

Stricken language would be deleted from present law. Underlined language would be added to present law.

As Engrossed: S2/4/97 S2/10/97

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

SENATE BILL 213

4
5 By: Senator Walker
6 By: Representative Stalnaker

For An Act To Be Entitled

9 "AN ACT TO AMEND THE REMOVAL OF ASBESTOS MATERIAL ACT,
10 ARKANSAS CODE 20-27-1001, ET SEQ. PERTAINING TO THE
11 REMOVAL OF ASBESTOS MATERIALS."

Subtitle

13
14 "AN ACT PERTAINING TO THE REMOVAL OF
15 ASBESTOS MATERIALS."

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code Annotated Title 20, Chapter 27, Subchapter 10
20 is amended to read as follows:

21 "20-27-1001. Purpose.

22 The purpose of this subchapter is to protect the public health and
23 safety and the environment and to qualify the Arkansas Department of Pollution
24 Control and Ecology to adopt, administer, and enforce a program for licensing
25 training providers involved with the training of regulated asbestos
26 professionals; licensing asbestos abatement consultants and asbestos abatement
27 contractors; ~~and training providers involved with the assessment, planning,~~
28 ~~management, and training, or abatement of friable and nonfriable asbestos-~~
29 ~~containing materials~~ and certifying air monitors, contractor/supervisors,
30 inspectors, management planners, project designers, and workers involved with
31 demolitions, renovations, and asbestos response actions in which regulated
32 asbestos-containing materials are disturbed in accordance with the provisions
33 of this subchapter, the Arkansas Water and Air Pollution Control Act, as
34 amended, § 8-4-101 et seq., and regulations issued pursuant thereto.

35
36 20-27-1003. Definitions.

1 (a) ~~"Friable asbestos material" means any material containing more than~~
2 ~~one percent (1%) asbestos by content that hand pressure can crumble,~~
3 ~~pulverize, or reduce to powder when dry, or has the potential to become~~
4 ~~friable when broken, crushed, sanded, sawed, or cut.~~

5 Air monitor means any person that collects airborne samples for
6 analysis of asbestos fibers.

7 (b) ~~—"Facility" means any institutional or commercial structure,~~
8 ~~installation, or building, excluding apartment buildings having less than four~~
9 ~~(4) dwelling units.~~

10 'Asbestos abatement consultant' means any person or other legal entity,
11 however organized, that acts as an agent for the owner or operator in
12 performing demolitions, renovations, and/or response actions which will
13 involve, or may involve, the removal or disturbance of asbestos-containing
14 materials in any facility.

15 (c) ~~—"Removal" means to take out friable asbestos material from any~~
16 ~~facility.~~

17 Asbestos abatement contractor means any person or other legal
18 entity, however organized, that acts as an agent for the owner or operator in
19 performing demolitions, renovations, and/or response actions which will
20 involve, or may involve, the removal or disturbance of asbestos-containing
21 materials in any facility.

22 (d) ~~—"Disposal" means the proper depositing or placing of friable and~~
23 ~~nonfriable asbestos material in a sanitary landfill permitted by the~~
24 ~~Department of Pollution Control and Ecology to accept such waste material.~~

25 Category I nonfriable asbestos-containing material means
26 asbestos-containing packings, gaskets, resilient floor covering, and asphalt
27 roofing products containing more that one percent (1%) asbestos as determined
28 using the method specified in Appendix E, Subpart E, 40 CFR Part 763, Section
29 1, Polarized Light Microscopy.

30 (e) ~~—"Consultant" means any person or legal entity, however organized,~~
31 ~~that conducts asbestos or lead paint site assessments, develops operations and~~
32 ~~management plans, designs asbestos abatement projects, or provides owner-~~
33 ~~representative services, including air monitoring and project management.~~

34 Category II nonfriable asbestos-containing material means any
35 material, excluding Category I nonfriable asbestos containing materials,
36 containing more that 1% (one percent) asbestos as determined using the methods

1 specified in Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized
2 Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to
3 powder by hand pressure.

4 ~~(f) — "Contractor" means any person or other legal entity, however~~
5 ~~organized, that engages in the removal of friable and nonfriable asbestos~~
6 ~~material from any facility other than those persons or other legal entities~~
7 ~~engaged in removal of friable and nonfriable asbestos material from a facility~~
8 ~~owned or operated by such person or legal entity.~~

9 Certificate means a document issued by the department to any
10 person certifying that person has satisfactorily completed such asbestos
11 training, examination, and other requirements established by the department to
12 perform the duties of the following: air monitor, contractor/supervisor,
13 inspector, management planner, project designer, and worker.

14 ~~(g) — "Director" means the Director of the Department of Pollution~~
15 ~~Control and Ecology.~~

16 Contractor/supervisor means any person who supervises the
17 following activities with respect to friable asbestos-containing material in a
18 facility: a response action other than a small-scale short-duration activity,
19 a maintenance activity that disturbs friable asbestos-containing material
20 other than a small-scale short-duration activity, or a response action for a
21 major fiber release episode.

22 ~~(h) — "Department" means the Department of Pollution Control and~~
23 ~~Ecology.~~

24 Demolition means the wrecking or taking out of any load-
25 supporting structural member of a facility together with any related handling
26 operations or intentional burning of a facility.

27 ~~(i) — "Asbestos abatement" means procedures to control fiber release~~
28 ~~from asbestos-containing materials in buildings. This shall include removal,~~
29 ~~encapsulation, and enclosure.~~

30 Department means the Arkansas Department of Pollution Control and
31 Ecology.

32 ~~(j) — "Encapsulation" means the coating of asbestos-containing material~~
33 ~~with a bonding or sealing agent to prevent the release of airborne fibers.~~

34 Director means the Director of the Arkansas Department of
35 Pollution Control and Ecology.

36 ~~(k) — "Enclosure" means the construction of airtight walls and ceilings~~

1 ~~around asbestos-containing material to prevent the release of airborne fibers.~~

2 Facility means any institutional, commercial, public, industrial,
3 or residential structure, installation, or building (including any structure,
4 installation, or building containing condominiums or individual dwelling units
5 operated as a residential cooperative, but excluding residential buildings
6 having four or fewer dwelling units); any ship; and any active or inactive
7 waste disposal site. For purposes of this definition, any building,
8 structure, or installation that contains a loft used as a dwelling is not
9 considered a residential structure, installation, or building. Any structure,
10 installation or building that was previously subject to this regulation is not
11 excluded, regardless of its current use or function.

12 (l) Friable asbestos materials means any materials containing more
13 than one percent (1%) asbestos as determined by using the method specified in
14 Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy
15 that, when dry, can be crumbled, pulverized, or reduced to powder by hand
16 pressure.

17 (m) Inspector means any person who inspects for asbestos-containing
18 material in a facility.

19 (n) License means a document issued by the department to an asbestos
20 abatement contractor, asbestos abatement consultant, or training provider who
21 meets the criteria for licensing as established by the department.

22 (o) Management Planner means any person who prepares management plans
23 for a school.

24 (p) Nonfriable asbestos-containing material means any material
25 containing more than one percent (1%) of asbestos as determined using the
26 method specified in Appendix E, Subpart E, 40 CFR Part 763, Section 1,
27 Polarized light Microscopy, that when dry, cannot be crumbled, pulverized, or
28 reduced to powder by hand pressure.

29 (q) Owner or operator means any person who owns, leases, operates,
30 controls, or supervises the facility being demolished or renovated or any
31 person who owns, leases, operates, controls, or supervises the demolition or
32 renovation operation, or both.

33 (r) Project designer means any person who designs the following
34 activities with respect to friable asbestos-containing material in a facility:
35 a response action other than a small-scale short-duration activity, a
36 maintenance activity that disturbs friable asbestos-containing material other

1 than a small-scale short-duration activity, or response action for a major
2 fiber release episode.

3 (s) Regulated asbestos-containing material means (1) friable asbestos
4 material;

5 (2) Category I nonfriable asbestos-containing material that has
6 become friable;

7 (3) Category I nonfriable asbestos-containing material that will
8 be or has been subjected to sanding, grinding, cutting, or abrading; or (4)
9 Category II nonfriable asbestos-containing material that has a high
10 probability of becoming or has become crumbled, pulverized, or reduced to
11 powder by the forces expected to act on the material in the course of
12 demolition or renovation operations regulated by this statute.

13 (t) Renovation means altering in any way a facility or one or more
14 facility components in any way, including the stripping or removal of
15 regulated asbestos-containing material from a facility component. Operations
16 in which load-supporting structural members are wrecked or taken out are
17 demolitions.

18 (u) Response action means a method, including removal,
19 encapsulation, enclosure, repair, and operation and maintenance, that protects
20 human health and the environment from friable asbestos-containing material.

21 (v) Training provider means any person or other legal entity, however
22 organized, who conducts some or all of the training programs for asbestos
23 professional disciplines which are regulated by the Department.

24 (w) Worker means any person who carries out any of the following
25 activities with respect to friable asbestos-containing material in a facility:
26 a response action other than a small-scale short-duration activity, a
27 maintenance activity that disturbs friable asbestos-containing material other
28 than a small-scale short-duration activity, or a response action for a major
29 fiber release episode.

30

31 20-27-1004. Powers and duties of Department.

32 The Department shall be charged with the responsibility of administering
33 and enforcing this subchapter and is given and charged with the following
34 powers and duties:

35 (1) To require and regulate training and examinations ~~on asbestos~~
36 ~~abatement techniques of friable and nonfriable asbestos materials for~~

1 ~~licensing under this subchapter for all disciplines certified by this Act and~~
2 ~~the regulation promulgated pursuant to this Act;~~

3 (2) To establish standards and procedures for the licensing of
4 consultants, contractors, and training providers, and to establish performance
5 standards for the abatement of friable and nonfriable asbestos materials.
6 Such performance standards shall be as stringent as those standards adopted by
7 the United States Environmental Protection Agency pursuant to section 112 of
8 the federal Clean Air Act;

9 (3) To enforce regulations necessary or appropriate to the
10 implementation of this subchapter, including taking legal action in any court
11 of competent jurisdiction;

12 (4) To issue licenses and certificates to all applicants who satisfy
13 the requirements of this subchapter and any regulations issued pursuant
14 thereto, to renew the licenses and certificates, and to suspend or revoke the
15 licenses and certificates for cause and after notice and opportunity for
16 hearing;

17 (5) To establish ~~an~~ annual license fees for asbestos abatement
18 consultants, asbestos abatement contractors, and training providers and annual
19 certification fees for air monitors, contractor/supervisors, inspectors,
20 management planners, project designers, and workers to recover the costs of
21 processing license and certificate applications and the issuance of licenses
22 and certificates, and to establish such other fees necessary to recover the
23 costs of enforcing this subchapter;

24 ~~—— (6) To establish licensing requirements, standards, and procedures~~
25 ~~necessary to regulate the removal of lead-based materials from facilities in~~
26 ~~the state, and to establish such fees necessary to recover the costs of~~
27 ~~enforcing such requirements, standards, and procedures.~~

28

29 20-27-1006. License required - Exceptions.

30 (a) Any asbestos abatement consultant, ~~contractor,~~ or ~~training provider~~
31 asbestos abatement contractor, shall obtain a license hereunder from the
32 department prior to actively engaging in any ~~asbestos-related activities from~~
33 ~~any facility in this state.~~ asbestos demolition, renovation, or asbestos
34 response action and any training provider shall obtain a license hereunder
35 from the department prior to actively engaging in any asbestos training as
36 provided by this act.

1 (b) The application for license shall be made in the manner and form
2 required by the department. An application for license, or renewal of a
3 license, shall be accompanied by proof of liability insurance coverage, except
4 for training providers, in the form and amount required by the department, and
5 proof of such training and examination as required by the department.

6 (c)(1) The department shall license all applicants for licenses under
7 this subchapter who satisfy the requirements of this subchapter.

8 (2) Licenses shall be valid for a period of one (1) year.

9 (3) Licenses shall be renewable upon application and upon satisfying
10 the renewal requirements of the department.

11 (d) State and federal governments and subdivisions thereof shall be
12 exempt, except for training providers, from the license ~~fee~~ requirements of
13 this section.

14 ~~———— (e) Consultants and contractors will provide a surety bond in the amount~~
15 ~~of twenty-five thousand dollars (\$25,000), with the Arkansas Department of~~
16 ~~Pollution Control and Ecology as obligee.~~

17 ~~———— (1) The bond must be executed by a resident agent of the State of~~
18 ~~Arkansas; mere countersigning will not suffice.~~

19 ~~———— (2) The bond must be made by a surety company qualified under ^A 22-~~
20 ~~9-401 et seq.~~

21

22 20-27-1007. Prohibitions.

23 It shall be unlawful for any person:

24 (1) To conduct asbestos ~~abatement activities~~ response actions without
25 having first obtained a license from the department when acting as ~~a~~ an
26 asbestos abatement consultant, asbestos abatement contractor, or training
27 provider, or without first having obtained a certificate from the department
28 when acting as an air monitor, contractor/supervisor, inspector, management
29 planner, project designer, or worker;

30 (2) To violate any provision of this subchapter or any regulation or
31 order adopted or issued under this subchapter;

32 (3) Knowingly to make any false statement, representation, or
33 certification in any application, record, report, or other document filed or
34 required to be maintained under this subchapter or regulations adopted
35 pursuant thereto, or to falsify, tamper with, or knowingly render inaccurate
36 any monitoring device or method required to be maintained under this

1 subchapter or any regulations adopted pursuant thereto; or

2 (4) To participate in any response action, demolition, or renovation
3 ~~any asbestos-related activity~~ contrary to the regulations or orders issued
4 under this subchapter or contrary to the provisions of the Arkansas Water and
5 Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste
6 Management Act, § 8-6-201 et seq., and the regulations promulgated thereunder,
7 whether or not such person is required to have a license or certificate
8 pursuant to this subchapter."

9

10 SECTION 2. All provisions of this act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

13

14 SECTION 3. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

19

20 SECTION 4. All laws and parts of laws in conflict with this act are
21 hereby repealed.

22

23 SECTION 5. EMERGENCY. It is hereby found and determined by the General
24 Assembly that the authority for the Arkansas Department of Pollution Control
25 and Ecology to license and certify asbestos abatement contractors, asbestos
26 abatement consultants, training providers, air monitors,
27 contractor/supervisors, inspectors, management planners, project designers,
28 and workers and to establish work practices and disposal requirements are
29 necessary to protect the lives, health and welfare of the people of Arkansas.
30 Therefore, an emergency is hereby declared to exist and this act being
31 necessary for the immediate preservation of the public peace, health and
32 safety shall be in full force and effect from and after its passage and
33 approval.

34

35

/s/Walker et al