
SUBSTITUTE SENATE BILL 5458

State of Washington

63rd Legislature

2013 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Billig, Ranker, Kohl-Welles, and Kline)

READ FIRST TIME 02/21/13.

1 AN ACT Relating to the labeling of certain asbestos-containing
2 building materials; amending RCW 70.94.431; adding a new chapter to
3 Title 70 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** Asbestos is a known human carcinogen that
6 causes painful, premature deaths due to diseases such as asbestosis,
7 mesothelioma, lung and gastrointestinal cancers, and other diseases and
8 cancers. Activities that can lead to the release of asbestos fibers
9 include installation, use, maintenance, repair, removal, and disposal
10 of asbestos-containing building materials.

11 Many people are unaware that asbestos-containing building materials
12 are still imported, sold, and used in the United States. Because few
13 regulations exist that require the disclosure of asbestos in building
14 materials, people can unknowingly be exposed to asbestos. Asbestos is
15 generally invisible, odorless, very durable, and highly aerodynamic.
16 Exposure can occur well after it has been disturbed and long distances
17 from where the asbestos release occurred.

18 The purpose of this chapter is to allow people to make informed
19 decisions regarding whether or not they purchase or use building

1 materials containing asbestos. More specifically, building materials
2 that contain asbestos must be clearly labeled as such by manufacturers,
3 wholesalers, and distributors.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Asbestos" includes the asbestiform varieties of actinolite,
7 amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine),
8 crocidolite (riebeckite), anthophyllite, and any of these minerals that
9 have been chemically treated or altered. The chemical abstracts
10 service registry number for each is as follows: Asbestos (1332-21-4),
11 actinolite (13768-00-8), amosite (12172-73-5), tremolite (14567-73-8),
12 chrysotile (12001-29-5), crocidolite (12001-28-4), and anthophyllite
13 (17068-78-9).

14 (2) "Asbestos-containing building material" includes any building
15 material containing asbestos, as determined using the United States
16 environmental protection agency method for the determination of
17 asbestos in building materials, EPA/600/R-93/116, July 1993.

18 (3) "Building material" includes materials designed for, or used
19 in, construction, renovation, repair, or maintenance of institutional,
20 commercial, public, industrial, or residential buildings and
21 structures. The term does not include automobiles, recreational
22 vehicles, boats, or other mobile means of transportation.

23 (4) "Consumer" means any person that acquires a building material
24 for direct use or ownership, rather than for resale or use in
25 production and manufacturing.

26 (5) "Department" means the department of ecology.

27 (6) "Person" means any individual, firm, public or private
28 corporation, association, partnership, political subdivision,
29 municipality, or government agency.

30 (7) "Retailer" means any person that sells goods or commodities
31 directly to consumers.

32 NEW SECTION. **Sec. 3.** (1) Effective January 1, 2014, it is
33 unlawful to manufacture, wholesale, or distribute for sale an asbestos-
34 containing building material that is not labeled as required by section
35 4 of this act. The labeling requirement also applies to stock-on-hand,
36 meaning any asbestos-containing building material in their possession

1 or control after December 31, 2013, must be labeled. Retailers that do
2 not manufacture, wholesale, or distribute asbestos-containing building
3 materials are exempt from this chapter.

4 (2)(a) Subsection (1) of this section does not apply to asbestos-
5 containing building materials that have already been installed,
6 applied, or used by the consumer.

7 (b) Subsection (1) of this section does not apply to asbestos-
8 containing building materials used solely for United States military
9 purposes.

10 (3) Any manufacturer, wholesaler, or distributor may submit a
11 written request for an exemption from the labeling requirements of this
12 chapter, and the department may grant such an exemption if it
13 determines that the labeling requirements are technically infeasible or
14 create an undue economic hardship. Each exemption is in effect for a
15 period not to exceed three years from the date issued and is subject to
16 the terms and conditions prescribed by the department.

17 NEW SECTION. **Sec. 4.** (1) A label must be placed in a prominent
18 location adjacent to the product name or description on the exterior of
19 the wrapping and packaging in which the asbestos-containing building
20 material is placed for storage, shipment, and sale.

21 (2) A label must also be placed on the exterior surface of the
22 asbestos-containing building material itself unless it is sold as a
23 liquid or paste, is sand or gravel, or an exemption is granted pursuant
24 to section 3(3) of this act.

25 (3) Asbestos-containing building materials must have a legible
26 label that clearly identifies it as containing asbestos. The
27 department may adopt rules regarding the implementation of this
28 chapter. At a minimum, the label must state the following:

29 CAUTION!

30 This product contains ASBESTOS which is known to cause cancer
31 and lung disease. Avoid creating dust. Intentionally removing
32 or tampering with this label is a violation of state law.

33 (4) It is unlawful for any person to remove, deface, cover, or
34 otherwise obscure or tamper with a label or sticker that has been
35 applied in compliance with this section, unless the asbestos-containing
36 building material is in the possession of the end user.

1 NEW SECTION. **Sec. 5.** (1) The provisions of this chapter may be
2 enforced by the department, local air authorities, or their designees.

3 (2) A person found in violation of this chapter is subject to the
4 penalties provided under RCW 70.94.431.

5 **Sec. 6.** RCW 70.94.431 and 1995 c 403 s 630 are each amended to
6 read as follows:

7 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
8 43.05.150, and in addition to or as an alternate to any other penalty
9 provided by law, any person who violates any of the provisions of this
10 chapter (~~(70.94-RCW)~~), chapter 70.120 RCW, chapter 70.-- RCW (the new
11 chapter created in section 7 of this act), or any of the rules in force
12 under such chapters may incur a civil penalty in an amount not to
13 exceed ten thousand dollars per day for each violation. Each such
14 violation shall be a separate and distinct offense, and in case of a
15 continuing violation, each day's continuance shall be a separate and
16 distinct violation.

17 Any person who fails to take action as specified by an order issued
18 pursuant to this chapter shall be liable for a civil penalty of not
19 more than ten thousand dollars for each day of continued noncompliance.

20 (2) Penalties incurred but not paid shall accrue interest,
21 beginning on the ninety-first day following the date that the penalty
22 becomes due and payable, at the highest rate allowed by RCW 19.52.020
23 on the date that the penalty becomes due and payable. If violations or
24 penalties are appealed, interest shall not begin to accrue until the
25 thirty-first day following final resolution of the appeal.

26 The maximum penalty amounts established in this section may be
27 increased annually to account for inflation as determined by the state
28 office of the economic and revenue forecast council.

29 (3) Each act of commission or omission which procures, aids or
30 abets in the violation shall be considered a violation under the
31 provisions of this section and subject to the same penalty. The
32 penalties provided in this section shall be imposed pursuant to RCW
33 43.21B.300.

34 (4) All penalties recovered under this section by the department
35 shall be paid into the state treasury and credited to the air pollution
36 control account established in RCW 70.94.015 or, if recovered by the
37 authority, shall be paid into the treasury of the authority and

1 credited to its funds. If a prior penalty for the same violation has
2 been paid to a local authority, the penalty imposed by the department
3 under subsection (1) of this section shall be reduced by the amount of
4 the payment.

5 (5) To secure the penalty incurred under this section, the state or
6 the authority shall have a lien on any vessel used or operated in
7 violation of this chapter which shall be enforced as provided in RCW
8 60.36.050.

9 (6) Public or private entities that are recipients or potential
10 recipients of department grants, whether for air quality related
11 activities or not, may have such grants rescinded or withheld by the
12 department for failure to comply with provisions of this chapter.

13 (7) In addition to other penalties provided by this chapter,
14 persons knowingly under-reporting emissions or other information used
15 to set fees, or persons required to pay emission or permit fees who are
16 more than ninety days late with such payments may be subject to a
17 penalty equal to three times the amount of the original fee owed.

18 (8) By January 1, 1992, the department shall develop rules for
19 excusing excess emissions from enforcement action if such excess
20 emissions are unavoidable. The rules shall specify the criteria and
21 procedures for the department and local air authorities to determine
22 whether a period of excess emissions is excusable in accordance with
23 the state implementation plan.

24 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute
25 a new chapter in Title 70 RCW.

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