

SECOND REGULAR SESSION

# SENATE BILL NO. 866

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR FLOTRON.

Read 1st time February 4, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3595.011

## AN ACT

To repeal sections 643.020, 643.225, 643.228, 643.230, 643.235, 643.237, 643.240, 643.242 and 643.250, RSMo 1994, relating to asbestos abatement, and to enact in lieu thereof nine new sections relating to the same subject.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 643.020, 643.225, 643.228, 643.230, 643.235, 643.237, 643.240, 643.242 and 643.250, RSMo 1994, are repealed and nine new sections enacted in lieu thereof, to be known as sections 643.020, 643.225, 643.228, 643.230, 643.235, 643.237, 643.240, 643.242 and 643.250, to read as follows:

643.020. When used in this chapter and in standards, rules and regulations promulgated under authority of this chapter, the following words and phrases mean:

- (1) "AHERA", Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519);
- (2) "Abatement project designer", an individual who designs or plans AHERA asbestos abatement;
- (3) "Air cleaning device", any method, process, or equipment which removes, reduces, or renders less obnoxious air contaminants discharged into ambient air;
- (4) "Air contaminant", any particulate matter or any gas or vapor or any combination thereof;
- (5) "Air contaminant source", any and all sources of air contaminants whether privately or publicly owned or operated;
- (6) "Air pollution", the presence in the ambient air of one or more air contaminants in quantities, of characteristics and of a duration which directly and proximately cause or contribute

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

to injury to human, plant, or animal life or health or to property or which unreasonably interferes with the enjoyment of life or use of property;

(7) "Ambient air", all space outside of buildings, stacks, or exterior ducts;

(8) "Area of the state", any geographical area designated by the commission;

(9) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(10) "Asbestos abatement", the encapsulation, enclosure or removal of asbestos containing materials in or from a building or air contaminant source, or preparation of friable asbestos containing material prior to demolition;

(11) "Asbestos abatement contractor", any person who by agreement, contractual or otherwise, conducts asbestos abatement projects at a location other than his own place of business;

(12) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or remove **[ten] one hundred sixty** square feet or **[sixteen] two hundred sixty** linear feet or more of friable asbestos containing materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing **[ten] one hundred sixty** square feet or **[sixteen] two hundred sixty** linear feet or more;

(13) "Asbestos abatement supervisor", an individual who directs, controls, or supervises others in asbestos abatement projects;

(14) "Asbestos abatement worker", an individual who engages in asbestos abatement projects;

(15) "Asbestos air sampling professional", an individual who by qualifications and experience is proficient in asbestos abatement air monitoring. The individual shall conduct, oversee or be responsible for air monitoring of asbestos abatement projects before, during and after the project has been completed;

(16) "Asbestos air sampling technician", an individual who has been trained by an air sampling professional to do air monitoring. Such individual conducts air monitoring of an asbestos abatement project before, during and after the project has been completed;

(17) "Asbestos containing material", any material or product which contains more than one percent asbestos, by weight;

(18) "Class A source", either a class A1, A2 or A3 source as defined in this section;

(19) "Class A1 source", any air contaminant source with the potential to emit equal to or greater than one hundred tons per year of an air contaminant;

(20) "Class A2 source", any air contaminant source, which is not a class A1 source, and with the potential, air cleaning devices not considered, to emit equal to or greater than one hundred tons per year of an air contaminant;

(21) "Class A3 source", any air contaminant source which emits or has the potential to emit, ten tons per year or more of any hazardous air pollutant or twenty-five tons of any

combination of hazardous air pollutants, or as defined pursuant to section 112 of the federal Clean Air Act, as amended, 42 U.S.C. 7412;

(22) "Class B source", any air contaminant source with the potential, air cleaning devices not considered, to emit equal to or greater than the de minimis amounts of an air contaminant established by the commission, but not a class A source;

(23) "Commission", the air conservation commission of the state of Missouri created in section 643.040;

(24) "Competent person", as defined in the United States Occupational Safety and Health Administration's (OSHA) standard 29 CFR 1926.58 (b). Such person shall also be a certified asbestos abatement supervisor;

(25) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(26) "De minimis source", any air contaminant source with a potential to emit an air contaminant, air cleaning devices not considered, less than that established by the commission as de minimis for the air contaminant;

(27) "Department", the department of natural resources of the state of Missouri;

(28) "Director", the director of the department of natural resources;

(29) "Emergency asbestos project", an asbestos project that must be undertaken immediately to prevent imminent, severe, human exposure or to restore essential facility operation;

(30) "Emission", the discharge or release into the atmosphere of one or more air contaminants;

(31) "Emission control regulations", limitations on the emission of air contaminants into the ambient air;

(32) "Friable asbestos containing material", any asbestos containing material which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure. **Category I and category II nonfriable asbestos-containing materials, as defined by the Environmental Protection Agency in 40 CFR Part 61, Subpart M, as amended, are not considered friable asbestos-containing materials;**

(33) "Inspector", an individual, under AHERA, who collects and assimilates information used to determine whether asbestos containing material is present in a building or other air

contaminant sources, **including any commission or department representative who conducts an inspection pursuant to section 643.242;**

(34) "Management planner", an individual, under AHERA, who devises and writes plans for asbestos abatement;

(35) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

(36) "Nonattainment area", any area designated by the governor as a "nonattainment area" as defined in the federal Clean Air Act, as amended, 42 U.S.C. 7501;

(37) "Person", any individual, partnership, copartnership, firm, company, or public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(38) "Small business", for the purpose of sections 643.010 to 643.190, a small business shall include any business regulated under this chapter, which is not a class A source and which employs less than one hundred people and emits less than fifty tons of any regulated pollutant per year and less than seventy-five tons of all regulated pollutants or as otherwise defined by the commission by rule.

643.225. 1. The provisions of sections 643.225 to 643.250 shall apply to all asbestos abatement projects. The commission shall promulgate rules and regulations it deems necessary to implement and administer the provisions of sections 643.225 to 643.250, including requirements, procedures and standards relating to asbestos projects, as well as the authority to require corrective measures to be taken in asbestos abatement projects as are deemed necessary to protect public health and the environment. **The rules and regulations so established shall not be any stricter than the notification and work practice requirements contained in the provisions of 40 CFR Part 61, Subpart M, as amended, nor shall such rules and regulations be enforced in any area of the state prior to the time required by 40 CFR Part 61, Subpart M, as amended.** The director shall establish any examinations for certification required by this section and shall hold such examinations at times and places as determined by the director.

**2. Projects involving the abatement or removal of asbestos-containing materials from the following structures are not asbestos abatement projects and are exempt from the requirements in sections 643.225 to 643.250:**

**(1) Single family, owner occupied dwellings;**

**(2) Vacant residential structures of four dwelling units or less being demolished either by or pursuant to an order issued by a federal, state or local governmental entity following a determination made solely by such federal, state or local governmental**

**entity that demolition is necessary to protect public health, safety or welfare.**

**3.** Except as otherwise provided in sections 643.225 to 643.250, no individual shall engage in an asbestos abatement project, inspection, management plan, abatement project design or asbestos air sampling unless the person has been issued a certificate by the director, or by the commission after appeal, for that purpose. **Any commission or department staff or representative who conducts an inspection pursuant to section 643.242 shall possess an asbestos inspector certificate as required by this section.**

[3.] **4.** In any application made to the director to obtain such certification as an inspector, management planner, abatement project designer, supervisor, contractor or worker from the department, the applicant shall include his diploma providing proof of successful completion of either a state accredited or United States Environmental Protection Agency (EPA) accredited training course as described in section 643.228. In addition, an applicant for certification as a management planner shall first be certified as an inspector. All applicants for certification as an inspector, management planner, abatement project designer, supervisor, contractor or worker shall successfully pass a state examination on Missouri state asbestos statutes and rules relating to asbestos. Certification issued hereunder shall expire one year from its effective date. Individuals applying for state certification as an asbestos air sampling professional shall have the following credentials:

(1) A bachelor of science degree in industrial hygiene plus one year of experience in the field; or

(2) A master of science degree in industrial hygiene; or

(3) Certification as an industrial hygienist as designated by the American Board of Industrial Hygiene; or

(4) Three years of practical experience in the field of industrial hygiene, including significant asbestos air monitoring experience and the completion of a forty-hour asbestos course which includes air monitoring instruction (National Institute of Occupational Safety and Health 582 course on air sampling or equivalent). In addition to these qualifications, the individual must also pass the state of Missouri asbestos examination. All asbestos air sampling technicians shall be trained and overseen by an asbestos air sampling professional and shall meet the requirements of training found in OSHA's 29 CFR 1926.58. Certification under this section as an AHERA asbestos abatement project designer does not qualify an individual as an architect, engineer or land surveyor, as defined in chapter 327, RSMo.

[4.] **5.** An application fee of seventy-five dollars shall be assessed for each category, except asbestos abatement worker, to cover administrative costs incurred. An application fee of twenty-five dollars shall be assessed for each asbestos abatement worker to cover administrative costs incurred. A fee of twenty-five dollars shall be assessed per state examination.

[5.] **6.** In order to qualify for renewal of a certificate, an individual shall have successfully

completed an annual refresher course from an Environmental Protection Agency or state of Missouri accredited training program. For each discipline, the refresher course shall review and discuss current federal and state statute and rule developments, state-of-the-art procedures and key aspects of the initial training course, as determined by the state of Missouri. For all categories except inspectors, individuals shall complete a one-day annual refresher training course for recertification. Refresher courses for inspectors shall be at least a half-day in length. Management planners shall attend the inspector refresher course, plus an additional half-day on management planning. All refresher courses shall require an individual to successfully pass an examination upon completion of the course. In the case of significant changes in Missouri state asbestos statutes or rules, an individual shall also be required to take and successfully pass an updated Missouri state asbestos examination. An individual who has failed the Missouri state asbestos examination may retake it on the next scheduled examination date. If his certification has lapsed for more than twenty-four months, he shall be required to retake the course in his specialty area described in this section. Failure to comply with the requirements for renewal of certification in this section will result in decertification. In no event shall certification or recertification constitute permission to violate sections 643.225 to 643.250 or any standard or rule promulgated under sections 643.225 to 643.250.

[6.] **7.** A fee of five dollars shall be paid to the state for renewal of certificates to cover administrative costs.

[7.] **8.** The provisions of subsections [2 through 6] **3 through 7** of this section, section 643.228, subdivision (4) of subsection 1 of section 643.230, sections 643.232 and 643.235, subdivisions (1) to (3) of subsection 1 of section 643.237, and subsection 2 of section 643.237 shall not apply to a person that is subject to requirements and applicable standards of the United States Environmental Protection Agency (EPA) and the United States Occupational Safety and Health Administration's (OSHA) 29 Code of Federal Regulations 1926.58 and which engages in asbestos abatement projects as part of normal operations in the facility solely at its own place or places of business. A person shall receive an exemption upon submitting to the director, on a form provided by the department, documentation of the training provided to their employees to meet the requirements of applicable OSHA and EPA rules and regulations and the type of asbestos abatement projects which constitute normal operations performed by the applicant. If the application does not meet the requirements of this subsection and the rules and regulations promulgated by the department, the applicant shall be notified, within one hundred eighty days of the receipt of the application, that his exemption has been revoked. An applicant may appeal the revocation of an exemption to the commission within thirty days of the notice of revocation. This exemption shall not apply to asbestos abatement contractors, to those persons who the commission by rule determines provide a service to the public in its place or places of business as the economic foundation of the facility, or to those persons subject to the requirements

of the federal Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519). A representative of the department shall be permitted to attend, monitor and evaluate any training program provided by the exempted person. Such evaluations may be conducted without prior notice. Refusal to allow such an evaluation is sufficient grounds for loss of exemption status. **In order to obtain any certificate required by subsection 2 of section 643.225, any commission, department of natural resources or department of health staff or representative who attends, monitors or evaluates any training program is required to pay any required attendance fee and pass any required examination.**

[8.] **9.** A fee of two hundred fifty dollars shall be submitted with the application for exemption. This is a one-time fee. Exempted persons shall submit to the director changes in curricula or other significant revisions to the training program as they occur.

643.228. 1. Required training courses for certification under section 643.225 shall first be accredited by the state. To be accredited, training programs shall meet the training certification and recertification requirements for each specialty area outlined in the United States EPA's model accreditation plan, 40 CFR Part 763, including passage of a course examination for these courses, and the certification requirements for air sampling professionals outlined in section 643.225. Such accreditation shall be obtained biennially. A representative of the department or the department of health shall be permitted to attend, monitor and evaluate any training program without charge to the state. Such evaluations may be conducted without prior notice. Refusal to allow such an evaluation is sufficient grounds for loss of certificate of accreditation. **In order to obtain any certificate required by subsection 2 of section 643.225, any commission, department of natural resources or department of health staff or representative who attends, monitors or evaluates any training program is required to pay any required attendance fee and pass any required examination.**

2. An accreditation fee of one thousand dollars per course category shall be paid prior to issuance or renewal of a certificate of accreditation, however, no individual, group, agency or organization shall pay more than three thousand dollars for all course categories for which accreditation is requested at the same time.

3. The director may engage in reciprocity agreements with other states that have established accreditation criteria for certification training programs that meet or exceed Missouri's accreditation criteria.

643.230. 1. The director may deny, suspend or revoke any certification, accreditation or exemption status under sections 643.225 to 643.250 if the director finds that the applicant has:

(1) Fraudulently or deceptively obtained or attempted to obtain a certificate, or accreditation or exemption status;

(2) Failed at any time to meet the qualifications for certification, accreditation or exemption or to comply with any applicable provision or requirement of sections 643.225 to

643.250;

(3) Failed at any time to meet any applicable federal or state requirements for removal, encapsulation, enclosure or demolition of asbestos;

(4) Failed to provide proof of certification on the job site;

(5) Failed to meet the state of Missouri accreditation or exemption requirements for training programs.

**2. Prior to the initiation of the denial, suspension or revocation of any certification, accreditation or exemption, the director shall attempt to eliminate the violation through conference, conciliation and persuasion in accordance with section 643.080. If the violation cannot be resolved as a result of conference, conciliation and persuasion, the director may initiate proceedings to deny, suspend or revoke the certification, accreditation or exemption.**

**3.** Suspension of a certificate or exemption under this section may not be in effect for a period greater than ninety days. At the end of such period of time, the certificate or exemption shall be reinstated unless the director has revoked the certificate or exemption or the certificate has expired.

[3.] **4.** Upon denial, suspension, or revocation of certification, accreditation or exemption by the director, the applicant may appeal to [the commission] **circuit court** by filing [notice of appeal with the commission] **an action** within thirty days of the notice of denial, suspension or revocation. [The commission shall hold a hearing at a time not more than sixty days after the date of request.] If the [commission] **court** determines that the applicant meets the requirements of section 643.225 and has not committed any violation indicated in section 643.225, 643.228, or in this section, and the rules promulgated thereto, the **court shall order the** commission [may] **to** issue certification, accreditation or exemption to the individual.

643.235. **1.** The director may deny, suspend or revoke any person's registration under sections 643.225 to 643.250 if the director finds that the applicant has:

(1) Failed to meet the requirements of section 643.232;

(2) Failed to use certified or trained individuals as required in section 643.232;

(3) Failed at any time to meet any applicable federal, state or local standards for removal, encapsulation, enclosure or demolition of asbestos; or

(4) Failed to renew his registration annually.

**2. Prior to the initiation of the denial, suspension or revocation of any registration, the director shall attempt to eliminate the violations through conference, conciliation and persuasion in accordance with section 643.080. If the violation cannot be resolved as a result of conference, conciliation and persuasion, the director may initiate proceedings to deny, suspend or revoke the certification, accreditation or exemption.**



3. Upon denial, suspension, or revocation of registration by the director, the person may appeal to the [commission] **circuit court** by filing [notice of appeal with the commission] **an action** within thirty days of the notice of denial, suspension or revocation. [The commission shall hold a hearing at a time not more than ninety days after the date of request.] If the [commission] **court** determines that the person meets the requirements of section 643.232 and has not committed any violation indicated in this section, and the rules promulgated thereto, the **court shall order the** commission [shall] **to** issue registration to the person.

[3.] 4. If a person's registration has been revoked, he may reapply for registration one year from the date of revocation if the director finds that he meets the requirements of sections 643.225 to 643.250.

643.237. 1. Any person undertaking an asbestos abatement project of a magnitude greater than or equal to one hundred sixty square feet or two hundred sixty linear feet **of friable asbestos-containing materials** shall meet the following requirements:

(1) The person shall submit an application for asbestos abatement to the **air pollution control program in the** department for review at least twenty days in advance. The application shall be in the form required by the department. Such application shall include the name and address of the applicant, a description of the proposed project and any other information as may be required by the commission and provide proof to the department that all employees engaged in an asbestos abatement project are in compliance with sections 643.225 and 643.228;

(2) Persons undertaking an asbestos abatement project shall notify the **air pollution control program in the** department within sixty days of the completion of the project in the form required by the department. **Certification by a certified air sampling professional or third party air monitor that the asbestos abatement project is completed and that no friable asbestos containing materials remained at the project shall be prima facie evidence that all regulated asbestos was properly removed;**

(3) Persons undertaking an emergency asbestos abatement project of this magnitude shall submit a notification to the **air pollution control program in the** department within twenty-four hours of the onset of the emergency. An application for permit to abate shall be submitted to the department within seven days of the onset of the emergency;

(4) A fee of one hundred dollars shall be paid for review of each asbestos abatement project notification of this magnitude;

(5) Any person undertaking an asbestos abatement project in the jurisdiction of an authorized local air pollution control agency shall be exempt from an application fee if the authorized local agency also imposes an application fee.

2. Any person undertaking an asbestos abatement project of a magnitude less than one hundred sixty square feet or two hundred sixty linear feet, but greater than ten square feet or sixteen linear feet shall meet the following requirements:

(1) The person shall submit notification to the **air pollution control program in the** department for review at least [twenty] **ten** days in advance. The notification shall be in the form required by the department. Such notification shall include the name and address of the applicant, a description of the proposed project [and any other information as may be required by the department], **a description of the quantity of asbestos present**, and provide proof to the department that all employees engaged in an asbestos abatement project are in compliance with sections 643.225 and 643.228. In addition, the person shall post for inspection, at the site, current certificates of all individuals engaged in the asbestos abatement project as well as proof of the person's current registration;

(2) [Persons undertaking an asbestos abatement project shall notify the department within sixty days of the completion of the project in the form required by the department;

(3) [Persons undertaking an emergency asbestos abatement project of this magnitude shall submit notification to the **air pollution control program in the** department within twenty-four hours of the onset of the emergency.

3. Any person who submits an asbestos abatement project notification to the department shall submit actual project dates and times for his project. **For projects involving multiple structures in the vicinity of each other, the person may notify the department of the project dates and times for the entire project as a whole involving the multiple structures.** If the dates and times are revised on this project as submitted to the department, the person is responsible to notify the **air pollution control program in the** department at least twenty-four hours prior to the original starting date of the project by telephone [and then followup with a written amendment] **or facsimile** stating the change in date and time. [If the person does not comply with this procedure, he shall be held in violation of the notification requirements found in this section.] This requirement does not change the reporting requirements for notification, post notification and emergency projects specified in this section.

643.240. 1. Before commencement of an asbestos abatement project, persons shall make all reasonable efforts to minimize the spread of friable asbestos-containing materials to uncontaminated areas.

2. [Any] **Category I and category II nonfriable asbestos-containing materials, as defined in 40 CFR Part 61, Subpart M, as amended, shall be managed as required by 40 CFR Part 61, Subpart M. All other** asbestos-containing material that will be rendered friable during the process of removal, encapsulation, enclosure or demolition is subject to all applicable federal and state regulations.

3. Analysis of asbestos air samples shall be conducted according to the United States Occupational Safety and Health Administration's (OSHA) standards in 29 CFR 1926.58.

643.242. 1. Asbestos abatement projects of a magnitude greater than or equal to [ten] **one hundred sixty** square feet or [sixteen] **two hundred sixty** linear feet **of friable asbestos-**

**containing materials** are subject to inspection. **An inspection of an asbestos abatement project by a commission or department representative or an authorized local agency shall occur only in the presence of the owner or operator or a designated representative of the owner or operator.**

2. The commission shall be authorized to assess a fee of not more than one hundred dollars for each on-site inspection of asbestos abatement projects. Such fees would not be assessed for more than three on-site inspections during the period an actual abatement project is in progress. [Failure of the asbestos abatement contractor to notify the department of project postponement may result in the assessment of an inspection fee in the event of an on-site visit by the department.]

3. Any person undertaking an asbestos abatement project in the jurisdiction of an authorized local air pollution control agency shall be exempt from an inspection fee if the authorized local agency also imposes an inspection fee.

**4. Any person undertaking an asbestos abatement project is not required to pay an inspection fee for an inspection conducted pursuant to section 643.242 unless the commission or department staff or authorized local agency representative possessed at the time of the inspection a valid asbestos inspector certificate as required by subsection 2 of section 643.225.**

643.250. 1. Any authorized representative of the department may enter at all reasonable times, in or upon public or private property for purposes required under sections 643.225 to 643.250. Refusal to allow such entry [shall] **may** be grounds for revocation of registration or injunctive relief.

2. Any person who knowingly violates sections 643.225 to 643.250, or any rule promulgated thereunder, shall, upon conviction, be punished by a fine of not less than twenty-five hundred dollars nor more than twenty-five thousand dollars per day of violation, or by imprisonment for not more than one year, or both. Second and successive convictions of any person shall be punished by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment for not more than two years, or both.

3. Any person who violates any provision of sections 643.225 to 643.250 may, in addition to any other penalty provided by law, incur a civil penalty in an amount not to exceed ten thousand dollars for each day of violation. The civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed. Any civil penalty paid shall be placed in the [natural resources protection fund--air pollution asbestos fee subaccount] **county school fund in the county where the violation occurred.**

4. Notwithstanding the existence or pursuit of any other remedy provided by sections 643.225 to 643.250, the commission may maintain, in the manner provided by chapter 536, RSMo,

an action in the name of the state of Missouri for injunction or other process against any person to restrain or prevent any violation of the provisions of sections 643.225 to 643.250.

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