

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5458

Chapter 51, Laws of 2013

63rd Legislature
2013 Regular Session

BUILDING MATERIALS--ASBESTOS--LABELING

EFFECTIVE DATE: 07/28/13

Passed by the Senate March 13, 2013
YEAS 47 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 9, 2013
YEAS 65 NAYS 28

FRANK CHOPP

Speaker of the House of Representatives

Approved April 23, 2013, 4:28 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5458** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 24, 2013

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5458

Passed Legislature - 2013 Regular Session

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" means any building
15 material to which asbestos is deliberately added in any concentration
16 or that contains more than one percent asbestos by weight or area as
17 determined using the United States environmental protection agency
18 method for the determination of asbestos in building materials,
19 EPA/600/R-93/116, July 1993.

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

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

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

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

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

34 NEW_SECTION. **Sec. 3.** (1) Effective January 1, 2014, it is
35 unlawful to manufacture, wholesale, or distribute for sale an asbestos-
36 containing building material that is not labeled as required by section

1 4 of this act or as required under federal law, 40 C.F.R. part 763,
2 subpart I, Sec. 173.171 (1994). The labeling requirement also applies
3 to stock-on-hand, meaning any asbestos-containing building material in
4 their possession or control after December 31, 2013, must be labeled.
5 Retailers that do not manufacture, wholesale, or distribute asbestos-
6 containing building materials are exempt from this chapter.

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

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

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

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

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

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

32 CAUTION!

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

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

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

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

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

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

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

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

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

33 (3) Each act of commission or omission which procures, aids or
34 abets in the violation shall be considered a violation under the
35 provisions of this section and subject to the same penalty. The

1 penalties provided in this section shall be imposed pursuant to RCW
2 43.21B.300.

3 (4) All penalties recovered under this section by the department
4 shall be paid into the state treasury and credited to the air pollution
5 control account established in RCW 70.94.015 or, if recovered by the
6 authority, shall be paid into the treasury of the authority and
7 credited to its funds. If a prior penalty for the same violation has
8 been paid to a local authority, the penalty imposed by the department
9 under subsection (1) of this section shall be reduced by the amount of
10 the payment.

11 (5) To secure the penalty incurred under this section, the state or
12 the authority shall have a lien on any vessel used or operated in
13 violation of this chapter which shall be enforced as provided in RCW
14 60.36.050.

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

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

24 (8) By January 1, 1992, the department shall develop rules for
25 excusing excess emissions from enforcement action if such excess
26 emissions are unavoidable. The rules shall specify the criteria and
27 procedures for the department and local air authorities to determine
28 whether a period of excess emissions is excusable in accordance with
29 the state implementation plan.

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

Passed by the Senate March 13, 2013.
Passed by the House April 9, 2013.
Approved by the Governor April 23, 2013.
Filed in Office of Secretary of State April 24, 2013.