

Act No. 55  
Public Acts of 1993  
Approved by the Governor  
June 8, 1993  
Filed with the Secretary of State  
June 8, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Shugars, Jamian, Horton and Stille

# **ENROLLED HOUSE BILL No. 4604**

AN ACT to amend sections 103, 207, 209, 220, and 305 of Act No. 135 of the Public Acts of 1986, entitled as amended "An act to provide for the licensing and regulation of asbestos abatement contractors; to create the asbestos abatement contractors licensing board; to establish the powers and duties of the department of public health and the asbestos abatement contractors licensing board; to create an asbestos abatement fund and to provide for expenditures from the fund; to provide for the promulgation of rules; to provide for certain fees; and to provide for penalties and civil fines," section 207 as amended and section 220 as added by Act No. 2 of the Public Acts of 1990, being sections 338.3103, 338.3207, 338.3209, 338.3220, and 338.3305 of the Michigan Compiled Laws; and to add sections 221 and 306.

*The People of the State of Michigan enact:*

Section 1. Sections 103, 207, 209, 220, and 305 of Act No. 135 of the Public Acts of 1986, section 207 as amended and section 220 as added by Act No. 2 of the Public Acts of 1990, being sections 338.3103, 338.3207, 338.3209, 338.3220, and 338.3305 of the Michigan Compiled Laws, are amended and sections 221 and 306 are added to read as follows:

Sec. 103. As used in this act:

(a) "Administrative procedures act of 1969" means Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(b) "Asbestos" means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(c) "Asbestos abatement contractor" means a business entity that is licensed under this act and that carries on the business of asbestos abatement on the premises of another business entity and not on the asbestos abatement contractor's premises.

(d) "Asbestos abatement project" means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.

(e) "Board" means the asbestos abatement contractors licensing board created in section 201.

(f) "Business entity" means a person, partnership, firm, association, corporation, sole proprietorship, public or private agency, or other legal entity.

(g) "Construction contractor" means a business entity that, pursuant to a contract with the owner or lessee of real property, provides an improvement to that property.

(h) "Construction subcontractor" means a business entity that, pursuant to a contract with a person other than the owner or lessee of the real property, performs any part of a construction contractor's contract for an improvement to that property.

(i) "Demolition" means the razing or taking out of any load-supporting structural member and any related removing or stripping of friable asbestos materials.

(j) "Department" means the department of public health.

(k) "Encapsulate" means the sealing of friable asbestos materials by means of the spraying of liquid sealant or any other suitable sealing method.

(l) "Friable asbestos material" means any material that contains more than 1% asbestos by weight and that can be crumbled, pulverized, or reduced to powder when dry, by hand pressure.

(m) "License" means an authorization issued by the department upon recommendation by the board for demolition, renovation, encapsulation, or removal of asbestos.

(n) "Neutral party" means a business entity that is not part of the asbestos abatement contractor's primary or secondary family and is not legally associated to any business operated by the asbestos abatement contractor.

(o) "Removal" means the taking out or stripping of asbestos from an existing structure.

(p) "Renovation" means the removal or stripping of friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. Renovation does not include any of the following:

(i) An operation necessitated by a nonroutine failure of equipment.

(ii) An unplanned operation resulting from a sudden unexpected event.

(iii) An operation in which load-supporting structural members are wrecked or taken out.

(q) "Structural member" means any load-supporting member, including, but not limited to, beams and load-supporting walls, or any nonsupporting member, including, but not limited to, ceilings and nonload-supporting walls.

(r) "Working day" means any day other than a Saturday, Sunday, or state legal holiday.

Sec. 207. (1) Except as otherwise provided in subsection (2), an asbestos-abatement contractor shall not engage in any activity involving the demolition, renovation, or encapsulation of friable asbestos materials without first receiving a license from the department.

(2) Until June 1, 1998, the licensing requirement of subsection (1) does not apply to any of the following if engaged in an asbestos abatement project that is incidental to the primary licensed trade and involves not more than 160 square feet or 260 linear feet of friable asbestos materials:

(a) A business entity licensed under the electrical administrative act, Act No. 217 of the Public Acts of 1956, being sections 338.881 to 338.892 of the Michigan Compiled Laws.

(b) A business entity licensed under the Forbes mechanical contractors act, Act No. 192 of the Public Acts of 1984, being sections 338.971 to 338.988 of the Michigan Compiled Laws.

(c) A business entity licensed under Act No. 266 of the Public Acts of 1929, being sections 338.901 to 338.917 of the Michigan Compiled Laws.

(d) A business entity licensed as a residential builder or a residential maintenance and alteration contractor under article 24 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws.

Sec. 209. (1) To apply for or renew a license, an asbestos abatement contractor shall do all of the following:

(a) Submit a completed application to the department on forms provided by the department. The asbestos abatement contractor shall state on the application whether or not the asbestos abatement contractor has liability insurance.

(b) Pay the fee required by subsection (2).

(c) Submit proof of Michigan workers' disability compensation insurance.

(d) Submit proof that all employees and agents of an asbestos abatement contractor who are responsible for, or are involved in, an asbestos abatement project have received training and become accredited as asbestos abatement workers or asbestos abatement contractors and supervisors as required under the asbestos workers accreditation act, Act No. 440 of the Public Acts of 1988, being sections 338.3401 to 338.3418 of the Michigan Compiled Laws.

(2) A license or renewal fee shall be paid as follows:

<u>Number of employees to be engaged in asbestos abatement projects</u>	<u>License fee</u>	<u>License renewal fee</u>
4 or less	\$200.00	\$100.00
5 or more	\$400.00	\$300.00

Sec. 220. (1) Until June 1, 1998, an asbestos abatement contractor shall notify the department . . . iting of all of the following at least 10 days before beginning an asbestos abatement project exceeding 10 linear feet or 15 square feet, or both, of friable asbestos materials:

- (a) The name and address of the owner of the building or structure.
- (b) The location of the building or structure where the asbestos abatement project will be performed.
- (c) The schedule for the starting and completion of the asbestos abatement project which may not exceed 1 year in length.
- (d) The amount of friable asbestos materials that will be removed or encapsulated.

(2) Until June 1, 1998, if during the course of a project and after a written contract is executed, a business entity that is exempt from licensure under section 207(2) and whose primary licensed trade is not that of an asbestos abatement contractor discovers that the removal or encapsulation of asbestos in an amount exceeding 10 linear feet or 15 square feet, or both, is required, that business entity shall notify the department of the asbestos abatement project before asbestos removal begins. Not more than 10 days after the discovery, the business entity shall provide written notification to the department in the manner described in subsection (1)(a) to (d).

(3) Until June 1, 1998, an asbestos abatement contractor providing written notification to the department pursuant to subsection (1) for an asbestos abatement project shall include a fee equal to 1% of the price of the contract for the asbestos abatement project and shall make available upon the request of the department a copy of the contract for the asbestos abatement project. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(4) Until June 1, 1998, in the case of a business entity that provides notice under subsection (2) for an asbestos abatement project that is incidental to the business entity's primary licensed trade and where asbestos is actually removed by that business entity, the primary licensed trade contractor shall include a fee of 1% of the asbestos abatement project portion of the contract price and shall make available upon the request of the department a copy of that portion of the contract covering the asbestos abatement. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(5) The asbestos abatement fund is created and, until June 1, 1998, shall exist in the state treasury and shall receive revenue as provided in this act and other revenue as the legislature may provide. The state treasurer shall direct the investment of the fund. All interest and earnings of the fund shall be retained by the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) Money in the asbestos abatement fund created in subsection (5) shall be used by the department only for the asbestos-related responsibilities of the department under this act which includes, but is not limited to, the inspection of asbestos abatement projects and the education of asbestos abatement contractors. It does not include use of the fund by the department for asbestos abatement projects on state owned property.

(7) Not later than October 1 of each year and until June 1, 1998, the department shall report to the legislature and the applicable committees in the house of representatives and the senate on the amount of money generated by the fees charged under this section. The report shall include the number of asbestos abatement projects inspected and the number of citations issued for violations of this act and other applicable laws, rules, and regulations.

(8) Until June 1, 1998, emergency asbestos abatement projects resulting from equipment failure or malfunctions are exempt from the 10-day written advance notice imposed under this section. The written notice in emergency situations shall be provided within 48 hours after the commencement of the asbestos abatement project except that the business entity shall contact the department telephonically immediately or as soon as possible after the discovery of the emergency situation.

Sec. 221. (1) Until June 1, 1998, except as provided by this subsection, a building or structure owner or lessee shall have a post abatement air monitoring check performed by a qualified neutral party completely independent of the asbestos abatement contractor at all asbestos abatement project sites involving a negative pressure enclosure as specified by 29 C.F.R. 1926.58(e)(6) that involve 10 or more linear feet or 15 or more square feet of friable asbestos materials. If the asbestos abatement contractor and the building or structure owner or lessee agree, the owner or lessee may have the post abatement air monitoring check required by this subsection performed by in-house personnel or by the asbestos abatement contractor.

(2) Whenever feasible, unless waived by the building or structure owner or lessee, the post abatement air monitoring check required by this section shall make use of aggressive air sampling methods as described in unit III.B.7.d. to appendix A to subpart E of part 763 of title 40 of the code of federal regulations, which is adopted in this act by reference.

(3) Upon request by the department, a post abatement air monitoring check taken pursuant to this section shall be reported to the department.

(4) After completion of the asbestos abatement project, the level of asbestos fibers per cubic centimeter of air that are more than 5 micrometers in length when sampled and analyzed according to method 7400 entitled "fibers" issued by the national institute of occupational safety and health (NIOSH) on 2/15/84 and revised on 5/15/89 which was published in the NIOSH manual of analytical methods, 3rd edition, shall not exceed 0.05 asbestos fibers at the asbestos abatement project site.

Sec. 305. (1) The department, in its own discretion, upon a recommendation by the board, or upon the written complaint of an aggrieved party or of a state agency or political subdivision, may investigate the acts of an asbestos abatement contractor under this act. After an investigation, the department may deny, suspend, or revoke a license issued under this act if an asbestos abatement contractor is found to be not in compliance with this act or the rules promulgated under this act. In addition, the department may deny, suspend, or revoke a license for any of the following:

(a) A willful or negligent act that causes any person to be exposed to asbestos in violation of this act, a rule promulgated under this act, or other state or federal law pertaining to the public health and safety aspects of asbestos demolition, renovation, and encapsulation.

(b) Falsification of records.

(c) Continued failure to obtain or renew a license.

(d) Deliberate misrepresentation of an act in applying for a license.

(e) Permitting any person who has not received the proper training and certification under state or federal law to come in contact with asbestos or be responsible for an asbestos abatement project.

(2) If the license of a business entity is denied, suspended, or revoked under this act, the denial, suspension, or revocation applies to each partner, trustee, director, officer, or person exercising control of the business entity.

Sec. 306. Upon application by the attorney general or a party to a contested case, the circuit court may issue a subpoena requiring a person to appear before a hearings examiner in the contested case or before the department in an investigation and be examined with reference to a matter within the scope of that contested case or investigation and to produce books, papers, or documents pertaining to that contested case or investigation.

This act is ordered to take immediate effect.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.