

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2260

By: Terrill

4  
5 AS INTRODUCED

6 An Act relating to labor; amending 40 O.S. 2001,  
7 Sections 451, 452, 453, 454, 455 and 456, which  
8 relate to the Oklahoma Asbestos Control Act;  
9 modifying definitions; modifying requirements for  
10 license and fees; modifying powers and duties of the  
11 Commissioner; modifying suspension, revocation, or  
12 refusal to issue license; modifying inspections and  
13 investigations; modifying violations and penalties;  
14 providing for civil penalty; and providing an  
15 effective date.

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

17 SECTION 1. AMENDATORY 40 O.S. 2001, Section 451, is  
18 amended to read as follows:

19 Section 451. As used in the Oklahoma Asbestos Control Act:

20 1. "Friable-asbestos-containing material (ACM)" means any  
21 material ~~that contains asbestos of~~ containing more than one percent  
22 (1%) ~~or more that can~~ asbestos which has been applied on ceilings,  
23 walls, structural members, piping, duct work, or any other part of a  
24 building, which when dry, may be crumbled, pulverized, or reduced to  
powder by hand pressure. The term includes nonfriable-asbestos-  
containing material after such previously nonfriable material

1 becomes damaged to the extent that when dry it may be crumbled,  
2 pulverized, or reduced to powder by hand pressure;

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

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

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

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

18 6. "Commissioner" means the Commissioner of Labor.

19 SECTION 2. AMENDATORY 40 O.S. 2001, Section 452, is  
20 amended to read as follows:

21 Section 452. A. No ~~contractor~~ individual or entity shall abate  
22 any friable material containing asbestos without having first  
23 obtained a license to do so from the Commissioner of Labor. The  
24 Commissioner shall issue an asbestos abatement license to a

1 qualified asbestos contractor upon proper application, as determined  
2 by the Commissioner. The annual fee for such license shall be Five  
3 Hundred Dollars (\$500.00). A nonrefundable initial application fee  
4 of One Thousand Dollars (\$1,000.00) shall be charged. The  
5 Commissioner may deny a license to applicants whose past abatement  
6 performance for abatement of friable asbestos does not comply with  
7 federal and other states' requirements. A minimum waiting period of  
8 one hundred twenty (120) days will be required before issuance of a  
9 license to permit the Commissioner to perform a work performance  
10 investigation of the applicant.

11 The annual fee for examining and certifying workers employed by  
12 a an asbestos contractor for asbestos abatement shall be ~~Twenty five~~  
13 ~~Dollars (\$25.00)~~ Fifty Dollars (\$50.00). Uncertified workers shall  
14 not be used on any asbestos abatement projects. The Commissioner of  
15 Labor shall charge a fee of Fifty Dollars (\$50.00) for a duplicate  
16 of any license issued pursuant to the Oklahoma Asbestos Control Act.

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

3 C. A fee of Six Hundred Dollars (\$600.00) shall be paid by  
4 asbestos contractors to the Department of Labor, to be deposited in  
5 the General Revenue Fund, for each separate containment area of any  
6 asbestos abatement project. There shall be a minimum of three  
7 inspections of each containment area. For projects which are not a  
8 part of a definite containment area, or are performed with multiple  
9 glovebags or miniature containments, a fee of Two Hundred Dollars  
10 (\$200.00), plus Five Dollars (\$5.00) per such glovebag or miniature  
11 containment, shall be made.

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

15 D. Any asbestos ~~abatement~~ contractor transporting asbestos-  
16 containing material shall be required to provide to the Commissioner  
17 a Certificate of Insurance by a carrier licensed to do business in  
18 the State of Oklahoma demonstrating a minimum of One Million Dollars  
19 (\$1,000,000.00) of environmental impairment insurance.

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

1 SECTION 3. AMENDATORY 40 O.S. 2001, Section 453, is  
2 amended to read as follows:

3 Section 453. A. The Commissioner of Labor shall have the power  
4 and duty to:

5 1. Develop and promulgate rules for the abatement of friable  
6 asbestos materials which shall be consistent with ~~general industry~~  
7 federal standards;

8 2. Instruct and examine asbestos contractors, employees and  
9 supervisors on the safe abatement of friable asbestos materials;

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

13 4. Inspect all asbestos abatement projects, to issue, modify  
14 and revoke orders; to issue cease and desist orders; and to require  
15 mandamus and seek injunctive relief for enforcement of orders;

16 5. Inspect public buildings for the presence of friable  
17 asbestos materials;

18 6. Collect samples to determine the presence and condition of  
19 friable asbestos materials in public buildings;

20 7. Recommend appropriate abatement measures for friable  
21 asbestos materials in public buildings;

22 8. Make and enter into all contracts and agreements necessary  
23 or incidental to the performance of the Department's duties and the  
24 execution of its powers under the Oklahoma Asbestos Control Act

1 including, but not limited to, contracts with the United States,  
2 other states, agencies, and political subdivisions of this state;

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

8 10. Supervise, administer, and enforce the provisions of the  
9 Oklahoma Asbestos Control Act rules promulgated thereunder;

10 11. Hold hearings;

11 12. Institute legal proceedings, including suits for  
12 injunctions for the enforcement of his orders, rules, and for the  
13 enforcement of penalties;

14 13. Investigate any violations of the Oklahoma Asbestos Control  
15 Act; and

16 14. Exercise all incidental powers which are necessary to carry  
17 out the provisions of the Oklahoma Asbestos Control Act.

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

21 SECTION 4. AMENDATORY 40 O.S. 2001, Section 454, is  
22 amended to read as follows:

23 Section 454. If the Commissioner finds that a an asbestos  
24 contractor has violated any of the provisions of the Oklahoma

1 Asbestos Control Act or any rule promulgated pursuant to the  
2 Oklahoma Asbestos Control Act, the Commissioner may suspend, revoke  
3 or refuse to issue the license of the contractor after a hearing  
4 held for such purpose. Such hearing shall be held within thirty  
5 (30) days after written notice has been sent to the asbestos  
6 contractor by certified mail. If, after such hearing, the  
7 Commissioner finds cause to suspend, revoke or refuse to issue a  
8 license, the asbestos contractor shall be given written notice of  
9 the decision of the Commissioner and the basis therefor. The  
10 decision shall become final at the end of thirty (30) days from the  
11 date of such notice, unless appealed to the district court. All  
12 appeals from the Commissioner's order shall be taken in the manner  
13 prescribed by law.

14 SECTION 5. AMENDATORY 40 O.S. 2001, Section 455, is  
15 amended to read as follows:

16 Section 455. The Commissioner of Labor or an authorized  
17 representative shall have the power and authority to enter at  
18 reasonable times upon any property for the purpose of inspecting and  
19 investigating asbestos contractors relating to the abatement of any  
20 friable material containing asbestos pursuant to the Oklahoma  
21 Asbestos Control Act.

22 SECTION 6. AMENDATORY 40 O.S. 2001, Section 456, is  
23 amended to read as follows:

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

10 B. The Attorney General shall, upon request of the  
11 Commissioner, bring an action for injunction against any person  
12 violating any provision of the Oklahoma Asbestos Control Act or  
13 violating any order or determination of the Commissioner. In any  
14 action for injunction, any finding of the Commissioner, after  
15 notice, shall be prima facie evidence of the facts found therein.

16 C. A district attorney, upon request of the Commissioner, shall  
17 prosecute any violation of the Oklahoma Asbestos Control Act.

18 D. In addition to any other penalty prescribed by law, any  
19 person who violates any of the provisions of the Oklahoma Asbestos  
20 Control Act or who violates any rule or order promulgated pursuant  
21 thereto shall be liable for a civil penalty, to be assessed by the  
22 Commissioner of Labor or a designee, of not more than One Thousand  
23 Dollars (\$1,000.00) per offense. The Commissioner of Labor or a  
24 designee shall assess and collect any civil penalty incurred under

1 this subsection and, in the Commissioner's discretion, may remit,  
2 mitigate or negotiate said penalty. In determining the amount of  
3 the penalty to be assessed, or the amount agreed upon in any  
4 negotiation, consideration shall be given to the appropriateness of  
5 such penalty in light of the life of the business of the person  
6 charged, the gravity of the violation, and the extent to which the  
7 person charged has complied with the provisions of the Oklahoma  
8 Asbestos Control Act or rules or orders promulgated pursuant thereto  
9 or has otherwise attempted to remedy the consequences of the said  
10 violation. Individual proceedings shall be conducted pursuant to  
11 the provisions of the Administrative Procedures Act.

12 SECTION 7. This act shall become effective November 1, 2009.

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14 52-1-6359 LRB 12/16/08

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