

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL NO. 1198

By: Justice

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to occupational safety; amending 40  
9 O.S. 2011, Sections 141.19, as amended by Section  
10 135, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2015,  
11 Section 141.19), 412, 451, 452 and 456, which relate  
12 to Department of Labor Revolving Fund, violations,  
13 definitions, license requirements and injunctive  
14 relief; modifying deposits and use of certain fund;  
15 modifying definition; granting authority to the  
16 Commissioner of Labor to establish by rule a schedule  
17 of administrative penalties and fines for violation  
18 of certain occupational standards and controls;  
19 creating a revolving fund for the Department of  
20 Labor; naming fund the "Department of Labor  
Administrative Penalty Revolving Fund"; stating  
purpose of fund; providing for deposits and transfer  
funding to General Revenue Fund each fiscal year;  
making administrative fines in addition to criminal  
fines; directing deposit of certain fees collected;  
modifying language; removing certain exemption from  
certification fees; deleting language; providing for  
codification; and providing an effective date.

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

22 SECTION 1. AMENDATORY 40 O.S. 2011, Section 141.19, as  
23 amended by Section 135, Chapter 304, O.S.L. 2012 (40 O.S. Supp.  
24 2015, Section 141.19), is amended to read as follows:

1       Section 141.19. There is hereby created in the State Treasury a  
2 revolving fund for the Department of Labor to be designated the  
3 "Department of Labor Revolving Fund". The fund shall be a  
4 continuing fund, not subject to fiscal year limitations, and shall  
5 consist of all monies designated for deposit in such fund. All  
6 monies accruing to the credit of the fund are hereby appropriated  
7 and may be budgeted and expended ~~as directed by the Legislature~~ by  
8 the Department of Labor for operations and expenses relating to its  
9 statutory duties and responsibilities. Expenditures from the fund  
10 shall be made upon warrants issued by the State Treasurer against  
11 claims filed as prescribed by law with the Director of the Office of  
12 Management and Enterprise Services for approval and payment.

13       SECTION 2.       AMENDATORY       40 O.S. 2011, Section 412, is  
14 amended to read as follows:

15       Section 412. A. Any person failing to comply with any standard  
16 or interfering with, impeding or obstructing in any manner the  
17 administration of standards pursuant to the provisions of the  
18 Oklahoma Occupational Health and Safety Standards Act, upon  
19 conviction, shall be guilty of a misdemeanor.

20       B. Any person who violates any of the provisions of the  
21 Oklahoma Occupational Health and Safety Standards Act, upon  
22 conviction, shall be guilty of a misdemeanor and in addition thereto  
23 may be enjoined from continuing such violation. Each day upon which  
24 such violation occurs shall constitute a separate violation.

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

7 D. The Commissioner of Labor may promulgate rules establishing  
8 a schedule of administrative penalties and fines for violations of  
9 the Oklahoma Occupational Health and Safety Standards act which may  
10 be in addition to or in lieu of the criminal penalties provided in  
11 this section. The promulgation of an administrative fine schedule  
12 shall grant the Commissioner authority to impose those  
13 administrative fines for any violation of the Oklahoma Occupational  
14 Health and Safety Standards Act. Funds collected as payment from a  
15 violation for administrative fines imposed for a violation of the  
16 Oklahoma Occupational Health and Safety Standards Act shall be  
17 deposited to the Department of Labor Administrative Penalty  
18 Revolving Fund created in Section 3 of this act.

19 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 405.1 of Title 40, unless there  
21 is created a duplication in numbering, reads as follows:

22 There is hereby created in the State Treasury a revolving fund  
23 for the Department of Labor to be designated the "Department of  
24 Labor Administrative Penalty Revolving Fund". The fund shall be a

1 continuing fund, not subject to fiscal year limitations, and shall  
2 consist of all administrative fines collected by the Department for  
3 violations of the Oklahoma Occupational Health and Safety Standards  
4 Act and the Oklahoma Asbestos Control Act, and any rules promulgated  
5 thereto. All monies accruing to the credit of the fund are hereby  
6 directed to be transferred by the Commissioner of Labor to the State  
7 Treasurer for deposit and credit to the General Revenue Fund at the  
8 end of each fiscal year.

9 SECTION 4. AMENDATORY 40 O.S. 2011, Section 451, is  
10 amended to read as follows:

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

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

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

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

22 4. "Friable asbestos material removal" means the actual  
23 physical removal of any friable asbestos containing material from a  
24

1 facility, when the asbestos is either attached to or detached from  
2 any device or structure;

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

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

8 SECTION 5. AMENDATORY 40 O.S. 2011, Section 452, is  
9 amended to read as follows:

10 Section 452. A. No contractor shall abate any friable material  
11 containing asbestos without having first obtained a license to do so  
12 from the Commissioner of Labor. The Commissioner shall issue an  
13 asbestos abatement license to a qualified contractor upon proper  
14 application, as determined by the Commissioner. The Commissioner of  
15 Labor may promulgate rules establishing a schedule of administrative  
16 fees for the application, licensing, examination, certification of  
17 asbestos abatement contractors and workers employed by a contractor  
18 for asbestos abatement, as well as a fee to be paid by contractors  
19 to the Department of Labor for each separate containment area,  
20 glovebag, or miniature containment area of any asbestos abatement  
21 project. The fees stated in this section on the effective date of  
22 this act shall remain in effect until such rules become effective,  
23 at which time the fees stated in this section shall be superseded by  
24 rule. The annual fee for such license shall be Five Hundred Dollars

1 (\$500.00). The fee shall be deposited into the Department of Labor  
2 Revolving Fund. A nonrefundable initial application fee of One  
3 Thousand Dollars (\$1,000.00) shall be charged and deposited into the  
4 Department of Labor Revolving Fund. The Commissioner may deny a  
5 license to applicants whose past abatement performance for abatement  
6 of friable asbestos does not comply with federal and other states'  
7 requirements. A minimum waiting period ~~of one hundred twenty (120)~~  
8 ~~days~~ shall be established at the discretion of the Commissioner of  
9 Labor and will be required before issuance of a license to permit  
10 the Commissioner to perform a work performance investigation of the  
11 applicant.

12 The annual fee for examining and certifying workers employed by  
13 a contractor for asbestos abatement shall be Twenty-five Dollars  
14 (\$25.00). The fee shall be deposited in the Department of Labor  
15 Revolving Fund. Uncertified workers shall not be used on any  
16 asbestos abatement projects.

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 not  
20 be exempt from any certification fees required by this section when  
21 such entities act as a contractor. ~~Any contractor not performing~~  
22 ~~abatement work which falls under the jurisdiction of the~~  
23 ~~Commissioner during the period of the issued license shall be~~  
24 ~~considered a new applicant for purposes of licensing and training.~~

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

14 Asbestos abatement projects performed on properties owned by the  
15 state or any political subdivision thereof shall not be exempt from  
16 this fee.

17 D. Any asbestos abatement contractor transporting asbestos-  
18 containing material shall be required to provide to the Commissioner  
19 a Certificate of Insurance by a carrier licensed to do business in  
20 the State of Oklahoma demonstrating a minimum of One Million Dollars  
21 (\$1,000,000.00) of environmental impairment insurance.

22 E. No state agency or political subdivision thereof, county or  
23 political subdivision thereof, or municipalities or political  
24 subdivisions thereof shall solicit or receive any estimate or bid

1 for abatement of asbestos from any person or party who is not a  
2 licensed asbestos abatement contractor.

3 SECTION 6. AMENDATORY 40 O.S. 2011, Section 456, is  
4 amended to read as follows:

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

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

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

23 D. The Commissioner of Labor may promulgate rules establishing  
24 a schedule of administrative penalties and fines for violations of

1 the Oklahoma Asbestos Control Act which may be in addition to or in  
2 lieu of the criminal penalties provided in this section. The  
3 promulgation of an administrative fine schedule shall grant the  
4 Commissioner authority to impose those administrative fines for any  
5 violation of the Oklahoma Asbestos Control Act. Funds collected as  
6 payment from a violator for administrative fines imposed for a  
7 violation of the Oklahoma Asbestos Control Act shall be deposited to  
8 the Department of Labor Administrative Penalty Revolving Fund  
9 created in Section 3 of this act.

10 SECTION 7. This act shall become effective November 1, 2016.

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