

ACT 242

S.B. NO. 1559

A Bill for an Act Relating to Environmental Health.

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

SECTION 1. Chapter 342P, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§342P- Variances.** (a) Every application for a variance shall be made on a form furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and any other information as the department may prescribe by rule.

(b) Each application for a variance shall be reviewed by the department. Additional information may be requested by the department for review.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the deviation from established asbestos or lead-based paint hazards standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the deviation from asbestos or lead standards occurring or proposed to occur by the granting of the variance is in the public interest;
- (2) The authorized variance occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which a variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal of a variance shall be granted within the requirements of this section, and for time periods consistent with the reasons given within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the asbestos or lead involved, it shall be only until the necessary means for prevention, control, or abatement becomes practicable. The variance shall be granted subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the asbestos or lead hazards involved;
- (2) The director may issue a variance for a period not exceeding six months; and
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air or dust sampling and report the results of the sampling to the department.

(e) Any variance granted pursuant to this section may be renewed for periods not exceeding six months on terms and conditions that would be appropriate upon the initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance. No renewal shall be granted without an application. Any renewal application shall be made at least sixty days prior to the expiration of the variance. The director shall act on an application for renewal within sixty days of the receipt of the application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance shall be construed to prevent or limit the application of any emergency provision or procedure provided by law.

(h) Any application for a variance may be subject to public participation. The contents of the public notice for a variance application shall include at least:

- (1) The name, address, and phone number of the agency issuing the public notice;
- (2) The name and address of the applicant;
- (3) A brief description of the applicant's activities or operations that result in asbestos or lead hazards, or other activity described in the variance application;
- (4) A short description of the location of each asbestos or lead-based paint hazard indicating whether the hazard is new or existing;
- (5) A brief description of the public participation procedures, including the comment period, which shall be for a period of not less than thirty days following the date of the public notice, and other means by which interested persons may comment on the variance application and the department's proposed action; and
- (6) The address and phone number of the state agency at which interested persons may obtain further information and may inspect a copy of the variance application and supporting and related documents.

**§342P- Establishment of asbestos and lead abatement special fund.**

(a) There is established within the department of health an asbestos and lead abatement special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, certificates, notifications, variances, investigations, and reviews.

(b) Moneys in the asbestos and lead abatement special fund shall be expended by the department to:

- (1) Partially fund the operating costs of the asbestos and lead abatement program's mandated activities and functions;
- (2) Fund statewide education, demonstration, and outreach programs;
- (3) Provide for the accreditation of training programs;
- (4) Provide training opportunities to ensure the maintenance of professional competence among staff and administrators; and
- (5) Plan for future growth and expansion to meet emerging needs."

SECTION 2. Chapter 342P, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“[[CHAPTER 342P]]  
ASBESTOS AND LEAD”**

SECTION 3. Chapter 342P, Hawaii Revised Statutes, is amended by amending part III to read as follows:

**“PART III. ASBESTOS EMISSION AND LEAD HAZARD CONTROL**

**[[§342P-40]] Prohibition.** No person, including any public body, shall engage in any activity that causes [an emission.] a violation of this chapter.

**[[§342P-41]] Powers and duties; specific.** The director may:

- (1) Establish emission and lead hazard exposure 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] as recommended by the United States Environmental Protection Agency for training for provider certification and accreditation requirements;
- (3) Establish work practice standards and notification requirements for the demolition and renovation of facilities containing asbestos[.] and for lead-based abatement activities in dwellings and child-occupied facilities; and
- (4) Establish procedures for issuance of reasonable fees for notifications, certifications, and licenses.

**[[§342P-42]] Recordkeeping and monitoring requirements.** The director may require the owner or operator of any asbestos or lead abatement activity to:

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

**[[§342P-43]] Complaints; hearings; appointment of masters.** The director may:

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

**[[§342P-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[;] or lead hazards;
- (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] or lead hazards; and
- (3) Conduct and supervise statewide educational and training programs on asbestos pollution or lead hazards prevention, control, and abatement, including the preparation and distribution of information relating to asbestos pollution[.] or lead hazards.”

SECTION 4. Section 342P-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Abatement” means any measure or set of measures designed to permanently eliminate asbestos or lead-based paint hazards, including but not limited to removal, enclosure, encapsulation, or disposal.

“Variance” means the act of deviating from the requirements of rules adopted under this chapter or a license granted by the director to deviate from these rules.”

SECTION 5. Section 342P-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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 and lead 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 lead-based paint hazards and regulating asbestos and lead 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.”

SECTION 6. Section 342P-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§342P-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 or lead 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. Nothing in this section shall be construed to permit a warrantless search of a single family residence, unless the owner or occupier of the dwelling has consented to such a warrantless search.

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 or lead, shall be disclosed by the official or employee except as it relates directly to asbestos or lead 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”

SECTION 7. Section 342P-5, Hawaii Revised Statutes, is amended by amending subsections<sup>1</sup> (a) and (b) to read as follows:

**“§342P-5 Enforcement[: education.** (a) If the director determines that any person has violated or is in violation of this chapter, any rule adopted pursuant to this chapter, any accepted schedule, any order issued under this section, or any condition of a permit or variance 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, may contain educational information necessary in performing abatement activities, and may contain an order specifying a reasonable time during which the person shall be required to take any measures that 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 section 342P-21 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, any accepted schedule, any order issued under this section, or any condition of a permit or variance 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 the director accepts the written schedule; or
- (4) May impose penalties as provided in section 342P-21 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.”

SECTION 8. Section 342P-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by an emission of asbestos or the presence of lead hazards that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the emission or lead hazards to immediately reduce or stop the emission or creating the lead hazard, and 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.”

SECTION 9. Section 342P-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates this chapter, any rule adopted by the department under this chapter, or any condition in a permit or variance 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 in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 10. Section 342P-22, Hawaii Revised Statutes, is amended to read as follows:

“**[[§342P-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 or variance 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.”

SECTION 11. Section 342P-23, Hawaii Revised Statutes, is amended to read as follows:

“**[[§342P-23]] Criminal penalties.** Any person who knowingly violates this chapter or any condition in a permit or variance 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 shall be fined not more than \$100,000 per day for each violation or imprisoned for not more than six years, or both.”

SECTION 12. Section 342P-24,<sup>1</sup> Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who knowingly violates this chapter or any condition in a permit or variance 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.”

SECTION 13. Section 342P-28, Hawaii Revised Statutes, is amended to read as follows:

“**[[§342P-28]] Fees.** The director may establish reasonable fees for the issuance of notifications, certificates, [and] licenses, permits, and variances to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits[,] and variances 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.] asbestos and lead abatement special fund.”

SECTION 14. Section 342P-29, Hawaii Revised Statutes, is amended to read as follows:

“**[[§342P-29]] Public records; confidential information; penalties.** Asbestos or lead abatement applications and reports on emissions or lead violations 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 342P-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.”

SECTION 15. Section 342P-31, Hawaii Revised Statutes, is amended to read as follows:

**“[[§342P-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, and variances of the department.”

SECTION 16. Section 342P-33, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any county may adopt ordinances and rules governing any matter relating to asbestos [control] or lead abatement 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] or lead abatement shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.”

SECTION 17. All acts passed by the legislature during this regular session of 1998, 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 18. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 19. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.