

HOUSE BILL REPORT

ESSB 5458

As Passed House:
April 9, 2013

Title: An act relating to the labeling of certain asbestos-containing building materials.

Brief Description: Concerning the labeling of certain asbestos-containing building materials.

Sponsors: Senate Committee on Energy, Environment & Telecommunications (originally sponsored by Senators Billig, Ranker, Kohl-Welles and Kline).

Brief History:

Committee Activity:

Environment: 3/26/13, 3/27/13 [DP].

Floor Activity:

Passed House: 4/9/13, 65-28.

Brief Summary of Engrossed Substitute Bill

- Requires the labeling of asbestos-containing building materials, effective January 1, 2014.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass. Signed by 9 members: Representatives Upthegrove, Chair; McCoy, Vice Chair; Short, Ranking Minority Member; Farrell, Fey, Kagi, Liias, Morris and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Pike, Assistant Ranking Minority Member; Nealey and Overstreet.

Staff: Jacob Lipson (786-7196).

Background:

Asbestos.

Asbestos is a naturally occurring mineral fiber found in rock and soil. The United States Environmental Protection Agency (EPA) classifies six categories of asbestos mineral fibers:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

chrysotile, amosite, crocidolite, tremolite, anthrophyllite, and actinolite. Asbestos can be used as an insulator or fire retardant in a variety of consumer goods, including building materials, and is also found as a naturally occurring contaminant in deposits of other mineral types used for commercial purposes.

Asbestos Regulation.

Since 1973 the federal government has adopted numerous environmental and public health regulations governing the mining, manufacture, installation, and removal of asbestos. In general, the federal Occupational Safety and Health Administration provides worker safety regulations for the use and proper handling of asbestos, while the EPA has asbestos-related regulatory authority deriving from the Clean Air Act and other federal environmental statutes, including the Toxic Substances Control Act (TSCA).

The TSCA includes provisions granting the EPA the regulatory authority to ban the use of individual chemicals under certain circumstances. In 1989 the EPA issued a rule under the TSCA which would have phased in a ban on the use of asbestos in most products. However, in 1991 this EPA ban was largely vacated by a federal appeals court decision, allowing for the continued use of asbestos in many consumer products. The products in which asbestos may be used include a variety of building materials, including cement corrugated sheets, flat sheets, shingles and piping, roof and non-roof coatings, and vinyl floor tile.

Currently, asbestos is banned by federal law from use in pipe and water heater insulation, spray-applied surfaces, artificial wall patching compounds, and rollboard insulation, as well as in types of products that have not historically contained asbestos. Per its authority under the TSCA, the EPA requires that certain products from which asbestos is banned, including building materials such as rollboard, receive a label noting that the product contains asbestos, in order to facilitate compliance with and enforcement of the rule.

The EPA has established formalized testing methods to measure for the presence and concentration of many pollutants, including asbestos, which it is charged with regulating. The EPA's asbestos-testing methods were developed in 1993.

At the state level, the Department of Labor and Industries regulates workplace standards related to asbestos use in construction and manufacturing, while the Department of Ecology (DOE) and local clean air agencies regulate asbestos removal from structures.

Clean Air Act.

The Washington Clean Air Act (state CAA) grants the DOE and local clean air agencies the authority to regulate air quality. Violators of certain provisions of the state CAA may incur civil penalties of up to \$10,000 per day per violation, which may be appealed to the Pollution Control Hearings Board. Unpaid penalties accrue interest after 90 days.

Summary of Bill:

Asbestos Labeling Requirements.

Effective January 1, 2014, the manufacture, wholesale, and distribution of asbestos-containing building material, including stock on hand, must be labeled as required by the

newly established state labeling requirements, or as required by federal law (which applies only if the product is one from which asbestos is banned by federal law).

The new state labeling requirement mandates label placement in a prominent location adjacent to the product name or description on the exterior of the wrapping and packaging used for storage, shipment, and sale. A second label must also be placed on the exterior surface of the building material itself, unless the building material is a liquid, a paste, sand, or gravel. The minimum wording for the label is specified. The label must not be defaced, covered, obscured, or tampered with prior to the asbestos-containing building product entering the possession of the end user.

Exemptions.

The state labeling requirements for asbestos-containing building materials do not apply to the following:

- retailers who do not manufacture, wholesale, or distribute asbestos-containing building materials;
- building materials that have already been installed, applied, or used by the consumer; and
- asbestos-containing building materials used for United States military purposes.

In addition, manufacturers, wholesalers, and distributors may request an exemption of up to three years from the state labeling requirements, which the DOE has discretion to grant if it determines the requirements are technically infeasible or create undue economic hardship.

Enforcement Authority.

The DOE and local air authorities are granted enforcement authority, and persons in violation are subject to the penalties prescribed in the state CAA of up to \$10,000 per day per violation.

Other Provisions.

"Asbestos-containing building material" is defined as a building material to which asbestos is deliberately added in any concentration or that contains more than 1 percent asbestos by weight or area, as determined using the EPA's asbestos measurement methods.

The DOE is given the discretion to adopt rules.

An intent section describes the health effects of asbestos and its presence in publicly-available products.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill all started with a constituent who identified something that needed to be fixed in the law. The Spokane Clean Air Agency was concerned about the release of asbestos during building demolition, and also about purchases of asbestos-containing materials at retail, since most people are not even aware that you can still legally purchase asbestos-containing materials. This bill does not affect demolition practices, which are covered by existing workplace rules. Instead, it addresses asbestos-containing materials that are newly entering the marketplace. The bill does not ban these products, but a label will now be required for building materials if asbestos is intentionally added, or if the product contains more than 1 percent asbestos. Asbestos is still found in products like cement pipes, wallboards, spray on insulation, and fire doors.

(Opposed) None.

Persons Testifying: Senator Billig, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.