

Mckinney's Consolidated Laws of New York Annotated [Currentness](#)

Labor Law ([Refs & Annos](#))

Chapter 31. Of the Consolidated Laws ([Refs & Annos](#))

→ [Article 30](#). Asbestos or Products Containing Asbestos; Licensing ([Refs & Annos](#))

→ **§ 900. Legislative findings and declaration**

The legislature hereby finds and declares that exposure to asbestos fibers, a known carcinogenic agent, creates a serious risk to the public health and safety. The legislature also finds that the public is more frequently exposed to these risks as a result of an increasing number of rehabilitation and reconstruction projects on buildings containing asbestos or asbestos materials.

The legislature finds that the risks associated with asbestos are exacerbated by the improper and uninformed manner in which some contractors and their employees handle asbestos. Improper design, implementation or inspection of asbestos projects creates unnecessary health and safety hazards which are detrimental to the state's interest, and that of its citizens.

The legislature, therefore, finds and declares it to be its purpose and policy to reduce asbestos related hazards by encouraging proper training of persons employed to design, implement or inspect asbestos projects and those who supervise or employ them, by requiring the licensing of contractors and the certification of individuals involved in asbestos projects pursuant to regulations promulgated by the commissioner, prior to the removal, enclosure, encapsulation or disturbance of friable asbestos or any handling of asbestos material which may result in the release of asbestos fiber and by conferring upon the commissioner the authority to inspect ongoing asbestos projects and promulgate and enforce safety and health standards regulating the conduct of those projects through injunctions, and the imposition of civil and criminal penalties.

§ 901. Definitions

As used in this article, the following terms have the meanings indicated:

1. "Approved asbestos safety program" means a program approved by the commissioner of health providing training in the handling and use of asbestos and asbestos material, education concerning safety and health risks inherent in such handling and use and training in techniques for minimizing exposure of the public to asbestos fibers.
2. "Asbestos" means any naturally occurring hydrated mineral silicate separable into commercially usable fibers, including chrysotile (serpentine), amosite (cummingtonite-grunerite), crocidolite (riebeckite), tremolite, anthrophyllite and actinolite.

3. "Asbestos contract" means an oral or written agreement contained in one or more documents for the performance of work on an asbestos project and includes all labor, goods and services.
4. "Asbestos handling certificate" means a certificate issued by the commissioner pursuant to the provisions of this article to a person who has satisfactorily completed an approved asbestos safety program.
5. "Asbestos handling license" means a license issued by the commissioner pursuant to the provisions of this article to an asbestos contractor engaged in an asbestos project.
6. "Asbestos material" means any material containing more than one percent by weight of asbestos.
7. "Asbestos project" means work undertaken which involves the removal, encapsulation, enclosure, repair or disturbance of friable or non-friable asbestos, or any handling of asbestos material that may result in the release of asbestos fiber except for work in an owner-occupied single family dwelling performed by the owner of such dwelling and, for the purpose of compliance with regulations promulgated pursuant to [subdivision one of section nine hundred six](#) of this article, except for in-plant operations as defined in subdivision thirteen of this section. Where all asbestos work on a project is subcontracted to an asbestos contractor with an asbestos handling license, only that part of the work involving asbestos shall be deemed to be an asbestos project.
8. "Commissioner" means the commissioner of labor.
9. "Asbestos contractor" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof, self-employed person, company, unincorporated association, firm, partnership or corporation, limited liability corporation or professional limited liability corporation and any owner or operator thereof, which engages in any portion of an asbestos project or employs persons engaged in an asbestos project.
10. "Department" means the department of labor.
11. "Entity" means a partnership, association, joint venture, company, sole proprietorship, corporation, limited liability corporation, professional limited liability corporation or any other form of doing business.
12. "Friable" means any material that when dry, can be crumbled, pulverized, crushed or reduced to powder by hand pressure or is capable of being released into the air by hand pressure.
13. "In-plant operations" means work within the premises of an employer other than the state, any political subdivision of the state, a public authority or other governmental agency or instrumentality thereof, in an area to which persons other than employees of that employer directly involved in the work will not have access during the course of the work and which is performed in a manner consistent with federal regulations promulgated under the federal occupational

safety and health act pursuant to chapter 15 of title twenty-nine of the United States code, and is performed in a manner which will not expose the public or employees of that employer not directly involved with the asbestos project to asbestos fibers in excess of background levels or .01 fibers per cubic centimeter, provided that the work involves the encapsulation, enclosure, removal, repair, disturbance or handling of (a) less than one hundred sixty square feet or two hundred sixty linear feet of asbestos or asbestos material and is performed by employees of such employer or (b) any quantity of non-friable organically bound asbestos material.

14. "Non-friable organically bound (NOB) asbestos material" means a wide range of non-friable asbestos materials embedded in flexible-to-rigid asphalt or vinyl matrices, including but not limited to, flooring materials, adhesives, mastics, asphalt shingles, roofing materials and caulks.

15. "Parent company" means an entity that directly, or indirectly through one or more intermediaries, controls the asbestos contractor.

16. "Person" means any natural person.

17. "Subsidiary" means an entity that is controlled directly, or indirectly through one or more intermediaries, by an asbestos contractor or by the asbestos contractor's parent company.

18. "Substantially owned-affiliated entity" means, in relation to any asbestos contractor, any (a) parent company of the asbestos contractor, (b) subsidiary of the asbestos contractor, (c) successor of the asbestos contractor, (d) entity in which the parent company of the asbestos contractor owns more than fifty percent of the voting stock, (e) entity in which one or more of the top five shareholders of the asbestos contractor individually or collectively also owns a controlling share of the voting stock, or (f) entity which exhibits any other indicia of control over the asbestos contractor or over which the asbestos contractor exhibits control, regardless of whether the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, but not be limited to, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

19. "Successor" means an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

§ 902. Licensing and certification requirements

1. It shall be unlawful for any contractor to engage in an asbestos project unless such contractor has a valid asbestos handling license issued by the commissioner. Such license will not be issued without evidence of successful completion by the contractor, or a supervisor designated to act as the contractor's agent, of an approved asbestos safety program which is, at the least, equivalent to the U.S. Environmental Protection Agency Model Accreditation Plan (40 CFR

Part 763) and the submission of any additional information which the commissioner may require.

2. A copy of a valid asbestos handling license or other proof of the issuance of a valid asbestos handling license granted to the contractor who will be undertaking the asbestos project must be submitted by the bidder in a form acceptable to the commissioner prior to the award of any public works contract all or part of which involves an asbestos project.

3. A copy of a valid asbestos handling license must be conspicuously displayed at the work site on an asbestos project.

4. It shall be unlawful for any contractor to engage in or to permit a person employed by the contractor, including but not limited to handlers, project designers, inspectors and management planners, to engage in work on an asbestos project or to supervise persons engaging in work on an asbestos project unless each such person and supervisor has a valid asbestos handling certificate. Such certificate will not be issued without evidence of successful completion by each such person of an approved asbestos safety program and the submission of any additional information which the commissioner may require.

5. Any person employed on an asbestos project or the supervisor of any person engaged in work on an asbestos project or any other person who is otherwise required by law or regulation to obtain an asbestos handler's certificate shall have in his or her possession at all times during the work on the project a copy of the asbestos handling certificate issued to the person by the commissioner.

§ 903. License and certification procedure

1. All applications for asbestos handling licenses or certificates shall be submitted in writing on forms furnished by the commissioner and shall contain such information which the commissioner may require. An application for an asbestos handling license shall contain a statement by the asbestos contractor or its duly authorized representative, which shall be subscribed by the asbestos contractor or its duly authorized representative and affirmed as true under penalties of perjury, that all persons employed by the asbestos contractor on any asbestos project whose duties involve the removal, encapsulation, enclosure, repair or disturbance of asbestos, or any handling of asbestos material that may result in the release of asbestos fiber or the supervision thereof, shall have valid asbestos handling certificates and that the asbestos contractor will abide by all the rules and regulations promulgated pursuant to this article. The commissioner shall have the authority to deny the issuance or renewal of a license or certificate for good cause shown, including the serious violation of state, federal or local laws by the applicant or by any substantially owned-affiliated entity of the applicant with regard to the conduct of any job involving asbestos or asbestos material, or for any serious violation or violations that resulted in a suspended or revoked license or certificate during the previous five years.

2. The fee for an asbestos handling license shall be five hundred dollars, which shall accompany each license application.

3. The renewal fee for an asbestos handling license shall be three hundred dollars, which shall accompany each license

renewal application.

4. An asbestos handling license shall be valid for a period of one year from the date of issuance and may be renewed on conditions set by the commissioner related to additional training.

5. The fee for an asbestos handling certificate shall be assessed in accordance with the following and shall accompany each certificate application.

Schedule: Asbestos Handling Certificate Category	Application Fee
Management Planner	\$150
Project Designer	150
Inspector	100
Air Monitor	75
Supervisor	75
Asbestos Handler	50
Operation and Maintenance	50
Restricted Handler	50

6. The renewal fee for any annual asbestos handling certificate shall be equal to the application fee set forth herein, and shall accompany each certificate renewal application.

7. An asbestos handling certificate shall be valid for a period of one year from date of issuance and may be renewed on conditions set by the commissioner related to additional training.

8. Within thirty days of the receipt of the application and fee for any license or certificate issued under this section, the commissioner shall either issue the license or certificate or deny the license or certificate setting forth the reason for such denial in writing.

§ 904. Notice and recordkeeping requirements

1. Each contractor shall keep and maintain for at least thirty years a record of each asbestos project in which it engages, which record shall include the following information: the name, address and social security number of the person who supervised the asbestos project; the location and description of the asbestos project; the amount of asbestos or asbestos material that was removed, enclosed, encapsulated, or disturbed; the starting and completion date of the asbestos project; the name and address of the deposit or waste disposal site or sites where the asbestos material was deposited or disposed of; the name and address of any interim storage sites used for the asbestos or asbestos materials prior to deposit or disposal; the name and address of any transporters used to move asbestos or asbestos material; the name,

address and social security number of all persons who worked on the asbestos project; and any other information which the commissioner may require.

2. Any contractor engaged in an asbestos project involving more than two hundred sixty linear feet or more than one hundred sixty square feet of asbestos or asbestos materials shall notify both the United States Environmental Protection Agency, Region II, Air and Hazardous Material Division and the commissioner in writing ten days prior to the commencement of work on the project or, if emergency conditions make it impossible to provide ten days prior notice, as soon as practicable after identification of the project. The notice to the commissioner shall include the following information: the name, address and asbestos handling license number of the contractor working on the project; the address and description of the building or area, including size, age and prior use of the building or area; the amount of friable asbestos material present in square feet and/or linear feet, if applicable; room designation numbers or other local information where such asbestos material is found unless such material is found throughout the entire structure; the scheduled starting and completion dates for removal; the procedures and equipment, including ventilating systems that will be employed; any additional information which the commissioner may require; and shall be accompanied by a project notification fee as follows:

Project Size/Linear Feet	Fee
260-429	\$200
430-824	400
825-1649	1,000
1650 or more	2,000
Project Size/Square Feet	Fee
160-259	\$200
260-499	400
500-999	1,000
1000 or more	2,000

3. Upon the expiration, revocation or non-renewal of an asbestos handling license, or at any other time at the request of the commissioner, any records required to be kept pursuant to this section shall be given to the commissioner.

4. A contractor shall post or otherwise provide for written notification to residential and business occupants of a building ten days prior to the commencement of work on any asbestos project in the building or, if the work is scheduled to begin less than ten days after the execution of the contract, at least three days prior to the commencement of work, or if emergency conditions make it impossible to provide ten days notice or three days notice as applicable, as soon as practicable after identification of the project. The notification shall be made in such a manner and shall contain such information as is reasonably necessary to advise such occupants of any asbestos project in the building, according to regulations promulgated by the commissioner. If posted, such notice shall remain in place until completion of the project. It shall be a violation of this chapter for any person to interfere with the obligations of a contractor under this subdivision.

§ 905. Training and education

1. The commissioner of health shall have authority to approve asbestos safety programs and shall maintain a list of approved programs which shall be made available to license applicants, certificate applicants and other interested parties upon request. The commissioner of health shall promulgate rules and regulations setting forth the criteria for approval of such programs, the procedures to be followed in applying for such approval and any other rules or regulations as shall be necessary and proper to effectuate the purposes of this section and to comply with the requirements of the Federal Asbestos Hazard Emergency Response Act [FN1] and any other applicable federal standards.

2. (a) The commissioner of health shall assess a fee of no more than twenty dollars for each asbestos safety program completion certificate requested by the training sponsor for each full asbestos safety program and a fee of no more than twelve dollars for each asbestos safety program completion certificate requested by the training sponsor for each refresher training asbestos safety program, provided, however, that in no event shall the cost of such certificates be assessed by the sponsor against the participants.

(b) There shall be established within the special revenue fund-other an asbestos safety program account. All fees assessed and collected pursuant to the provisions of this subdivision shall be paid and deposited into the asbestos safety program account established by this paragraph for the purposes of offsetting the costs incurred by the commissioner of health for the administration of asbestos safety programs.

[FN1] 15 USCA § 2641 et seq.

§ 906. Regulations

The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes and provisions of this article and to comply with the requirements of the Federal Asbestos Hazard Emergency Response Act [FN1] and any other applicable federal standards. Such regulations shall include but not be limited to (1) standards for asbestos projects including methods of removing, encapsulating, enclosing or disturbing friable asbestos and standards for any handling of asbestos material which may result in the creation of friable asbestos or any handling of asbestos material that may result in the release of asbestos fibers, as shall be necessary to protect the public health and safety and shall include regulations which will permit such disturbance that results from actions that are necessary to abate an emergency which poses an immediate threat to safety or the public health; (2) standards for asbestos projects and in-plant operations setting licensing and certification requirements; and (3) standards for asbestos projects and in-plant operations setting goal air monitoring and clearance requirements, including those necessary to insure that asbestos work is properly designated as an in-plant operation as defined in [subdivision twelve of section nine hundred one](#) of this chapter.

[FN1] 15 USCA § 2641 et seq.

§ 907. Investigations and complaints

The commissioner shall have the authority to inspect ongoing or completed asbestos projects and to conduct an investigation upon his or her own initiation or upon receipt of a complaint by any person or entity.

§ 908. Injunction

If the commissioner finds that any asbestos project is not being performed in accordance with this article or the rules and regulations promulgated hereunder, the commissioner may, by delivery of notice to the contractor engaged in the asbestos project or its agent or representative, enjoin any further work on such asbestos project. Such notice shall specifically enumerate the violations of law or regulation which are occurring on the asbestos project and shall prohibit any further work on the asbestos project until the violations complained of cease and the notice is rescinded by the commissioner. Upon receipt of a written notification from the contractor that the violations have been corrected, the commissioner shall, within ten days, issue a determination as to whether the notice shall be rescinded. Any person or contractor who may be adversely affected by a notice or determination issued under this section may challenge the validity or applicability of such notice or determination by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules.

§ 909. Civil penalties and revocation

1. a. The commissioner may impose a civil penalty upon an asbestos contractor of up to two thousand five hundred dollars for the initial violation of [section nine hundred two](#) of this article and up to four thousand dollars for the second or subsequent violation of such section. Any substantially owned-affiliated entity of such asbestos contractor shall be held jointly and severally liable for the payment of such civil penalty. The commissioner may issue an order directing payment of such civil penalty by the asbestos contractor and substantially owned-affiliated entity.

b. If, after an investigation and a formal hearing, the commissioner finds that an asbestos contractor has violated any provision of this article, other than [section nine hundred two](#) or any rule or regulation promulgated hereunder, the commissioner shall, by an order which shall describe in detail the nature of the violation or violations, assess the asbestos contractor a civil penalty of not more than the greater of twenty-five percent of the monetary value of the contract upon which the violation was found to have occurred or five thousand dollars per violation. Any asbestos contractor who, having previously been assessed a civil penalty under this section, or whose substantially owned-affiliated entity having previously been assessed a civil penalty under this section, violates any provision of this article or any rule or regulation promulgated hereunder, shall be subject to a civil penalty of not more than the greater of fifty percent of the monetary value of the contract upon which the violation was found to have occurred or twenty-five thousand dollars per violation. Each day a violation continues may be considered a separate violation under this section. In assessing the amount of penalty, the commissioner shall give due consideration to the size of the asbestos contractor's business, the good faith of the contractor, the gravity of the violation and the history of previous violations by the asbestos contractor and/or any substantially owned-affiliated entity of such asbestos contractor. Any substantially owned-affiliated entity of such asbestos contractor shall be held jointly and severally liable for the payment of such civil penalty. The commissioner may issue an order directing payment of such civil penalty by the asbestos contractor and any substantially owned-affiliated entity.

2. If, after an investigation and a formal hearing, the commissioner finds that an asbestos contractor has violated any provision of this article or any rule or regulation promulgated hereunder within three years of the last assessment of a civil penalty against the asbestos contractor or any substantially owned-affiliated entity of the asbestos contractor under this article, or has been found to have committed serious violations of other state, federal or local laws with regard to the conduct of the asbestos contractor or any substantially owned-affiliated entity of such asbestos contractor at or on any asbestos project or that such asbestos contractor or any substantially owned-affiliated entity of such asbestos contractor has otherwise demonstrated a lack of responsibility in the conduct of any job involving asbestos or asbestos material of such seriousness as to warrant the revocation of the asbestos contractor's license, or the license of any substantially owned-affiliated entity of such asbestos contractor, the commissioner may, by an order which describes in detail the nature of the violation or violations, revoke the asbestos contractor's asbestos handling license or the asbestos handling license of any substantially owned-affiliated entity of such asbestos contractor and neither such asbestos contractor nor any substantially owned-affiliated entity of such asbestos contractor shall be eligible to apply for a new asbestos handling license for a period of up to two years.

3. If, after an investigation and a formal hearing, the commissioner finds that a person who has been issued an asbestos handling certificate has willfully violated any provision of this article, or any rule or regulation promulgated hereunder, the commissioner may, by order which describes in detail the nature of the violation or violations, suspend or revoke the asbestos handling certificate of such person.

4. Any person or asbestos contractor who may be adversely affected by an order issued under this section may challenge the validity or applicability of such order by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules. The commissioner may file with the county clerk of the county where the person, asbestos contractor, or substantially owned-affiliated entity of such person or contractor resides or has a place of business, the order containing the amount of civil penalty, unless a proceeding for judicial review as provided in this article shall then be pending or the time for initiation of such proceeding has not expired. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

5. When any person or corporation, or any officer or shareholder who owns or controls at least ten per centum of the outstanding stock of such corporation, has been convicted of a felony offense for conduct directly relating to obtaining or attempting to obtain, an asbestos handling certificate or asbestos handling license or performing or attempting to perform an asbestos contract such person or corporation shall be ineligible to be issued an asbestos handling certificate or asbestos handling license for a period of five years from the date of conviction.

6. Nothing in this section shall be construed as affecting any provision of any other law or regulation relating to the issuance of asbestos handling certificates or asbestos handling licenses.

§ 910. Enforcement

1. Nothing in this article shall be construed to prevent municipalities from enacting local laws or ordinances which impose standards or requirements relating to the handling of asbestos or asbestos material more effective than those set forth in this article or in any rule or regulation promulgated hereunder.

2. The commissioner shall enforce the provisions of this article and rules and regulations adopted hereunder; provided, however, that the provisions of this section and [sections nine hundred seven, nine hundred eight and nine hundred nine](#) of this article shall not be enforced in reference to persons or contractors performing work in a city or municipality which files with the commissioner a duly certified copy of a local law or ordinance assuming full responsibility for enforcing the provisions of this article and the rules and regulations adopted hereunder. Such city or municipality shall have all the powers of the commissioner in enforcing the provisions of this article and the rules and regulations adopted hereunder, including but not limited to the collection and retention of monetary penalties.

3. Each city or municipality which elects such local enforcement option shall submit a report to the commissioner annually on or before the first day of June of the manner in which this article and the rules and regulations promulgated thereunder have been and are administered, and the results of such administration under the jurisdiction of such city or municipality and shall from time to time submit to the commissioner such other reports as to such other matters as the commissioner may require.

4. A city or municipality may file with the commissioner a duly certified copy of a local law or ordinance terminating its enforcement responsibilities which shall be effective thirty days from the filing thereof.

[\[§ 911. Repealed by L.2005, c. 57, pt. A, § 1-b, eff. April 12, 2005, deemed eff. April 1, 2005\]](#)

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