeanor.

14 B. Any person who violates any of the provisions of the
15 Oklahoma Occupational Health and Safety Standards Act, upon
16 conviction, shall be guilty of a misdemeanor and in addition
17 thereto may be enjoined from continuing such violation. Each day
18 upon which such violation occurs shall constitute a separate
19 violation.

20 C. The Attorney General, on the request of the Commissioner,
21 shall bring an action against any person violating any of the
22 provisions of the Oklahoma Occupational Health and Safety
23 Standards Act or violating any order or determination of the
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1 Commissioner promulgated pursuant to the Oklahoma Occupational
2 Health and Safety Standards Act.

3 D. Any employer who willfully or repeatedly violates the
4 requirements of the Oklahoma Occupational Health and Safety
5 Standards Act, any standard or order promulgated pursuant to
6 Section 403 of this title, or regulations prescribed pursuant to
7 the Oklahoma Occupational Health and Safety Standards Act, may be
8 assessed a civil penalty of not more than Ten Thousand Dollars
9 (\$10,000.00) for each violation, to be assessed by the
10 Commissioner of Labor, or designee. Fines shall be assessed as
11 follows:

12 1. Serious violations - up to One Thousand Dollars
13 (\$1,000.00) per violation;

14 2. Other than serious - up to One Thousand Dollars
15 (\$1,000.00) per violation;

16 3. De minimus - no penalty;

17 4. Failure to abate - up to One Thousand Dollars (\$1,000.00)
18 per day for each day during which such failure continues;

19 5. Violations that cause death - up to Ten Thousand Dollars
20 (\$10,000.00); and

21 6. Knowingly making a false statement, representation or
22 certification in any application, record, report, plan, or other
23 document filed or required to be maintained - Ten Thousand
24 Dollars (\$10,000.00).

1 "Serious" is defined as substantial probability that death or
2 serious physical harm could result from a condition which exists
3 or from one or more practices, means, methods, operations or
4 processes which have been adopted or are in use in such place of
5 employment.

6 E. The Commissioner of Labor or designee shall assess and
7 collect any civil penalty incurred under subsection D of this
8 section and, in the Commissioner's discretion, may remit, mitigate
9 or negotiate said penalty. In determining the amount of the
10 penalty to be assessed, or the amount agreed upon in any
11 negotiation, consideration shall be given to the appropriateness
12 of such penalty in light of the life of the business of the
13 employer charged, the gravity of the violation, and the extent to
14 which the employer charged has complied with the provisions of the
15 Oklahoma Occupational Health and Safety Standards Act or has
16 otherwise attempted to remedy the consequences of the violation.
17 Individual proceedings shall be conducted pursuant to the
18 provisions of the Administrative Procedures Act.

19 F. There is hereby created in the State Treasury a revolving
20 fund for the Department of Labor to be designated the "Public
21 Employee Occupational Safety and Health Revolving Fund". The fund
22 shall be a continuing fund, not subject to fiscal year
23 limitations, and shall consist of all monies collected by the
24 Department pursuant to the provisions of the Oklahoma Occupational

1 Health and Safety Standards Act. Expenditures from said fund
2 shall be made upon warrants issued by the State Treasurer against
3 claims filed as prescribed by law with the Director of State
4 Finance for approval and payment.

5 SECTION 7. AMENDATORY 40 O.S. 2001, Section 414, is
6 amended to read as follows:

7 Section 414. A. The Commissioner shall not assert
8 enforcement jurisdiction pursuant to Section 401 et seq. of this
9 title over any occupational safety or health issue with respect to
10 which a federal standard has been issued pursuant to Section (6)
11 of Public Law 91-596, also known as the Williams-Steiger
12 Occupational Safety and Health Act of 1970.

13 B. The Commissioner shall provide competent occupational
14 safety and health consultation, education and training for private
15 and public employers in coordination with the Oklahoma Department
16 of Career and Technology Education and other available community
17 resources.

18 C. Such consultation shall be provided on a priority basis to
19 those private employers ~~which, based on their certification, have~~
20 ~~occupational injury and illness rates exceeding the national~~
21 ~~average incidence rate for private employers of similar character~~
22 in accordance with Title 29 of the U.S. Code of Federal
23 Regulations, Part 1908, Consultation Agreements, the current U.S.
24 DOL, OSHA Consultation Policies and Procedures Manual ("CPPM"),

1 and in compliance with Section (6) of Public Law 91-596, also
2 known as the Williams-Steiger Occupational Safety and Health Act
3 of 1970 (29 U.S.C.A., Section 655), and the Consultation and
4 Cooperative Agreements pursuant to Section 21(d) of 29 U.S.C.,
5 Section 656.

6 D. No such consultation shall be provided except upon written
7 request by the private employer.

8 E. Except when a condition of "imminent danger" exists, no
9 reports, communication, or other information regarding safety and
10 health hazards discovered by the Commissioner, pursuant to the
11 administration of Section 401 et seq. of this title, or ~~his~~ the
12 representative of the Commissioner in the workplaces of private
13 employers, shall be reported to any enforcement authority
14 whatsoever without the prior approval of the employer.

15 F. The Commissioner may, in providing services to private
16 employers upon request, refer private employers for participation
17 in other safety and health consultation, education and training
18 programs including but not limited to the programs authorized by
19 Section ~~7(C)~~ 21(d) of Public Law 91-596.

20 G. The Commissioner may, upon request, refer qualifying
21 private employers to programs operated by the U.S. Department of
22 Labor for recognition or for exemption from inspection by the U.S.
23 Department of Labor Occupational Safety and Health Administration.

24

1 H. The Commissioner shall certify successful participation in
2 the occupational safety and health consultation, education and
3 training program pursuant to the provisions of Section 924.2 of
4 Title 36 of the Oklahoma Statutes.

5 I. The Commissioner may promulgate such rules and regulations
6 as may be necessary to implement the provisions of this section.

7 J. As used in this section:

8 1. "Private employer" means a person engaged in a business
9 affecting commerce who has employees, but does not include the
10 United States or any state or political subdivision of a state;
11 and

12 2. "Imminent danger" means any conditions or practices in any
13 place of employment which are such that a danger exists which
14 could reasonably be expected to cause death, or serious physical
15 harm immediately.

16 SECTION 8. AMENDATORY 40 O.S. 2001, Section 452, is
17 amended to read as follows:

18 Section 452. A. No contractor shall abate any friable
19 material containing asbestos without having first obtained a
20 license to do so from the Commissioner of Labor. The Commissioner
21 shall issue an asbestos abatement license to a qualified
22 contractor upon proper application, as determined by the
23 Commissioner. The annual fee for such license shall be Five
24 Hundred Dollars (\$500.00). A nonrefundable initial application

1 fee of One Thousand Dollars (\$1,000.00) shall be charged. The
2 Commissioner may deny a license to applicants whose past abatement
3 performance for abatement of friable asbestos does not comply with
4 federal and other states' requirements. A minimum waiting period
5 of one hundred twenty (120) days will be required before issuance
6 of a license to permit the Commissioner to perform a work
7 performance investigation of the applicant.

8 The annual fee for examining and certifying workers employed
9 by a contractor for asbestos abatement shall be ~~Twenty-five~~
10 ~~Dollars (\$25.00)~~ Fifty Dollars (\$50.00). Uncertified workers
11 shall not be used on any asbestos abatement projects.

12 The Commissioner of Labor shall charge a fee of Fifty Dollars
13 (\$50.00) for a duplicate of any license issued pursuant to the
14 Oklahoma Asbestos Control Act.

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

23 C. A fee of Six Hundred Dollars (\$600.00) shall be paid by
24 contractors to the Department of Labor, to be deposited in the

1 General Revenue Fund, for each separate containment area of any
2 asbestos abatement project. There shall be a minimum of three
3 inspections of each containment area. For projects which are not
4 a part of a definite containment area, or are performed with
5 multiple glovebags or miniature containments, a fee of Two Hundred
6 Dollars (\$200.00), plus Five Dollars (\$5.00) per such glovebag or
7 miniature containment, shall be made.

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

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

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

22 F. There is hereby created in the State Treasury a revolving
23 fund for the Department of Labor to be designated the "Oklahoma
24 Asbestos Control Revolving Fund". The fund shall be a continuing

1 fund, not subject to fiscal year limitations, and shall consist of
2 all monies collected by the Department pursuant to the provisions
3 of the Oklahoma Asbestos Control Act. Expenditures from said fund
4 shall be made upon warrants issued by the State Treasurer against
5 claims filed as prescribed by law with the Director of State
6 Finance for approval and payment.

7 SECTION 9. AMENDATORY 40 O.S. 2001, Section 456, is
8 amended to read as follows:

9 Section 456. A. In addition to any administrative or civil
10 penalty, any person who violates any of the provisions of the
11 Oklahoma Asbestos Control Act or who violates any rule or order
12 promulgated pursuant thereto shall be guilty of a misdemeanor and
13 may be enjoined from continuing such action. Upon conviction
14 thereof, said person shall be punished by imprisonment in the
15 county jail for not more than six (6) months and by a fine of not
16 less than One Hundred Dollars (\$100.00). Each day's violations
17 shall constitute a separate violation.

18 B. The Attorney General shall, upon request of the
19 Commissioner, bring an action for injunction against any person
20 violating any provision of the Oklahoma Asbestos Control Act or
21 violating any order or determination of the Commissioner. In any
22 action for injunction, any finding of the Commissioner, after
23 notice, shall be prima facie evidence of the facts found therein.

24

1 C. A district attorney, upon request of the Commissioner,
2 shall prosecute any violation of the Oklahoma Asbestos Control
3 Act.

4 D. In addition to any other penalty prescribed by law, any
5 person who violates any of the provisions of the Oklahoma Asbestos
6 Control Act or who violates any rule or order promulgated pursuant
7 thereto shall be liable for a civil penalty, to be assessed by the
8 Commissioner of Labor or designee, of not more than One Thousand
9 Dollars (\$1,000.00) per offense. The Commissioner of Labor or
10 designee shall assess and collect any civil penalty incurred under
11 this subsection and, in the Commissioner's discretion, may remit,
12 mitigate or negotiate said penalty. In determining the amount of
13 the penalty to be assessed, or the amount agreed upon in any
14 negotiation, consideration shall be given to the appropriateness
15 of such penalty in light of the life of the business of the person
16 charged, the gravity of the violation, and the extent to which the
17 person charged has complied with the provisions of the Oklahoma
18 Asbestos Control Act or rules or orders promulgated pursuant
19 thereto or has otherwise attempted to remedy the consequences of
20 the violation. Individual proceedings shall be conducted pursuant
21 to the provisions of the Administrative Procedures Act.

22 SECTION 10. AMENDATORY 40 O.S. 2001, Section 463, is
23 amended to read as follows:
24

1 Section 463. A. No fees shall be charged to public agencies.

2 The fees provided for in this subsection shall not apply to
3 amusement parks owned and operated by nonprofit corporations.

4 1. The annual ride registration fee shall be: ~~\$25.00~~
5 \$50.00

6 2. The inspection fee shall be:

7 a. Kiddie Rides ~~\$25.00~~

8 \$50.00

9 b. Major Rides ~~\$50.00~~

10 \$100.00

11 c. Inflatable Ride \$ 25.00

12 d. Water Park Ride \$100.00

13 e. Return Trip Fee \$100.00

14 f. Other Rides per hour ~~\$100.00~~

15 \$125.00

16 3. The annual waiver fee shall be:

17 a. Non-complex \$250.00

18 b. All other \$1,000.00

19 B. The Commissioner of Labor shall not issue an original
20 certificate of inspection for an amusement ride until he receives
21 certification in writing that such amusement rides meet the
22 requirements established by the Commissioner of Labor for
23 amusement rides. The Commissioner of Labor shall designate by
24 rule and regulation pursuant to Section 460 of this title the

1 qualifications of the inspectors making the inspections required
2 by this section.

3 C. Any permanent amusement park ride owner or operator shall
4 file a copy of a certificate of insurance with the Commissioner of
5 Labor on or before February 1 of each year. Such certificate of
6 insurance shall be in such form as to reflect the safety
7 inspection requirements for obtaining such insurance and the date
8 of the last inspection. The amount of the premium and the amount
9 of coverage shall not be required to be disclosed in the
10 certificate.

11 The Commissioner may accept such certificate and insurance
12 inspection as evidence sufficient to issue a certificate of
13 inspection for the permanent amusement park ride.

14 D. The Governing Board of the State Fair of Oklahoma, the
15 Tulsa State Fair, and the Muskogee State Fair shall file a copy of
16 a certificate of insurance with the Commissioner of Labor before
17 the rides are put into operation at each location for the use of
18 the public. Such certificate shall be in such form as to reflect
19 the safety inspection requirements for obtaining such insurance
20 and the date of the inspection.

21 The Commissioner may accept such insurance inspection as
22 evidence sufficient to issue a certificate of inspection for the
23 rides.

24

1 E. There is hereby created in the State Treasury a revolving
2 fund for the Department of Labor to be designated the "Safety
3 Standards Revolving Fund". The fund shall be a continuing fund,
4 not subject to fiscal year limitations, and shall consist of all
5 monies collected by the Department pursuant to the Amusement Ride
6 Safety Act, the Oklahoma Welding Act, and the Oklahoma Boiler and
7 Pressure Vessel Safety Act. Expenditures from said fund shall be
8 made upon warrants issued by the State Treasurer against claims
9 filed as prescribed by law with the Director of State Finance for
10 approval and payment.

11 SECTION 11. AMENDATORY 40 O.S. 2001, Section 469, is
12 amended to read as follows:

13 Section 469. A. Any violation of the provisions of this act
14 shall be a misdemeanor. Conviction thereof shall be punished by a
15 fine not exceeding One Thousand Dollars (\$1,000.00) or not more
16 than one (1) year in the county jail, or both such fine and
17 imprisonment. Each day of violation shall constitute a separate
18 offense.

19 B. The Commissioner shall have subpoena powers and shall have
20 the right to seek injunctive relief to prevent the operation of
21 any amusement ride covered by this act for lacking a current
22 certificate of operation. For any violation of the Amusement Ride
23 Safety Act the Commissioner may assess an administrative fine of
24 not more than Two Thousand Five Hundred Dollars (\$2,500.00), which

1 fine may be assessed in addition to any other penalties provided
2 pursuant to this act.

3 C. Any denial of issuance of a certificate of operation, or
4 any order issued by the Commissioner, or any Red Tag notification
5 or assessment of an administrative fine may be appealed and the
6 appropriate party(ies) shall be afforded the opportunity for a
7 hearing pursuant to the provisions of the Administrative
8 Procedures Act, if a written request is received by the Department
9 of Labor within fifteen (15) days of the denial letter or
10 notification or assessment of any fine.

11 SECTION 12. This act shall become effective November 1, 2008.

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