
SENATE BILL 5397

State of Washington

54th Legislature

1995 Regular Session

By Senators Franklin and Pelz; by request of Department of Labor & Industries

Read first time 01/23/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to asbestos certification; and amending RCW
2 49.26.013, 49.26.016, 49.26.100, 49.26.110, 49.26.115, 49.26.120, and
3 49.26.125.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 49.26.013 and 1989 c 154 s 2 are each amended to read
6 as follows:

7 (1) Any owner or owner's agent who allows or authorizes any
8 construction, renovation, remodeling, maintenance, repair, or
9 demolition project which has a reasonable possibility, as defined by
10 the department, of disturbing or releasing asbestos into the air, shall
11 perform or cause to be performed, using practices approved by the
12 department, a good faith inspection to determine whether the proposed
13 project will disturb or release any material containing asbestos into
14 the air.

15 Such inspections shall be conducted by persons meeting the
16 accreditation requirements of the federal toxics substances control
17 act, section 206(a) (1) and (3) (15 U.S.C. 2646(a) (1) and (3)).

18 An inspection under this section is not required if the owner or
19 owner's agent is reasonably certain that asbestos will not be disturbed

1 or assumes that asbestos will be disturbed by a project which involves
2 construction, renovation, remodeling, maintenance, repair, or
3 demolition and takes the maximum precautions as specified by all
4 applicable federal and state requirements.

5 (2) Except as provided in RCW 49.26.125, the owner or owner's agent
6 shall prepare and maintain a written report describing each inspection,
7 or a statement of assumption of the presence or reasonable certainty of
8 the absence of asbestos, and shall ~~((make))~~ provide a copy of the
9 written report or statement ~~((available))~~ to all contractors before
10 they apply or bid on work. In addition, upon written or oral request,
11 the owner or owner's agent shall make a copy of the written report
12 available to: (1) The department of labor and industries; (2)
13 contractors; and (3) the collective bargaining representatives or
14 employee representatives, if any, of employees who may be exposed to
15 any asbestos or material containing asbestos. A copy shall be posted
16 as prescribed by the department in a place that is easily accessible
17 to such employees.

18 **Sec. 2.** RCW 49.26.016 and 1989 c 154 s 3 are each amended to read
19 as follows:

20 (1) Any owner or owner's agent who allows the start of any
21 construction, renovation, remodeling, maintenance, repair, or
22 demolition without first (a) conducting the inspection and preparing
23 and maintaining the report of the inspection, or preparing and
24 maintaining a statement of assumption of the presence or reasonable
25 certainty of the absence of asbestos, as required under RCW 49.26.013;
26 and (b) preparing and maintaining the additional written description of
27 the project as required under RCW 49.26.120 shall be subject to a
28 mandatory fine of not less than two hundred fifty dollars for each
29 violation. Each day the violation continues shall be considered a
30 separate violation. In addition, any construction, renovation,
31 remodeling, maintenance, repair, or demolition which was started
32 without meeting the requirements of RCW 49.26.013 and 49.26.120 shall
33 be halted immediately and cannot be resumed before meeting such
34 requirements.

35 ~~((It is the responsibility of any contractor registered under~~
36 ~~chapter 18.27 RCW to request a copy of the written report or statement~~
37 ~~required under RCW 49.26.013 from the owner or the owner's agent.)) No~~
38 contractor may commence any construction, renovation, remodeling,

1 maintenance, repair or demolition project without receiving the copy of
2 the written report or statement from the owner or the owner's agent.
3 Any contractor who begins any project without the copy of the written
4 report or statement shall be subject to a mandatory fine of not less
5 than two hundred and fifty dollars per day. Each day the violation
6 continues shall be considered a separate violation.

7 ~~(3) ((Any partnership, firm, corporation or sole proprietorship
8 that begins any construction, renovation, remodeling, maintenance,
9 repair, or demolition without meeting the requirements of RCW 49.26.013
10 and the notification requirement under RCW 49.26.120 shall lose the
11 exemptions provided in RCW 49.26.110 and 49.26.120 for a period of not
12 less than six months.~~

13 ~~(4))~~ The certificate of any asbestos contractor who knowingly
14 violates any provision of this chapter or any rule adopted under this
15 chapter shall be revoked for a period of not less than six months.

16 ~~((+5))~~ (4) The penalties imposed in this section are in addition
17 to any penalties under RCW 49.26.140.

18 **Sec. 3.** RCW 49.26.100 and 1989 c 154 s 4 are each amended to read
19 as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Asbestos abatement project" means an asbestos project
23 involving three square feet or three linear feet, or more, of asbestos-
24 containing material.

25 (2) "Asbestos project" means the construction, demolition, repair,
26 maintenance, remodeling, or renovation of any public or private
27 building or mechanical piping equipment or systems involving the
28 demolition, removal, encapsulation, salvage, or disposal of material,
29 or outdoor activity, releasing or likely to release asbestos fibers
30 into the air.

31 ~~((+2))~~ (3) "Department" means the department of labor and
32 industries.

33 ~~((+3))~~ (4) "Director" means the director of the department of
34 labor and industries or the director's designee.

35 ~~((+4))~~ (5) "Person" means any individual, partnership, firm,
36 association, corporation, sole proprietorship, or the state of
37 Washington or its political subdivisions.

1 ~~((+5))~~ (6) "Certified asbestos supervisor" means an individual who
2 is certified by the department to supervise an asbestos project. A
3 certified asbestos supervisor is not required for projects involving
4 less than three square feet or three linear feet of asbestos-containing
5 material.

6 ~~((+6))~~ (7) "Certified asbestos worker" means an individual who is
7 certified by the department to work on an asbestos project.

8 ~~((+7))~~ (8) "Certified asbestos contractor" means any partnership,
9 firm, association, corporation or sole proprietorship registered under
10 chapter 18.27 RCW that submits a bid or contracts to remove or
11 encapsulate asbestos for another and is certified by the department to
12 remove or encapsulate asbestos.

13 ~~((+8))~~ (9) "Owner" means the owner of any public or private
14 building, structure, facility or mechanical system, or the agent of
15 such owner, but does not include individuals who work on asbestos
16 projects on their own single-family residences no part of which is used
17 for any commercial purpose.

18 **Sec. 4.** RCW 49.26.110 and 1989 c 154 s 5 are each amended to read
19 as follows:

20 (1) No employee or other individual is eligible to do work governed
21 by this chapter unless issued a certificate by the department ~~((except,~~
22 ~~in the case of an asbestos project undertaken by any partnership, firm,~~
23 ~~corporation or sole proprietorship which has not lost this exemption~~
24 ~~under RCW 49.26.016(3), and conducted in its own facility and by its~~
25 ~~own employees. In cases excepted under this section:~~

26 ~~(a) Direct, on-site supervision by a certified asbestos supervisor~~
27 ~~shall be required for asbestos projects performed at one project~~
28 ~~location by workers who are not certified.~~

29 ~~(b) If a project is conducted using only certified workers or if a~~
30 ~~certified worker functions as a foreman or lead person, supervision can~~
31 ~~be performed in the regular course of a supervisor's duties and need~~
32 ~~not be direct and on-site.~~

33 ~~(c) The partnership, firm, corporation or sole proprietorship shall~~
34 ~~submit a written description to the department of the kinds of~~
35 ~~asbestos projects expected to be undertaken and the procedures to be~~
36 ~~used in undertaking asbestos projects, which description shall~~
37 ~~demonstrate competence in performing the work in compliance with the~~
38 ~~requirements of this chapter, rules adopted under this chapter, and any~~

1 ~~other requirements of law for the safe demolition, removal,~~
2 ~~encapsulation, salvage, and disposal of asbestos)).~~

3 (2) To qualify for a certificate:

4 (a) Certified asbestos workers ~~((and supervisors))~~ must have
5 successfully completed a four-day training course ~~((of at least thirty~~
6 ~~hours,))~~. Certified asbestos supervisors must have completed a five-
7 day training course. Training courses shall be provided or approved by
8 the department((, on the)); shall cover such topics as the health and
9 safety aspects of the removal and encapsulation of asbestos, including
10 but not limited to the federal and state standards regarding protective
11 clothing, respirator use, disposal, air monitoring, cleaning, and
12 decontamination~~((,))~~; and shall meet such additional qualifications as
13 may be established by the department by rule for the type of
14 certification sought; and

15 (b) All applicants for certification as asbestos workers or
16 supervisors must pass an examination in the type of certification
17 sought which shall be provided or approved by the department.

18 These requirements are intended to represent the minimum
19 requirements for certification and shall not preclude contractors or
20 employers from providing additional education or training. The
21 department may require the successful completion of annual refresher
22 courses provided or approved by the department for continued
23 certification as an asbestos worker or supervisor.

24 (3) The department shall provide for the reciprocal certification
25 of any individual trained to engage in asbestos projects in another
26 state when the prior training is shown to be substantially similar to
27 the training required by the department. Nothing shall prevent the
28 department from requiring such individuals to take an examination or
29 refresher course before certification.

30 (4) The department may deny, suspend, or revoke a certificate, as
31 provided under RCW 49.26.140, for failure of the holder to comply with
32 any requirement of this chapter or chapter 49.17 RCW, or any rule
33 adopted under those chapters, or applicable health and safety standards
34 and regulations. In addition to any penalty imposed under RCW
35 49.26.016, the department may suspend or revoke any certificate issued
36 under this chapter for a period of not less than six months upon the
37 following grounds:

38 (a) The certificate was obtained through error or fraud; or

1 (b) The holder thereof is judged to be incompetent to carry out the
2 work for which the certificate was issued.

3 Before any certificate may be denied, suspended, or revoked, the
4 holder thereof shall be given written notice of the department's
5 intention to do so, mailed by registered mail, return receipt
6 requested, to the holder's last known address. The notice shall
7 enumerate the allegations against such holder, and shall give him or
8 her the opportunity to request a hearing before the department. At
9 such hearing, the department and the holder shall have opportunity to
10 produce witnesses and give testimony.

11 (5) A denial, suspension, or revocation order may be appealed to
12 the board of industrial insurance appeals within fifteen working days
13 after the denial, suspension, or revocation order is entered. The
14 notice of appeal may be filed with the department or the board of
15 industrial insurance appeals. The board of industrial insurance
16 appeals shall hold the hearing in accordance with procedures
17 established in RCW 49.17.140. Any party aggrieved by an order of the
18 board of industrial insurance appeals may obtain superior court review
19 in the manner provided in RCW 49.17.150.

20 (6) Each person certified under this chapter shall display, upon
21 the request of an authorized representative of the department, valid
22 identification issued by the department.

23 **Sec. 5.** RCW 49.26.115 and 1989 c 154 s 6 are each amended to read
24 as follows:

25 Before working on an asbestos abatement project, a contractor shall
26 obtain an asbestos contractor's certificate from the department and
27 shall have in its employ at least one certified asbestos supervisor who
28 is responsible for supervising all asbestos projects undertaken by the
29 contractor and for assuring compliance with all state laws and
30 regulations regarding asbestos. The contractor shall apply for
31 certification renewal every year. The department shall ensure that the
32 expiration of the contractor's registration and the expiration of his
33 or her asbestos contractor's certificate coincide.

34 **Sec. 6.** RCW 49.26.120 and 1989 c 154 s 7 are each amended to read
35 as follows:

36 (1) No person may assign any employee, contract with, or permit any
37 individual or person to remove or encapsulate asbestos in any facility

1 unless performed by a certified asbestos worker and under the direct,
2 on-site supervision of a certified asbestos supervisor ((except, in the
3 case of an asbestos project undertaken by any partnership, firm,
4 corporation or sole proprietorship which has not lost this exemption
5 under RCW 49.26.016(3), and conducted in its own facility and by its
6 own employees. In cases excepted under this section:

7 (a) Direct, on-site supervision by a certified asbestos supervisor
8 shall be required for asbestos projects performed at one project
9 location by workers who are not certified.

10 (b) If a project is conducted using only certified workers or if a
11 certified worker functions as a foreman or lead person, supervision can
12 be performed in the regular course of a supervisor's duties and need
13 not be direct and on-site.

14 (c) The partnership, firm, corporation or sole proprietorship shall
15 submit a written description to the department of the kinds of asbestos
16 projects expected to be undertaken and the procedures to be used in
17 undertaking asbestos projects, which description shall demonstrate
18 competence in performing the work in compliance with the requirements
19 of this chapter, rules adopted under this chapter, and any other
20 requirements of law for the safe demolition, removal, encapsulation,
21 salvage, and disposal of asbestos)).

22 (2) The department shall require persons undertaking asbestos
23 abatement projects to provide written notice to the department before
24 the commencement of the project except as provided in RCW 49.26.125.
25 The notice shall include a written description containing such
26 information as the department requires by rule. The department may by
27 rule allow a person to report multiple projects at one site in one
28 report. The department shall by rule establish the procedure and
29 criteria by which a person will be considered to have attempted to meet
30 the prenotification requirement.

31 (3) The department shall consult with the state fire protection
32 policy board, and may establish any additional policies and procedures
33 for municipal fire department and fire district personnel who clean up
34 sites after fires which have rendered it likely that asbestos has been
35 or will be disturbed or released into the air.

36 **Sec. 7.** RCW 49.26.125 and 1989 c 154 s 8 are each amended to read
37 as follows:

1 Prenotification to the department under RCW 49.26.120 shall not be
2 required for:

3 (1)(a) Any asbestos project involving less than (~~forty-eight~~)
4 three square feet of surface area, or less than (~~ten~~) three linear
5 feet of pipe unless the surface area of the pipe is greater than
6 (~~forty-eight~~) three square feet. The person undertaking such a
7 project shall keep the reports, or statements, and written descriptions
8 required under RCW 49.26.013 and 49.26.120 which shall be available
9 upon request of the department. Employees and employee representatives
10 may request such reports under RCW 49.26.013(2).

11 (b) The director may waive the prenotification requirement upon
12 written request of an owner for large-scale, on-going projects. In
13 granting such a waiver, the director shall require the owner to provide
14 prenotification if significant changes in personnel, methodologies,
15 equipment, work site, or work procedures occur or are likely to occur.
16 The director shall further require annual resubmittal of such
17 notification.

18 (c) The director, upon review of an owner's reports, work
19 practices, or other data available as a result of inspections, audits,
20 or other authorized activities, may reduce the size threshold for
21 prenotification required by this section. Such a change shall be based
22 on the director's determination that significant problems in personnel,
23 methodologies, equipment, work site, or work procedures are creating
24 the potential for violations of this chapter or asbestos requirements
25 under chapter 49.17 RCW. The new prenotification requirements shall be
26 given in writing to the owner and shall remain in effect until modified
27 or withdrawn in writing by the director.

28 (2) Emergency projects.

29 (a) As used in this section, "emergency project" means a project
30 that was not planned and results from a sudden, unexpected event, and
31 does not include operations that are necessitated by nonroutine failure
32 of equipment or systems.

33 (b) Emergency projects which disturb or release any material
34 containing asbestos into the air shall be reported to the department
35 within three working days after the commencement of the project in the
36 manner otherwise required under this chapter. A notice shall be
37 clearly posted adjacent to the work site describing the nature of the
38 emergency project. The employees' collective bargaining
39 representatives, or employee representatives, or designated

1 representatives, if any, shall be notified of the emergency as soon as
2 possible by the person undertaking the emergency project.

3 Incremental phasing in the conduct or design of asbestos abatement
4 projects or otherwise designing or conducting asbestos projects of a
5 size less than (~~forty-eight~~) three square feet, or other threshold
6 for exemption as provided under this section, with the intent of
7 avoiding prenotification requirements is a violation of this chapter.

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