



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2572

Introduced 1/13/2010, by Sen. Mike Jacobs

SYNOPSIS AS INTRODUCED:

105 ILCS 105/2	from Ch. 122, par. 1402
105 ILCS 105/3	from Ch. 122, par. 1403
105 ILCS 105/12a	from Ch. 122, par. 1412a
105 ILCS 105/12b	from Ch. 122, par. 1412b
105 ILCS 105/14a new	

Amends the Asbestos Abatement Act. Provides that the Department of Public Health may, if an emergency exists, order the evacuation and sealing of commercial and public buildings as defined by the Commercial and Public Building Asbestos Abatement Act and immediate suspension of any licensed person involved in improper removal of asbestos materials, and require that any person found to be improperly removing asbestos materials immediately cease those activities. Adds the Attorney General to the list of those authorized to enforce the order, including obtaining an injunction against the offending parties, after receiving notice from the Department. Provides that each day's violation of an order constitutes a separate offense. Specifies the penalties for specified violations of the Act. Provides that an action brought by a State's Attorney under specified provisions shall be conducted in accordance with the applicable provisions of the Code of Criminal Procedure of 1963. Effective immediately.

LRB096 16643 MJR 31924 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Asbestos Abatement Act is amended by
5 changing Sections 2, 3, 12a, and 12b and by adding Section 14a
6 as follows:

7 (105 ILCS 105/2) (from Ch. 122, par. 1402)

8 Sec. 2. Legislative declaration. The General Assembly
9 finds that:

10 (a) substantial amounts of asbestos materials were used
11 throughout school buildings during the period from 1946 to 1972
12 for fireproofing, soundproofing, decorative and other
13 purposes;

14 (b) exposure to asbestos fibers and particles in the air
15 over a long period of time has been linked by reputable medical
16 and scientific authorities to a significant increase in the
17 incidence of disease, such as asbestosis, bronchogenic
18 carcinoma, mesothelioma, and other malignancies;

19 (c) precise scientific data as to the levels at which
20 asbestos materials constitute a hazard to health in educational
21 settings are not yet available and may not be available for
22 many years to come because of the long period of time which
23 elapses between the onset of exposure and the appearance of

1 clinically detectable illness; however, mesothelioma has been
2 found among individuals exposed to asbestos in some
3 nonoccupational settings; ~~and~~

4 (d) in view of the fact that the State of Illinois has
5 compulsory attendance laws for children of school age and these
6 children must be educated in a safe and healthy environment,
7 the presence and condition of asbestos in the schools is of
8 special concern to the General Assembly; ~~and-~~

9 (e) improper asbestos removal occurs in public and
10 commercial buildings other than school buildings and improper
11 removal or disturbance of asbestos will contaminate those
12 buildings and present an imminent threat to the public health.

13 Therefore, it is the purpose of this Act to provide for the
14 identification, containment or removal of those asbestos
15 materials that constitute a significant health hazard and
16 repair or maintenance of those asbestos materials that do not
17 constitute a significant health hazard in commercial and public
18 buildings to occupants and in schools to students, school
19 personnel, parents and visitors to such schools, ~~and to provide~~
20 ~~financial assistance to elementary and secondary schools~~
21 ~~within this State as provided by law.~~ The purpose of this Act
22 is also to provide the Department with authority to enforce
23 this Act and associated rules in all commercial and public
24 buildings as defined by the Commercial and Public Building
25 Asbestos Abatement Act and K-12 schools.

26 (Source: P.A. 84-1096.)

1 (105 ILCS 105/3) (from Ch. 122, par. 1403)

2 Sec. 3. Definitions. As used in this Act:

3 (a) "Asbestos" means the asbestiform varieties of
4 chrysotile, amosite, crocidolite, tremolite, anthrophyllite,
5 and actinolite.

6 (b) "Asbestos materials" means materials formed by mixing
7 asbestos fibers with other products, including but not limited
8 to rock wool, plaster, cellulose, clay, vermiculite, perlite
9 and a variety of adhesives, and which contain more than 1%
10 asbestos by weight. Some of these materials may be sprayed on
11 surfaces or applied to surfaces in the form of plaster or a
12 textured paint.

13 (c) "School" means any school district or public, private
14 or nonpublic day or residential educational institution that
15 provides elementary or secondary education for grade 12 or
16 under.

17 (d) "Local educational agency" means:

18 (1) Any local education agency as defined in Section
19 198 of the Elementary and Secondary Education Act of 1965
20 (20 U.S.C. 3381).

21 (2) The owner of any nonpublic, nonprofit elementary or
22 secondary school building.

23 (3) The governing authority of any school operated
24 under the defense dependents' education system provided
25 for under the Defense Department's Education Act of 1978

1 (20 U.S.C. 921, et seq.).

2 (e) "Response action" means a method, including removal,
3 encapsulation, enclosure, repair, operations and maintenance,
4 that protects human health and the environment from friable
5 ACM.

6 (f) "Asbestos containing building materials" or ACM means
7 surfacing asbestos containing material or ACM, thermal system
8 insulation ACM or miscellaneous ACM that is found in or on
9 interior structural members or other parts of a school
10 building.

11 (g) "Friable" when referring to material in a school
12 building means that the material, when dry, may be crumbled,
13 pulverized, or reduced to powder by hand pressure, and includes
14 previously nonfriable materials after such previously
15 nonfriable material becomes damaged to the extent that, when
16 dry, it may be crumbled, pulverized, or reduced to powder by
17 hand pressure.

18 (h) "Asbestos Abatement Contractor" means any entity that
19 engages in the removal, enclosure, or encapsulation of asbestos
20 containing materials for any school.

21 (i) "Response action contractor" means any entity that
22 engages in response action services for any school.

23 (j) "Friable material containment" means the encapsulation
24 or enclosure of any friable asbestos material in a facility.

25 (k) "Enclosure" means the construction of airtight walls
26 and ceilings between the asbestos material and the educational

1 facility environment, or around surfaces coated with asbestos
2 materials, or any other appropriate scientific procedure as
3 determined by the Department which prevents the release of
4 asbestos materials.

5 (l) "Encapsulation" means the treatment of ACBM with a
6 material that surrounds or embeds asbestos fibers in an
7 adhesive matrix to prevent the release of fibers, as the
8 encapsulant creates a membrane over the surfaces (bridging
9 encapsulant or penetrates the material and binds its components
10 together (penetrating encapsulant)).

11 (m) "Department" means the Department of Public Health.

12 (n) "Director" means the Director of Public Health.

13 (o) "School personnel" means any employee of a school.

14 (p) "Student" means any student enrolled in a school.

15 (q) "School Building" means:

16 (1) Any structure suitable for use as a classroom,
17 including a school facility such as a laboratory, library,
18 school eating facility, or facility used for the
19 preparation of food.

20 (2) Any gymnasium or other facility which is specially
21 designed for athletic or recreational activities for an
22 academic course in physical education.

23 (3) Any other facility used for the instruction or
24 housing of students or for the administration of
25 educational or research programs.

26 (4) Any maintenance, storage, or utility facility,

1 including any hallway essential to the operation of any
2 facility described in this definition of "school building"
3 under items (1), (2), or (3).

4 (5) Any portico or covered exterior hallway or walkway.

5 (6) Any exterior portion of a mechanical system used to
6 condition interior space.

7 (r) "Asbestos worker" means an individual who cleans,
8 removes, encapsulates, encloses, hauls or disposes of friable
9 asbestos material in schools as defined in this Act.

10 (s) "Nonfriable" means material in a school building which,
11 when dry, may not be crumbled, pulverized, or reduced to powder
12 by hand pressure.

13 (t) "Management plan" means a plan developed for a local
14 educational agency for the management of asbestos in its school
15 buildings pursuant to the federal Asbestos Hazard Emergency
16 Response Act of 1986 and the regulations promulgated
17 thereunder.

18 (u) "Management planner" means an individual licensed by
19 the Department to prepare management plans.

20 (v) "Project designer" means an individual licensed by the
21 Department to design response actions for school buildings.

22 (w) "Asbestos inspector" means an individual licensed by
23 the Department to perform inspections of schools for the
24 presence of asbestos containing materials.

25 (x) "Person" is any individual, partnership,
26 co-partnership, firm, company, limited liability company,

1 corporation, association, joint stock company, trust, estate,
2 political subdivision, State agency, or any other legal entity,
3 or their legal representative, agent, or assigns.

4 (Source: P.A. 86-416; 86-1475.)

5 (105 ILCS 105/12a) (from Ch. 122, par. 1412a)

6 Sec. 12a. Emergency stop work orders. Whenever the
7 Department finds that an emergency exists which requires
8 immediate action to protect the public health, it may, without
9 notice or hearing, issue an order reciting the existence of
10 such an emergency and then require that such action be taken as
11 it may deem necessary to meet the emergency, including but not
12 limited to the issuance of a stop work order, ordering the
13 evacuation and sealing of commercial and public buildings as
14 defined by the Commercial and Public Building Asbestos
15 Abatement Act, immediate suspension of any licensed person
16 involved in improper removal of asbestos materials, require
17 that any person found to be improperly removing asbestos
18 materials immediately cease those activities and the immediate
19 removal of a contractor or contractors from the list provided
20 for in Section 10. Notwithstanding any other provision in this
21 Act, such order shall be effective immediately. The Illinois
22 Attorney General or the State's Attorney and Sheriff of the
23 county in which the commercial or public building or school is
24 located shall enforce the order after receiving notice thereof.
25 Any person ~~contractor~~ affected by such an order is entitled,

1 upon request, to a hearing as provided for in rules and
2 regulations promulgated pursuant to this Act. When such
3 conditions are abated, in the opinion of the Department, the
4 Department may authorize the reinstatement of the activities
5 and inclusion on the list of contractors of those activities
6 and contractors which were the subject of a stop work order.

7 (Source: P.A. 84-951.)

8 (105 ILCS 105/12b) (from Ch. 122, par. 1412b)

9 Sec. 12b. Civil Penalties. The Department, Illinois
10 Attorney General, or the State's Attorney in the county of the
11 county in which a violation occurs is empowered to assess civil
12 penalties against a contractor inspector, management planner,
13 project designer, supervisor, worker, project manager, or air
14 sampling professional for violations of this Act and the rules
15 promulgated thereunder, ~~pursuant to rules for such penalties~~
16 ~~established by the Department.~~ Each day's violation
17 constitutes a separate offense. The State's Attorney of the
18 county in which the violation occurred or the Attorney General
19 shall bring such actions in the name of the people of the State
20 of Illinois or may, in addition to other remedies provided in
21 this Act, bring action for an injunction to restrain such
22 violation or to enjoin the operation of any such establishment.

23 (Source: P.A. 86-416.)

24 (105 ILCS 105/14a new)

1 Sec. 14a. Violations.

2 (a) Any person who violates this Act or any rule adopted by
3 the Department or who violates any determination or order of
4 the Department under this Act shall be guilty of a Class A
5 misdemeanor.

6 (b) Any person who knowingly violates this Act or the rules
7 adopted by the Department or who violates any determination or
8 order of the Department under this Act shall be guilty of a
9 Class 4 felony. A person who, after being convicted under this
10 subsection (b), violates this subsection (b) a second or
11 subsequent time, commits a Class 3 felony.

12 (c) Any person who knowingly makes a false, fictitious, or
13 fraudulent statement, orally or in writing, to the Department,
14 related to or required by this Act, a rule adopted under this
15 Act, any federal law or regulation for which the Agency has
16 responsibility, or any determination or order of the Department
17 under this Act, or any permit, term, or condition thereof,
18 commits a Class 4 felony, and each such statement or writing
19 shall be considered a separate Class 4 felony. A person who,
20 after being convicted under this subsection (c), violates this
21 subsection (c) a second or subsequent time, commits a Class 3
22 felony.

23 (d) Any action brought under this Section shall be brought
24 by the State's Attorney of the county in which the violation
25 occurred or by the Attorney General and shall be conducted in
26 accordance with the applicable provisions of the Code of

1 Criminal Procedure of 1963.

2 For an offense described in this Section, the period for
3 commencing prosecution prescribed by the statute of
4 limitations shall not begin to run until the offense is
5 discovered by or reported to a State or local agency having the
6 authority to investigate violations of this Act.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.