New Jersey Statutes Annotated Currentness
Title 34. Labor and Workmen's Compensation
Chapter 5A. Hazardous Substances in the Workplace and Community (Refs & Annos)
II. Asbestos Services (Refs & Annos)
34:5A-32. Legislative findings

The Legislature finds that the application, enclosure, removal and encapsulation of asbestos when improperly performed creates unnecessary health and safety hazards which are detrimental to the State's interest in protecting the health, safety, and welfare of all citizens thereby exposed to such asbestos hazards.

34:5A-33. Legislative declarations

The Legislature declares it to be its purpose and policy to reduce asbestos-related hazards by:

a. Encouraging contracting parties, citizens and insurance companies in their efforts to reduce disabling asbestos hazards and to stimulate initiation of new and to perfect existing programs for controlling the application, use and removal of asbestos, an extremely dangerous substance;

b. Creating a climate for developing innovative methods, techniques and approaches for dealing with life-destroying asbestos materials;

c. Encouraging competence and knowledge in the field of asbestos application, enclosure, repair, removal, and encapsulation by the licensing of employers, including contractors, and the permitting of employees in an effort to ensure that incompetent work will not pose a health and safety threat to the public-at-large through subsequent exposure to asbestos;

d. Providing for the adoption of standards for the application, enclosure, removal, encapsulation, storage, sale, disposal and use of asbestos and asbestos-containing material; and

e. Establishing an enforcement program for these standards, which shall include reporting procedures.

34:5A-34. Definitions

As used in this act:

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a. “Asbestos” means the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummuningtonitegrunerite); anthophyllite; termolite; and actinolite;

b. “Asbestos-containing material” means any material which contains more than 1% asbestos by weight;

c. “Employee” means any person suffered or permitted to work by an employer;

d. “Employer” means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work. In the case of a corporation, the officers of the corporation and any agents having the management of the corporation shall be deemed to be employers of the employees of the corporation for the purposes of this act. This term shall apply to private employers and to the State, its political subdivisions, and any boards, commissions, schools, institutions, or authorities created or recognized thereby;

e. “Friable” means asbestos-containing material that when dry may be crumbled, pulverized or reduced to powder by hand pressure, and includes previously nonfriable asbestos-containing material after that material becomes damaged to the extent that when dry it may be crumbled, pulverized or reduced to powder by hand pressure.

34:5A-35. Contracts for application, enclosure, removal or encapsulation of asbestos; licensure of contractors

Any private or public agency letting contracts for any activity involving the application, enclosure, repair, removal or encapsulation of asbestos in any structure for which a license is required shall include in these contracts specifications that these contracts are to be performed by contractors and subcontractors licensed by the Commissioner of Labor.

34:5A-36. Licenses; requirements; posting

No employer shall either directly or indirectly perform any of the functions of application, enclosure, removal, or encapsulation of asbestos in any structure, nor enter into any contract with the owner or the owner's representative for the employer to perform such work or services, without first obtaining a nontransferable license from the Commissioner of Labor, except private employers subject to the federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) who use their own employees to apply, enclose, remove, repair, or encapsulate asbestos in their own facility, or as otherwise exempted pursuant to section 7 of P.L.1994, c. 21 (C. 34:5A-43).

This license shall be in writing, shall be dated when issued, shall contain an expiration date, and shall be

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signed by the commissioner. The commissioner may issue employer licenses with such conditions as the commissioner deems necessary, and as adopted by regulation, specifying the scope of work authorized by such license. No license shall be issued by the commissioner unless the employer has completed a course of training certified by, and satisfactorily has completed an examination approved by, the Department of Health. The license shall give the name and address of the employer to whom it is issued. Licensed employers shall post a sign indicating, in letters more than four inches in height, "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK," readily visible outdoors at the work site. The actual license shall be readily available at the work site for inspection by representatives of the Commissioners of Labor and Health and the contracting agency.

34:5A-37. Employees; performance permit; training course

Every employee performing functions of application, enclosure, repair, removal, or encapsulation of asbestos, with the exception of employees of an employer subject to the federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) applying, enclosing, repairing, removing, or encapsulating asbestos at the employer's own facility, or as otherwise exempted pursuant to section 7 of P.L.1994, c. 21 (C. 34:5A-43), shall first procure from the Commissioner of Labor a performance permit. No permit shall be issued unless the employee has taken a course of training in asbestos control and removal, passed an examination thereon, and demonstrated the ability to perform asbestos control and removal safely, in accordance with the current state-of-the-art technology. The Commissioner of Health shall certify the course of training and approve the examination necessary for a permit. This permit shall be in writing, shall be dated when issued, shall contain an expiration date, and shall be signed by the Commissioner of Labor. It shall give the name and address of the employee to whom it is issued. The permit shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioners of Labor and Health and the contracting agency. The Commissioner of Labor may place reasonable conditions on employee permits which specify the scope of work authorized by such permit.

34:5A-38. Licenses and permits; issuance; fees; duration

Beginning not later than one year following the effective date of this act, licenses and permits shall be issued by the Commissioner of Labor, or his designee, and shall be valid for 12 months, in accordance with regulations promulgated under provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The Commissioner of Labor shall, in accordance with fee schedules adopted by regulation, establish, charge, and collect reasonable annual fees for licenses and permits. There shall annually be appropriated an amount equivalent to the amount anticipated to be collected by the Department of Labor pursuant to the provisions of this act and that amount shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor. The Commissioner of Health shall, in accordance with fee schedules adopted by regulation, establish, charge, and collect reasonable annual fees for the certification of all training agencies administering training courses and for the administration of all examinations required by this act. There shall annually be appropriated an amount equivalent to the amount anticipated to be collected by the Department of Health for the administration of the training and examination programs certified or ap-

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proved by the department.

34:5A-39. Standards and regulations

Not later than six months after the effective date of this act, the Commissioners of Labor and Health jointly shall, in consultation with the Commissioner of Environmental Protection, adopt all standards and regulations which they deem necessary for the proper administration and enforcement of this act. These standards and regulations shall include, but shall not be limited to, protective equipment specifications; application, enclosure, removal, and encapsulation procedures; administrative penalties; waste disposal; self-monitoring; cleanup; health checkup; license and permit issuance, suspension, renewal and revocation; fee charges; experience necessary for license or permit qualification; general subject matter of qualifying examinations; and continuing education. Any suspension, revocation, or refusal to renew any permit or license pursuant to this act shall be effectuated as follows: the department that is responsible for the issuance of the permit or license may suspend, revoke, or refuse to renew any license or permit because of a violation of any provision of this act. Prior to that suspension, revocation, or failure to renew, the department shall afford the applicant, licensee, or permit holder an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), except that, if the department has reason to believe that a condition exists at a job site which poses an imminent threat to the public health, safety or welfare, it may order the immediate suspension of the license, permit, or certification pending the outcome of the hearing.

34:5A-40. Enforcement of asbestos act; order of abatement; injunction or restraining order; assessment of costs and civil administrative penalty

This act, and its standards and regulations, shall be enforced by the Commissioners of Labor and Health, who have the right-of-entry to all pertinent premises and records for purposes of inspection and information. Both commissioners may employ the following powers and remedies in enforcing their respective responsibilities under this act:

a. Whenever either commissioner finds that a person has violated any provision of this act for which that commissioner has the responsibility of enforcement, that commissioner may issue an administrative order specifying the provision or provisions of the act which the person has violated, ordering abatement of the violation and giving notice of the person's right to a hearing on the matters contained in the order. The person shall have 10 calendar days from receipt of the order within which to deliver to the commissioner a written request for a hearing. After the hearing, and upon finding that a violation has occurred, the commissioner may issue a final order. If no hearing is requested, the order shall become final upon expiration of the 10-day period. A request for a hearing shall not automatically stay the effect of an administrative order. A stay of an administrative order may only be granted by the commissioner upon a written request and a factual basis clearly supporting the appropriateness of the stay.

b. Either commissioner may institute an action or proceeding in the Superior Court for injunctive or other re-

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lief for any violation of this act for which that commissioner has the responsibility of enforcement and the court may proceed in the action in a summary manner. In the proceeding, the relief may restrain any violation or compel the taking of any action required pursuant to this act, and the court may grant temporary or interlocutory relief. The relief may include, singularly or in combination:

(1) A temporary or permanent restraining order or injunctive relief;

(2) Assessment of the violator for the costs of any investigation or inspection leading to the establishment of the violation and for the reasonable costs of preparing and litigating the case; and

(3) Assessment of the violator for the costs incurred by the State in correcting or terminating any adverse health and environmental effects resulting from the violation.

c. Either commissioner may assess a civil administrative penalty for any violation of this act for which that commissioner has the responsibility of enforcement not to exceed $25,000 for each violation. Each day during which the violation continues shall constitute an additional, separate and distinct offense. No assessment shall be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of civil administrative penalties to be imposed, and a statement of the violator's right to a hearing. The violator shall have 10 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing, and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 10-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to “the penalty enforcement law,” N.J.S. 2A:58-1 et seq.

d. A person who violates an administrative order issued pursuant to subsection a. of this section, or a court order issued pursuant to subsection b. of this section, or who fails to pay in full an administrative assessment pursuant to subsection c. of this section is subject, upon order of a court of competent jurisdiction, to a civil penalty not to exceed $50,000 per day for such violation.

The pursuit of any of the remedies specified in this section shall not preclude the commissioner from seeking any other remedy.

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34:5A-41. Violations; penalties

Any person who knowingly hinders or delays the Commissioner of Labor or Health and Senior Services or the authorized representative thereof, in the performance of the duty to enforce this act, or knowingly submits false or misleading information on any license or permit application required by this act, or fails to obtain licenses or permits required by the provisions of this act, or refuses to make these licenses or permits accessible to either commissioner, or the authorized representative thereof, or otherwise violates any provision of this act or any regulation adopted under this act, shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than $25,000 in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

34:5A-42. Discrimination against complaining employee; penalties

Any employer who discriminates against or otherwise sanctions an employee who complains or cooperates with the Commissioner of Labor or Health, or the designee thereof, in administering this act is a disorderly person and upon conviction is subject to the penalties specified in section 10 of this act. [FN1]

[FN1] N.J.S.A. § 34:5A-41.

34:5A-43. Certification standards; exemptions; annual fees

a. The Commissioner of Health shall, by regulation, adopt standards and other requirements for the certification of training programs and for approving examinations for the issuance of licenses or permits pursuant to P.L.1984, c. 173 (C. 34:5A-32 et seq.).

b. The Commissioner of Health may, by regulation, exempt from the license or permit requirements of P.L.1984, c. 173 (C. 34:5A-32 et seq.) designated asbestos-related activities should sufficient data indicate that no significant asbestos exposure exists. These exempted activities shall involve non-friable asbestos-containing material that is not rendered friable by the activity.

c. The Department of Health shall, in accordance with fee schedules adopted by regulation, establish, charge, and collect reasonable annual fees for the certification of all training agencies administering training courses and for approving all examinations required by this act. There shall annually be appropriated an amount equivalent to the amount anticipated to be collected by the Department of Health for the administration of the training and examination programs certified or approved by the department.

34:5A-44. Citizen complaints; procedures

Any person who believes that a violation of this act has occurred may petition the Commissioner of Health or

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the Commissioner of Labor to bring an enforcement action pursuant to this section. Any citizen complaint filed pursuant to this section shall specify the provision alleged to have been violated, the facts which constitute the alleged violation and the name and address of the citizen lodging the complaint. Upon receipt of a citizen's complaint pursuant to this section, the commissioner who is responsible for enforcement action regarding the violation shall:

a. Give notice of the complaint within 10 calendar days to the person alleged to be in violation;

b. Give notice to the citizen who filed the complaint of the scheduling of an enforcement investigation inspection to investigate the complaint within 30 calendar days of its having been filed;

c. Afford the complaining citizen or his or her representative an opportunity to be present during the enforcement investigation inspection. Public employees who bring complaints shall have the right to accompany the commissioner on an enforcement investigation inspection and shall receive payment of normal wages for time spent during normal working hours on the inspection;

d. Afford the complaining citizen access to all public records regarding the commissioner's investigation; and

e. Render a final decision within 90 calendar days of receipt of a citizen complaint on the appropriate disposition, after investigation, of the citizen's complaint. The decision shall either reference the initiation of an enforcement action or state the factual and legal basis of the decision not to bring an enforcement action.

Public employees bringing a complaint pursuant to this section shall have all protections and rights set forth in section 21 of P.L.1983, c. 516 (C. 34:6A-45).

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