

SSB 5458 - S AMD 52  
By Senator Billig

ADOPTED 03/13/2013

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) Effective January 1, 2014, it is  
24 unlawful to manufacture, wholesale, or distribute for sale an asbestos-  
25 containing building material that is not labeled as required by section  
26 4 of this act or as required under federal law, 40 C.F.R. part 763,  
27 subpart I, Sec. 173.171 (1994). The labeling requirement also applies  
28 to stock-on-hand, meaning any asbestos-containing building material in  
29 their possession or control after December 31, 2013, must be labeled.  
30 Retailers that do not manufacture, wholesale, or distribute asbestos-  
31 containing building materials are exempt from this chapter.

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

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

16 (3) Asbestos-containing building materials must have a legible  
17 label that clearly identifies it as containing asbestos. The  
18 department may adopt rules regarding the implementation of this  
19 chapter. At a minimum, the label must state the following:

20 CAUTION!

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

24 (4) It is unlawful for any person to remove, deface, cover, or  
25 otherwise obscure or tamper with a label or sticker that has been  
26 applied in compliance with this section, unless the asbestos-containing  
27 building material is in the possession of the end user.

28 NEW SECTION. **Sec. 5.** (1) The provisions of this chapter may be  
29 enforced by the department, local air authorities, or their designees.

30 (2) A person found in violation of this chapter is subject to the  
31 penalties provided under RCW 70.94.431.

32 **Sec. 6.** RCW 70.94.431 and 1995 c 403 s 630 are each amended to  
33 read as follows:

34 (1) Except as provided in RCW 43.05.060 through 43.05.080 and

1 43.05.150, and in addition to or as an alternate to any other penalty  
2 provided by law, any person who violates any of the provisions of this  
3 chapter (~~(70.94 RCW)~~), chapter 70.120 RCW, chapter 70.-- RCW (the new  
4 chapter created in section 7 of this act), or any of the rules in force  
5 under such chapters may incur a civil penalty in an amount not to  
6 exceed ten thousand dollars per day for each violation. Each such  
7 violation shall be a separate and distinct offense, and in case of a  
8 continuing violation, each day's continuance shall be a separate and  
9 distinct violation.

10 Any person who fails to take action as specified by an order issued  
11 pursuant to this chapter shall be liable for a civil penalty of not  
12 more than ten thousand dollars for each day of continued noncompliance.

13 (2) Penalties incurred but not paid shall accrue interest,  
14 beginning on the ninety-first day following the date that the penalty  
15 becomes due and payable, at the highest rate allowed by RCW 19.52.020  
16 on the date that the penalty becomes due and payable. If violations or  
17 penalties are appealed, interest shall not begin to accrue until the  
18 thirty-first day following final resolution of the appeal.

19 The maximum penalty amounts established in this section may be  
20 increased annually to account for inflation as determined by the state  
21 office of the economic and revenue forecast council.

22 (3) Each act of commission or omission which procures, aids or  
23 abets in the violation shall be considered a violation under the  
24 provisions of this section and subject to the same penalty. The  
25 penalties provided in this section shall be imposed pursuant to RCW  
26 43.21B.300.

27 (4) All penalties recovered under this section by the department  
28 shall be paid into the state treasury and credited to the air pollution  
29 control account established in RCW 70.94.015 or, if recovered by the  
30 authority, shall be paid into the treasury of the authority and  
31 credited to its funds. If a prior penalty for the same violation has  
32 been paid to a local authority, the penalty imposed by the department  
33 under subsection (1) of this section shall be reduced by the amount of  
34 the payment.

35 (5) To secure the penalty incurred under this section, the state or  
36 the authority shall have a lien on any vessel used or operated in  
37 violation of this chapter which shall be enforced as provided in RCW  
38 60.36.050.

1 (6) Public or private entities that are recipients or potential  
2 recipients of department grants, whether for air quality related  
3 activities or not, may have such grants rescinded or withheld by the  
4 department for failure to comply with provisions of this chapter.

5 (7) In addition to other penalties provided by this chapter,  
6 persons knowingly under-reporting emissions or other information used  
7 to set fees, or persons required to pay emission or permit fees who are  
8 more than ninety days late with such payments may be subject to a  
9 penalty equal to three times the amount of the original fee owed.

10 (8) By January 1, 1992, the department shall develop rules for  
11 excusing excess emissions from enforcement action if such excess  
12 emissions are unavoidable. The rules shall specify the criteria and  
13 procedures for the department and local air authorities to determine  
14 whether a period of excess emissions is excusable in accordance with  
15 the state implementation plan.

16 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute  
17 a new chapter in Title 70 RCW."

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18 On page 1, beginning on line 2 of the title, after "materials;"  
19 strike the remainder of the title and insert "amending RCW 70.94.431;  
20 adding a new chapter to Title 70 RCW; and prescribing penalties."

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