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**ENGROSSED SUBSTITUTE SENATE BILL 5458**

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**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.

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