

ESSB 5458 - H AMD 356

By Representative Short

FAILED 04/09/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** Asbestos is a known human carcinogen that
4 causes painful, premature deaths due to diseases such as asbestosis,
5 mesothelioma, lung and gastrointestinal cancers, and other diseases and
6 cancers. Activities that can lead to the release of asbestos fibers
7 include installation, use, maintenance, repair, removal, and disposal
8 of asbestos-containing building materials.

9 Many people are unaware that asbestos-containing building materials
10 are still imported, sold, and used in the United States. Because few
11 regulations exist that require the disclosure of asbestos in building
12 materials, people can unknowingly be exposed to asbestos. Asbestos is
13 generally invisible, odorless, very durable, and highly aerodynamic.
14 Exposure can occur well after it has been disturbed and long distances
15 from where the asbestos release occurred.

16 The purpose of this chapter is to allow people to make informed
17 decisions regarding whether or not they purchase or use building
18 materials containing asbestos. More specifically, building materials
19 that contain asbestos must be clearly labeled as such by manufacturers,
20 wholesalers, and distributors.

21 NEW SECTION. **Sec. 2.** The definitions in this section apply
22 throughout this chapter unless the context clearly requires otherwise.

23 (1) "Asbestos" includes the asbestiform varieties of actinolite,
24 amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine),
25 crocidolite (riebeckite), anthophyllite, and any of these minerals that
26 have been chemically treated or altered. The chemical abstracts
27 service registry number for each is as follows: Asbestos (1332-21-4),
28 actinolite (13768-00-8), amosite (12172-73-5), tremolite (14567-73-8),

1 chrysotile (12001-29-5), crocidolite (12001-28-4), and anthophyllite
2 (17068-78-9).

3 (2) "Asbestos-containing building material" means any building
4 material to which asbestos is deliberately added in any concentration
5 or that contains more than one percent asbestos by weight or area as
6 determined using the United States environmental protection agency
7 method for the determination of asbestos in building materials,
8 EPA/600/R-93/116, July 1993.

9 (3) "Building material" includes materials designed for, or used
10 in, construction, renovation, repair, or maintenance of institutional,
11 commercial, public, industrial, or residential buildings and
12 structures. The term does not include automobiles, recreational
13 vehicles, boats, or other mobile means of transportation.

14 (4) "Consumer" means any person that acquires a building material
15 for direct use or ownership, rather than for resale or use in
16 production and manufacturing.

17 (5) "Department" means the department of ecology.

18 (6) "Person" means any individual, firm, public or private
19 corporation, association, partnership, political subdivision,
20 municipality, or government agency.

21 (7) "Retailer" means any person that sells goods or commodities
22 directly to consumers.

23 NEW SECTION. **Sec. 3.** (1) Except as otherwise provided in this
24 section or section 4 of this act, it is unlawful to manufacture,
25 wholesale, or distribute for sale an asbestos-containing building
26 material that is not labeled as required by section 5 of this act or as
27 required under federal law, 40 C.F.R. part 763, subpart I, Sec. 173.171
28 (1994). The labeling requirement also applies to stock-on-hand,
29 meaning any asbestos-containing building material in the possession or
30 control of a manufacturer, wholesaler, or distributor after December
31 31, 2013, must be labeled.

32 (2)(a) Subsection (1) of this section does not apply to asbestos-
33 containing building materials that have already been installed,
34 applied, or used by the consumer.

35 (b) Subsection (1) of this section does not apply to asbestos-
36 containing building materials used solely for United States military
37 purposes.

1 (3) Any manufacturer, wholesaler, or distributor may submit a
2 written request for an exemption from the labeling requirements of this
3 chapter, and the department may grant such an exemption if it
4 determines that the labeling requirements are technically infeasible or
5 create an undue economic hardship. Each exemption is in effect for a
6 period not to exceed three years from the date issued and is subject to
7 the terms and conditions prescribed by the department.

8 NEW SECTION. **Sec. 4.** Except for the provisions of section 5(4) of
9 this act, retailers that do not manufacture, wholesale, or distribute
10 asbestos-containing building materials are exempt from this chapter.

11 NEW SECTION. **Sec. 5.** (1) A label must be placed in a prominent
12 location adjacent to the product name or description on the exterior of
13 the wrapping and packaging in which the asbestos-containing building
14 material is placed for storage, shipment, and sale.

15 (2) A label must also be placed on the exterior surface of the
16 asbestos-containing building material itself unless it is sold as a
17 liquid or paste, is sand or gravel, or an exemption is granted pursuant
18 to section 3(3) of this act.

19 (3) Asbestos-containing building materials must have a legible
20 label that clearly identifies it as containing asbestos. At a minimum,
21 the label must state the following:

22 CAUTION!

23 This product contains ASBESTOS which is known to cause cancer
24 and lung disease. Avoid creating dust. Intentionally removing
25 or tampering with this label is a violation of state law.

26 (4) Other than inadvertent violations damaging the label in the
27 course of normal transportation and preparation of the asbestos-
28 containing building material for retail sale, it is unlawful for any
29 person to remove, deface, cover, or otherwise obscure or tamper with a
30 label or sticker that has been applied in compliance with this section,
31 unless the asbestos-containing building material is in the possession
32 of the end user.

33 NEW SECTION. **Sec. 6.** (1) The provisions of this chapter may be

1 enforced by the department, a local air authority formed under chapter
2 70.94 RCW, or their designees.

3 (2) Whenever the department or authority determines, after
4 receiving a complaint, that a person has violated any provision of this
5 chapter, the department may issue an order requiring compliance either
6 immediately or within a specified period of time.

7 (3) Any person who has received a corrective action order under
8 subsection (2) of this section within the preceding twelve calendar
9 months and is determined to have subsequently violated this chapter, or
10 any person who fails to take corrective action as specified by an order
11 issued pursuant to subsection (2) of this section and is subsequently
12 determined to be in continuing violation of this chapter, is liable for
13 a civil penalty of not more than one thousand dollars per day. In the
14 case of a continuing violation, each day's continuance is a separate
15 and distinct violation.

16 (4) The penalties provided in this section are imposed pursuant to
17 RCW 43.21B.300. All penalties recovered under this chapter by the
18 department must be paid into the state treasury and credited to the air
19 pollution control account established in RCW 70.94.015 or, if recovered
20 by an authority, must be paid into the treasury of an authority and
21 credited to its funds. If a prior penalty for the same violation has
22 been paid to an authority, the penalty imposed by the department under
23 subsection (3) of this section must be reduced by the amount of the
24 payment.

25 (5) For the purposes of this section, "authority" has the same
26 meaning as defined in RCW 70.94.030.

27 **Sec. 7.** RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are
28 each reenacted and amended to read as follows:

29 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
30 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,
31 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 90.76 RCW
32 and chapter 70.-- RCW (the new chapter created in section 9 of this
33 act), shall be imposed by a notice in writing, either by certified mail
34 with return receipt requested or by personal service, to the person
35 incurring the penalty from the department or the local air authority,
36 describing the violation with reasonable particularity. For penalties
37 issued by local air authorities, within thirty days after the notice is

1 received, the person incurring the penalty may apply in writing to the
2 authority for the remission or mitigation of the penalty. Upon receipt
3 of the application, the authority may remit or mitigate the penalty
4 upon whatever terms the authority in its discretion deems proper. The
5 authority may ascertain the facts regarding all such applications in
6 such reasonable manner and under such rules as it may deem proper and
7 shall remit or mitigate the penalty only upon a demonstration of
8 extraordinary circumstances such as the presence of information or
9 factors not considered in setting the original penalty.

10 (2) Any penalty imposed under this section may be appealed to the
11 pollution control hearings board in accordance with this chapter if the
12 appeal is filed with the hearings board and served on the department or
13 authority thirty days after the date of receipt by the person penalized
14 of the notice imposing the penalty or thirty days after the date of
15 receipt of the notice of disposition by a local air authority of the
16 application for relief from penalty.

17 (3) A penalty shall become due and payable on the later of:

18 (a) Thirty days after receipt of the notice imposing the penalty;

19 (b) Thirty days after receipt of the notice of disposition by a
20 local air authority on application for relief from penalty, if such an
21 application is made; or

22 (c) Thirty days after receipt of the notice of decision of the
23 hearings board if the penalty is appealed.

24 (4) If the amount of any penalty is not paid to the department
25 within thirty days after it becomes due and payable, the attorney
26 general, upon request of the department, shall bring an action in the
27 name of the state of Washington in the superior court of Thurston
28 county, or of any county in which the violator does business, to
29 recover the penalty. If the amount of the penalty is not paid to the
30 authority within thirty days after it becomes due and payable, the
31 authority may bring an action to recover the penalty in the superior
32 court of the county of the authority's main office or of any county in
33 which the violator does business. In these actions, the procedures and
34 rules of evidence shall be the same as in an ordinary civil action.

35 (5) All penalties recovered shall be paid into the state treasury
36 and credited to the general fund except those penalties imposed
37 pursuant to RCW 18.104.155, which shall be credited to the reclamation
38 account as provided in RCW 18.104.155(7), RCW 70.94.431, the

1 disposition of which shall be governed by that provision, RCW
2 70.105.080, which shall be credited to the hazardous waste control and
3 elimination account created by RCW 70.105.180, RCW 90.56.330, which
4 shall be credited to the coastal protection fund created by RCW
5 90.48.390, and RCW 90.76.080, which shall be credited to the
6 underground storage tank account created by RCW 90.76.100.

7 NEW SECTION. **Sec. 8.** The department may adopt rules regarding
8 the implementation of this chapter.

9 NEW SECTION. **Sec. 9.** Sections 1 through 6 and 8 of this act
10 constitute a new chapter in Title 70 RCW.

11 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2014."

12 Correct the title.

EFFECT: Specifies that actions taken by the department of ecology
or a local air authority to enforce asbestos labeling provisions must
be initiated only after the receipt of a complaint;

Narrows the exemption for retailers, so that retailers are
prohibited from intentionally removing or defacing a label, but remain
otherwise exempt from the bill's requirements;

Narrows the prohibition on label removal and defacement so that
certain inadvertent violations are not punishable; and

Changes the penalty from \$10,000 per violation per day to \$1,000
per day, and allows for penalties to be issued only after a company
fails to respond to a corrective action order, or has received a prior
corrective action order within the previous year.

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