

(3) provide the commissioner and governor with a review of ongoing services, programs, and proposed legislation affecting the hearing impaired.

Approved May 28, 1987

CHAPTER 303—S.F.No. 858

An act relating to health; providing for asbestos regulation; directing the commissioner of health to regulate and license persons or entities enclosing, removing, or encapsulating asbestos; providing penalties; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 326.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[326.70] TITLE.**

Sections 1 to 13 may be cited as the "asbestos abatement act."

Sec. 2. **[326.71] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 1 to 13.

Subd. 2. ASBESTOS. "Asbestos" means the asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

Subd. 3. ASBESTOS-CONTAINING MATERIAL. "Asbestos-containing material" means material that contains more than one percent asbestos by weight.

Subd. 4. ASBESTOS-RELATED WORK. "Asbestos-related work" means the enclosure, removal, or encapsulation of asbestos-containing material in a quantity that meets or exceeds the United States Environmental Protection Agency's requirement of 260 lineal feet of friable asbestos on pipes or 160 square feet of friable asbestos on other facility components.

Subd. 5. COMMISSIONER. "Commissioner" means the commissioner of health and the commissioner's authorized delegates.

Subd. 6. CONTRACTING ENTITY. "Contracting entity" means a public or private body, board, natural person, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity that contracts with an employer or person to do asbestos-related work for the benefit of the contracting entity.

Subd. 7. EMPLOYEE. "Employee" means a person who works directly or indirectly for an employer.

Subd. 8. EMPLOYER. "Employer" means an individual, body, board,

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corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity directly or indirectly employing an employee. This term applies to private employers and to the state, its political subdivisions, and any boards, commissions, schools, institutions, or authorities created or recognized by them.

Sec. 3. [326.72] ASBESTOS LICENSE.

Subdivision 1. WHEN LICENSE REQUIRED. An employer or other person within the state intending to directly perform or cause to be performed through subcontracting or similar delegation any asbestos-related work either for financial gain or with respect to the employer's or person's own property shall first apply for and obtain a license from the commissioner. The license shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and give the name and address of the employer or person to whom it is issued.

Subd. 2. DISPLAY OF LICENSE. Licensees shall post a sign with the words, in letters four or more inches high, "licensed by the state of Minnesota for asbestos work" in a conspicuous place outside of the asbestos abatement work area. The actual license or a copy certified by the commissioner shall be readily available at the work site for inspection by the commissioner, other public officials charged with the health, safety, and welfare of the state's citizens, and the contracting entity.

Sec. 4. [326.73] EMPLOYEE ASBESTOS CERTIFICATIONS.

Before an employee performs asbestos-related work, the employee shall first obtain a certificate from the commissioner certifying that the employee is qualified to perform the work. No certificate shall be issued unless the employee has taken a course of training in asbestos control and removal, passed an examination in those subjects, and demonstrated to the commissioner the ability to perform asbestos-related work safely in accordance with the current state-of-the-art technology. The commissioner shall specify the course of training necessary. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the employee to whom it is issued. The certificate shall be carried by the employee and be readily available for inspection by the commissioner, other public officials charged with the health, safety, and welfare of the state's citizens, and the contracting entity.

Sec. 5. [326.74] REPORTING ASBESTOS WORK.

An employer, at least five calendar days before engaging in asbestos-related work, shall give written notice to the commissioner of the project. The notice shall contain the following information:

- (1) a brief description of the work to be performed;

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- (2) the name of the contracting entity;
- (3) the location and address of the project work site;
- (4) the approximate duration of the project;
- (5) the approximate amount of the asbestos involved in the project;
- (6) the name of any project manager; and
- (7) other information required by the commissioner.

Sec. 6. [326.75] FEES.

Subdivision 1. LICENSING FEE. An employer or other person required to be licensed under section 3 shall, before receipt of the license and before causing asbestos-related work to be performed, pay the commissioner an annual license fee of \$100.

Subd. 2. CERTIFICATION FEE. Employees required to be certified under section 3 shall, before performing asbestos-related work, pay the commissioner a certification fee of \$50.

Subd. 3. PERMIT FEE. Before beginning asbestos-related work, an employer shall pay a project permit fee to the commissioner equal to one percent of the total costs of the asbestos-related work.

Subd. 4. DEPOSIT OF FEES. Fees collected under this section shall be deposited in the asbestos abatement revolving fund created by section 13.

Sec. 7. [326.76] DUTIES OF CONTRACTING ENTITIES.

A contracting entity intending to have asbestos-related work performed for its benefit shall include in the specifications and contracts for the work a requirement that the work be performed by contractors and subcontractors licensed by the commissioner under sections 1 to 13. No contracting entity shall allow asbestos-related work to be performed for its benefit unless it has seen that the employer has a valid license. A contracting entity's failure to comply with this section does not relieve an employer from any of its responsibilities under sections 1 to 13.

Sec. 8. [326.77] INDOOR AIR STANDARD.

(a) The commissioner may adopt rules establishing an indoor air standard for asbestos.

(b) Until the rules become effective, asbestos remaining in the air following the completion of an abatement project shall not exceed .01 fibers greater than five microns in length per cubic centimeter of air.

Sec. 9. [326.78] DUTIES OF THE COMMISSIONER.

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Subdivision 1. RULEMAKING. The commissioner shall adopt and begin enforcement of rules necessary to implement sections 1 to 13. The rules adopted shall not be duplicative of rules adopted by the commissioner of the department of labor and industry. The rules shall include rules in the following areas:

- (1) application, enclosure, removal, and encapsulation procedures;
- (2) license and certificate qualification requirements;
- (3) examinations for obtaining a license and certificate;
- (4) training necessary for employee certification;
- (5) qualifications for managers of asbestos abatement projects;
- (6) abatement specifications;
- (7) any contractor bonding and insurance requirements deemed necessary by the commissioner;
- (8) license and certificate issuance and revocation procedures;
- (9) suspension or revocation of licenses or certificates;
- (10) license and certificate suspension and revocation criteria;
- (11) cleanup standards;
- (12) continuing education requirements; and
- (13) other rules necessary to implement sections 1 to 13.

Subd. 2. ISSUANCE OF LICENSES AND CERTIFICATES. The commissioner may issue licenses to employers and certificates to employees who meet the criteria in sections 1 to 13 and the commissioner's rules. Licenses and certificates shall be valid for at least 12 months.

Subd. 3. DELEGATION. The commissioner may, in writing, delegate the inspection and enforcement authority granted in sections 1 to 13 to other state agencies regulating asbestos.

Subd. 4. ACCESS TO INFORMATION AND PROPERTY. (a) Any person who the commissioner has reason to believe is engaged in asbestos-related work, or who is the owner of real property where the asbestos-related work is being undertaken, when requested by the commissioner, or any member, employee, or agent thereof who is authorized by the commissioner, shall furnish the commissioner any information that the person may have or may reasonably obtain that is relevant to the asbestos-related work.

(b) The commissioner or any person authorized by the commissioner, upon presentation of credentials, and with reason to believe that violation of this act may be occurring, may:

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(1) examine and copy any books, papers, records, memoranda, or data related to the asbestos-related project of any person who has a duty to provide information to the department under paragraph (a); and

(2) enter upon any public or private property to take action authorized by this section including obtaining information from any person who has a duty to provide the information under paragraph (a), and conducting surveys or investigations.

Subd. 5. SUBPOENAS. In matters under investigation by or pending before the commissioner under sections 1 to 13, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of papers, books, records, documents, and other relevant evidentiary material. A person failing or refusing to comply with the subpoena or order may, upon application by the commissioner to the district court in any district, be ordered by the court to comply with the order or subpoena. The commissioner may also administer oaths and affirmations to witnesses. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon any person anywhere within the state by an officer authorized to serve subpoenas in civil actions, with the same fees and mileage costs paid, and in the manner as prescribed by law, for process of the state district courts. Fees and mileage and other costs of persons subpoenaed by the commissioner shall be paid in the manner prescribed for proceedings in district court.

Subd. 6. CEASE AND DESIST ORDER. (a) The commissioner may issue an order requiring an employer to cease asbestos-related work if the commissioner determines that a condition exists that poses an immediate danger to the public health. For purposes of this subdivision, an immediate danger to the public health exists if the commissioner determines that:

(1) air quality standards are being exceeded;

(2) asbestos-related work is being undertaken in a manner violative of applicable state or federal law;

(3) the employer or an employee working at the project site is not licensed or certified, or in possession of a current license or certificate, as the case may be; or

(4) the employer has not reported the project under section 5.

(b) The order is effective for a maximum of 60 days. Following issuance of the order, the commissioner shall provide the contractor or individual with an opportunity for a hearing under the contested case provisions of chapter 14. At the hearing, the commissioner shall decide whether to rescind, modify, or reissue the previously made order. A modified or reissued order is effective for a maximum of 60 days from the date of modification or reissuance.

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Subd. 7. ORDER FOR CORRECTIVE ACTION. After notice and opportunity for hearing under the contested case provisions of chapter 14, the commissioner may issue an order requiring anyone violating sections 1 to 13 or a rule of the commissioner to take corrective action as the commissioner determines will accomplish the purpose of the project and prevent future violation. The order shall contain a date by which the violation must be corrected.

Subd. 8. INJUNCTIVE RELIEF. In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in the district court in Ramsey county or, at the commissioner's discretion, in the district court in the county in which an asbestos-related work is being undertaken to halt the work or an activity connected with it. A temporary restraining order or other injunctive relief may be granted by the court in the proceeding if continuation of the work or an activity connected with it would result in an imminent risk of harm to any person.

Sec. 10. [326.79] MISDEMEANOR PENALTY.

A person who:

(1) hinders or delays the commissioner or the commissioner's authorized representative in the performance of the duty to enforce sections 1 to 13;

(2) undertakes asbestos-related work without a license or with a revoked, expired, or suspended license;

(3) refuses to make a license or certificate accessible to either the commissioner or the commissioner's authorized representative;

(4) uses an employee who does not have a certificate to do asbestos-related work;

(5) fails to report asbestos-related work as required by section 5;

(6) undertakes asbestos-related work for which the person is not qualified under department rules; or

(7) makes a material false statement related to a license, certificate, report, or other document required under sections 1 to 13

is guilty of a misdemeanor and may be sentenced to payment of a fine of not more than \$700, imprisonment for not more than 30 days, or both, for each violation.

Sec. 11. [326.80] SUSPENSIONS; REVOCATIONS.

As an alternative, or in addition to, the criminal penalties provided in section 10, the commissioner or the commissioner's designee may suspend or revoke a license or certificate for repeated or serious violations of sections 1 to 13 in accordance with procedures adopted by rule by the commissioner and the contested case procedures of chapter 14.

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Sec. 12. [326.81] DISCRIMINATION; SANCTIONS.

An employer who discriminates against or otherwise sanctions an employee who complains to or cooperates with the commissioner in administering sections 1 to 13 is guilty of a misdemeanor.

Sec. 13. [326.82] ASBESTOS ABATEMENT REVOLVING FUND.

Subdivision 1. CREATION; APPROPRIATION. The asbestos abatement revolving fund is created as a separate account in the state treasury. The fund consists of the fees collected under section 6. The money in the fund is continually appropriated to the commissioner for the purposes of sections 1 to 13.

Subd. 2. UNOBLIGATED EXCESS TRANSFERRED. When the unobligated money in the asbestos abatement revolving fund exceeds \$500,000 at the end of any fiscal year, the unobligated amount in excess of that amount shall be transferred to the general fund.

Sec. 14. APPROPRIATIONS.

\$23,800 is appropriated from the general fund to the commissioner of health for purposes of sections 1 to 13, to be available for the fiscal year ending June 30, 1988. \$23,800 must be transferred from the asbestos abatement revolving fund to the general fund on June 30, 1989.

Sec. 15. EFFECTIVE DATES.

Sections 1, 2, 5, 8, 9, and 12 to 14 are effective July 1, 1987. Sections 3; 4; 6, subdivisions 1 and 2; 7; 10; and 11 are effective on the date on which rules adopted by the commissioner under section 9 become effective. Section 6, subdivisions 3 and 4, are effective April 1, 1988.

Approved May 28, 1987

CHAPTER 304—S.F.No. 865

An act relating to environment; authorizing an assessment against public utilities to finance the state costs of controlling acid deposition; amending Minnesota Statutes 1986, section 116C.69, subdivision 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 116C.69, subdivision 3, is amended to read:

Subd. 3. **FUNDING; ASSESSMENT.** The board shall finance its base line studies, general environmental studies, development of criteria, inventory prepa-

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