

CHAPTER 97

H.B. No. 36

AN ACT

relating to the regulation of persons engaged in the business of removing asbestos from public buildings or encapsulating that asbestos; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. DEFINITIONS. In this Act:

(1) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Public building" means a building that is open to the public or that has public access, including but not limited to government buildings and public schools.

SECTION 2. LICENSE REQUIRED TO REMOVE OR ENCAPSULATE ASBESTOS.

(a) A person may not engage in the business of removing asbestos from a public building or encapsulating asbestos from a public building unless the person is licensed by the department in accordance with this Act.

(b) In an emergency that results from a sudden, unexpected event that is not a planned renovation or demolition, the department may waive the requirement for a license.

(c) An individual licensed under this Act shall supervise each project to remove asbestos from a public building or encapsulate that asbestos.

(d) A person engaged in the business of removing asbestos from a public building or encapsulating that asbestos must notify the department in writing at least 10 days prior to beginning the removal or encapsulation project. Verbal notification may be substituted for written notification if the removal or encapsulation is of an emergency nature.

SECTION 3. QUALIFICATIONS FOR LICENSE. (a) To qualify for a license to remove asbestos from a public building or encapsulate that asbestos, a person must meet the requirements of this section and any other requirements established by the board.

(b) A person engaged in the business of removing asbestos from a public building or encapsulating that asbestos must ensure that each employee or agent who will come in contact with asbestos in a public building or who will be responsible for removal or encapsulation of asbestos from a public building:

- (1) is familiar with federal standards for asbestos removal and encapsulation; and
- (2) has completed a course of instruction on asbestos removal and encapsulation approved by the United States Environmental Protection Agency.

(c) A person engaged in the business of removing asbestos from a public building or encapsulating that asbestos must demonstrate to the satisfaction of the department that the person:

(1) is capable of complying with all applicable standards of the department, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any state agency with authority to regulate the removal, encapsulation, or disposal of asbestos;

(2) has completed a thorough and detailed course of instruction on asbestos removal and encapsulation approved by the United States Environmental Protection Agency; and

(3) has access to at least one appropriate disposal site for deposit of all asbestos waste that the person will generate during the term of the license.

SECTION 4. APPLICATION FOR LICENSE. (a) To apply for a license, a person engaged in the business of removing asbestos from a public building or encapsulating that asbestos must submit an application to the department on the form prescribed by the department and pay to the department an application fee set by the board in an amount that, together with the registration fee, does not exceed \$500 and that together with the registration fee generates the approximate amount of revenue necessary to administer this Act.

(b) The application form must be signed by the person or the person's designee and must include:

- (1) the business name and address of the person;
- (2) a description of the protective clothing and respirators that the person will use;
- (3) the name and address of each disposal site that the person will use;
- (4) a description of the site decontamination procedures that the person will use;
- (5) a description of the removal and encapsulation methods that the person will use;
- (6) a description of the procedures that the person will use for handling waste containing asbestos;
- (7) a description of the air-monitoring procedures that the person will use;
- (8) a description of the final cleanup procedures that the person will use; and
- (9) any other information that the department requires.

(c) Upon receipt of payment of the required fee, the department will license a person engaged in the business of removing asbestos from a public building or encapsulating that asbestos, if the person has been fully accredited by the United States Environmental Protection Agency.

SECTION 5. TERM AND RENEWAL OF LICENSE. (a) A license expires on the first anniversary of its effective date, unless the license is renewed for a one-year term as provided by this section.

(b) At least one month before the license expires, the department shall send to the licensee, by first-class mail to the last known address of the licensee, a renewal notice that states:

- (1) the date on which the current license expires;
- (2) the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and
- (3) the amount of the renewal fee.

(c) Before the license expires, the licensee periodically may renew it for an additional one-year term, if the person engaged in the business of removing asbestos from a public building or encapsulating that asbestos:

- (1) otherwise is entitled to be licensed;
- (2) pays to the department a renewal fee in the amount set by the board for an original application under Section 4(a) of this Act; and
- (3) submits to the department a renewal application on the form that the department requires.

SECTION 6. REQUIRED RECORDS. (a) Each licensee shall:

- (1) keep a record of each asbestos removal or encapsulation project that it performs in a public building; and
- (2) make that record available to the department at any reasonable time.
- (b) The records required by this section shall be kept for at least six years.
- (c) The records required by this section must include:
  - (1) the name and address of the individual who supervised the asbestos removal;
  - (2) the location of and a description of the project and the amount of asbestos material that was removed;
  - (3) the starting and completion dates of each instance of removal;
  - (4) a summary of the procedures that were used to comply with all applicable standards;
  - (5) the name and address of each disposal site where the waste containing asbestos was deposited; and
  - (6) any other information that the department requires.

SECTION 7. REPRIMAND, SUSPENSION, AND REVOCATION. Subject to the hearing provisions of this Act, the department may reprimand any licensee, or suspend or revoke any license, if the licensee:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fails at any time to meet the qualifications for a license or to comply with any rule that the board adopts under this Act; or
- (3) fails to meet any applicable federal or state standard for removal or encapsulation of asbestos.

SECTION 8. HEARINGS. (a) Before the department takes any action under Section 7 of this Act, it shall give the licensee against whom the action is contemplated an opportunity for a hearing.

(b) The department shall give notice and hold the hearing in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 9. REGISTRATION OF EMPLOYEES. (a) Each employee of a person required to be licensed under this Act must register with the department before the employee may remove asbestos from a public building or encapsulate that asbestos. The employee must register on a form prescribed by the department and must pay to the department a registration fee set by the board in an amount not to exceed \$50.

(b) To be registered under this Act, the employee must demonstrate to the satisfaction of the department that the employee has completed a course of instruction on asbestos removal and encapsulation approved by the United States Environmental Protection Agency.

(c) An employee who is registered under this section is not required to be licensed under this Act unless the employee is the supervisor of a project to remove asbestos from a public building or encapsulate that asbestos.

SECTION 10. COMPANY COURSE OF INSTRUCTION IN ASBESTOS REMOVAL AND ENCAPSULATION. (a) If an employer provides the course of instruction on asbestos removal and encapsulation for his employees, the course must be approved by

the department in addition to approval by the United States Environmental Protection Agency and must be taught by a qualified instructor.

(b) The instructor must furnish records to the department concerning employees who have attended the employer's course of instruction.

(c) An instructor who submits to the department a record the instructor knows is false commits an offense. An offense under this subsection is a Class C misdemeanor.

SECTION 11. BOARD AND DEPARTMENT DUTIES. (a) The board shall adopt rules to carry out this Act.

(b) At least once a year, during an actual removal or encapsulation project, the department shall conduct an on-site inspection of each licensee's procedures for removing and encapsulating asbestos.

(c) If, during an inspection, the department finds that a violation of this Act has occurred or is occurring, the department may apply for injunctive relief in a court of competent jurisdiction. On application of the department, the court shall immediately restrain the violation of this Act.

SECTION 12. ADVISORY COMMITTEE. (a) The department shall appoint an advisory committee to advise the department concerning rules, fees, courses of instruction, and any other topics the department considers necessary to administer this Act.

(b) The department shall appoint to the committee one industrial hygienist, one licensed physician, two instructors of asbestos abatement techniques who have actual experience in removing asbestos and who have been approved by the United States Environmental Protection Agency, and one asbestos removal contractor who qualifies for a license under this Act.

SECTION 13. CIVIL PENALTY. (a) A person who intentionally violates this Act or any rule adopted under this Act is liable for a civil penalty not to exceed \$5,000.

(b) Each day a violation continues is a separate violation under this section.

(c) At the request of the board, the attorney general may file a civil suit in a court of competent jurisdiction to recover the penalty.

SECTION 14. CRIMINAL PENALTY. (a) A person who is required to be licensed under this Act commits an offense if the person:

(1) engages in the business of removing asbestos from a public building or encapsulating that asbestos without the license and previously has been assessed a civil penalty for engaging in that business without a license; or

(2) fails to keep records as required by Section 6 of this Act and previously has been assessed a civil penalty for failing to keep records.

(b) An offense under this section is a misdemeanor and on conviction is punishable by:

(1) a fine not to exceed \$20,000 for the first offense under this section; or

(2) a fine not to exceed \$25,000, confinement in jail for not more than two years, or both, for a second or subsequent offense under this section.

SECTION 15. DELAYED EFFECT OF REGULATION. (a) A person engaged in the business of removing asbestos from a public building or encapsulating that asbestos is not required to have a license under this Act and is not required to comply with the other regulatory provisions of this Act until January 1, 1988. A person employed to remove asbestos from a public building or to encapsulate that asbestos is not required to register under this Act and is not required to comply with the other regulatory provisions of this Act until January 1, 1988.

(b) If a project to remove asbestos from a public building or to encapsulate that asbestos is in progress on January 1, 1988, the employer and employees involved in that project are not required to be licensed or registered under this Act in order to complete that project.

(c) If a person required to be licensed or registered under this Act has received training approved by the United States Environmental Protection Agency as required by this Act and the department within the 12 months preceding January 1, 1988, the department will accept that training in licensing or registering the person in accordance

with this Act. This does not exempt the person from payment of the required license or registration fee, or from other requirements for licensing or registration under this Act.

SECTION 16. EFFECTIVE DATE. This Act takes effect September 1, 1987.

SECTION 17. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 24, 1987, by a non-record vote. Passed by the Senate on April 30, 1987, by a viva-voce vote.

Approved May 14, 1987.

Effective Sept. 1, 1987.