

A Bill for an Act Relating to Asbestos.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
ASBESTOS  
PART I. DEFINITIONS AND GENERAL PROVISIONS**

§ **-1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Asbestos” means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite - grunerite (amosite), anthophyllite, actinolite, and tremolite.

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted or issued pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health or a duly authorized agent, officer, or inspector.

“Emission” means the act of releasing or discharging asbestos into the ambient air from any source.

“Facility” means any institutional, commercial, public, private, or industrial structure, installation or building.

“Party” means each person or agency named as a party or properly entitled to be a party in any court or agency proceeding.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Renovation” means altering in any way one or more facilities or structural components of a facility.

“Repair” means the restoration of asbestos-containing material that has been damaged to seal exposed areas where asbestos fibers may be released, including the repair of enclosures around asbestos-containing materials. The term, as it relates to the repair of previously encapsulated asbestos-containing materials, includes filling damaged areas with asbestos substitute and re-encapsulating.

§ **-2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable

and proper for the effective administration of this chapter, except the power to make rules.

§ **-3 Duties, rules, powers, appointment of hearings officers.** (a) In addition to any other power or duty prescribed by law and in this chapter, the director shall provide for the review of asbestos abatement plans and the inspection of abatement projects within the State.

(b) The director may make, amend, and repeal state rules controlling and prohibiting asbestos pollution and regulating asbestos abatement. All rules shall be adopted pursuant to chapter 91. Any person heard at a public hearing to adopt these rules shall be given written notice of the action taken by the department with respect to the same.

(c) The director, without regard to chapters 76 and 77, may appoint hearings officers to conduct public participation activities, including public hearings and public informational meetings.

§ **-4 Inspection of premises.** The director, in accordance with any law, may enter and inspect any building or place to investigate an actual or suspected source, use, or presence of asbestos to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, any permit or other approval granted by the department pursuant to this chapter, or any order issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith.

No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of asbestos, shall be disclosed by the official or employee except as it relates directly to asbestos and then only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

§ **-5 Enforcement.** (a) If the director determines that any person is in violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which the person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports;
- (2) May require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of; and
- (3) May impose penalties as provided in part II by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, after having been served notice of the violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring the person to submit a written schedule within thirty days specifying the measures to be taken and the time within which the measures will be taken to bring the person into

compliance with this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit issued pursuant to this chapter;

- (2) Shall accept or modify the submitted schedule within sixty days of receipt of the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time as the director accepts the written schedule; or
- (4) May impose penalties as provided in part II by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing the nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless, not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case in accordance with chapter 91. If, after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed, modify or affirm the order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved or the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty, which shall be a government realization.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

§ **-6 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by an emission of asbestos, that requires immediate action, the director, with the approval of the governor and without a public hearing, may order any person causing or contributing to the emission to immediately reduce or stop the emission or may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power that the governor or any other officer may have to declare an emergency or to act on the basis of such a declaration, if the power is conferred by statute or constitutional provision or inheres in the office.

## PART II. PENALTIES

§ **-20 Civil penalties.** (a) Any person who violates this chapter, any rule adopted by the department under this chapter, or any condition in a permit issued under this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building or place that the officer or employee is authorized to enter and inspect, shall be fined not more than \$5,000. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

§ **-21 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter or rules adopted under this chapter, the director may impose by order the penalties specified in section -20. Factors to be considered in imposing an administrative penalty shall include the nature and history of the violation and any prior violations, and the opportunity, difficulty, and history of corrective action. It shall be presumed that the violator's economic and financial conditions allow payment of the penalty; the burden of proof to the contrary shall be on the violator. In any judicial proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

§ **-22 Negligent violations.** Any person who negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter, shall be fined not less than \$2,500 nor more than \$25,000 per day for each violation or imprisoned for not more than one year, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, punishment shall be a fine of not more than \$50,000 per day for each violation or imprisonment of not more than two years, or both.

§ **-23 Criminal penalties.** Any person who knowingly violates this chapter or any condition in a permit issued under this chapter, shall be fined not less than \$5,000 nor more than \$50,000 per day for each violation or imprisoned for not more than three years, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, the person

## ACT 219

shall be fined not more than \$100,000 per day for each violation or imprisoned for not more than six years, or both.

**§ -24 Knowing endangerment.** (a) Any person who knowingly violates this chapter or any condition in a permit issued under this chapter, and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury, upon conviction, shall be fined not more than \$250,000 or imprisoned for not more than fifteen years, or both.

(b) A person that is an organization, upon conviction of violating this section, shall be fined not more than \$1,000,000.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that the individual's conduct placed another person in imminent danger of death or serious bodily injury:

- (1) The person shall be responsible only for actual awareness or actual belief that the person possessed; and
- (2) Knowledge possessed by a person other than the defendant but not by the defendant, may not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(d) It shall be an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) An occupation, a business, or a profession; or
- (2) Medical treatment or medical or scientific experimentation conducted by professionally-approved methods and the other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) As used in this section:

"Organization" means a legal entity, other than a government, established or organized for any purpose. The term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**§ -25 False statements.** (a) Any person who knowingly makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a misdemeanor.

(b) A person that is an organization, upon conviction of violating this section, shall be fined not more than \$20,000.

**§ -26 Injunctive relief.** The director may institute a civil action for injunctive relief in any court of competent jurisdiction to prevent the violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior

revocation of the permit or variance. The court may grant relief in accordance with the Hawaii rules of civil procedure.

§ **-27 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

§ **-28 Fees.** The director may establish reasonable fees for the issuance of notifications, certificates, and licenses to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits, not including court costs or other costs associated with any formal enforcement action. The fees shall be deposited to the credit of the general fund.

§ **-29 Public records; confidential information; penalties.** Asbestos abatement applications and reports on emissions submitted to the department shall be made available for inspection by the public during established office hours unless the reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department, acquiring confidential information from the inspection authorized by section -4, who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or any rule or standard adopted pursuant to this chapter, shall be fined not more than \$1,000.

§ **-30 Other action not barred.** No existing civil or criminal remedy for any wrongful action that is in violation of any statute or any rule of the department or ordinance of any county, shall be excluded or impaired by this chapter.

§ **-31 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department.

§ **-32 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

§ **-33 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to asbestos control that are not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to asbestos control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ **-34 Priority in courts.** All actions brought pursuant to this chapter, the rules adopted under this chapter, or the conditions of a permit issued under this chapter, at the discretion of the court, shall receive priority in the courts of the State.

**PART III. ASBESTOS EMISSION CONTROL**

§ **-40 Prohibition.** No person, including any public body, shall engage in any activity that causes an emission.

§ **-41 Powers and duties; specific.** The director may:

- (1) Establish emission standards for the State as a whole or for any part thereof, including an indoor nonoccupational exposure standard;
- (2) Establish a model accreditation program; and
- (3) Establish standards and notification requirements for the demolition and renovation of facilities containing asbestos.

§ **-42 Recordkeeping and monitoring requirements.** The director may require the owner or operator of any asbestos abatement activity to:

- (1) Establish and maintain such records;
- (2) Make such reports;
- (3) Install, use, and maintain such monitoring equipment or methods;
- (4) Sample such emissions; and
- (5) Provide such other information; as the department may require.

§ **-43 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints on asbestos pollution, hold hearings in connection with asbestos pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of asbestos pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

§ **-44 Research, education, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, hazards, or means to monitor or abate sources of asbestos pollution;
- (2) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State, or private sources, for the study and control of asbestos pollution; and
- (3) Conduct and supervise statewide educational and training programs on asbestos pollution prevention, control, and abatement, including the preparation and distribution of information relating to asbestos pollution."

SECTION 2. All acts passed by the legislature during this Regular Session of 1991, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 1991.)