

CHAPTER 8

HEALTH & ENVIRONMENT

HOUSE BILL 95-1016

BY REPRESENTATIVES Knox, Agler, George, Armstrong, and Lyle;
also SENATORS Martinez, Mutzebaugh, and Schroeder.

AN ACT

**CONCERNING THE ADMINISTRATION OF THE ASBESTOS CERTIFICATION PROGRAM BY THE AIR
QUALITY CONTROL COMMISSION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 25-7-502, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-7-502. Definitions. As used in this part 5, unless the context otherwise requires:

(7.5) "PROJECT MANAGER" MEANS A PERSON WHO HAS SATISFIED THE EXPERIENCE AND ACADEMIC TRAINING REQUIREMENTS SET FORTH BY THE COMMISSION.

SECTION 2. 25-7-503 (1) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended, and the said 25-7-503 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

25-7-503. Powers and duties of the commission - rules and regulations - delegation of authority to division. (1) The commission has the following powers and duties:

(b) To promulgate rules and regulations pursuant to section 24-4-103, C.R.S., regarding the following, as are necessary to implement the provisions of this part 5, AS REQUIRED BY THE FEDERAL "CLEAN AIR ACT", 42 U.S.C. SECTION 7412, ET. SEQ.,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AS AMENDED:

(I) Determination of the minimum scope of asbestos abatement to which the provisions of this part 5 shall apply, but not less than ~~fifty~~ ~~thirty-two~~ TWO HUNDRED SIXTY linear feet on pipes or ~~thirty-two~~ ONE HUNDRED SIXTY square feet on other materials or the equivalent of a fifty-five-gallon drum;

(II) Requirements of notification, AS CONSISTENT WITH THE FEDERAL ACT, to demolish, renovate, or perform asbestos abatement in any building, structure, facility, or installation, or any portion thereof, which contains asbestos, except within such minimum scope of asbestos abatement or when otherwise exempt;

(III) Procedures for the inspection and monitoring of sites where demolition, renovation, or the performance of asbestos abatement is taking place, including rules assuring that aggressive air monitoring shall be utilized only in the context of conducting final clearance of an abatement project as outlined in the "Asbestos Hazardous Emergency Response Act" and pursuant to the regulations found at 40 C.F.R. part 763. Specifications as listed in "measuring airborne asbestos following an abatement action", published by the environmental protection agency in 1985, shall be adopted by the commission as criteria for aggressive sampling.

(IV) (A) Fees for notifications to demolish, renovate, or perform asbestos abatement and for any associated site inspections or necessary monitoring for compliance with this part 5.

(B) FEES PURSUANT TO THIS SUBPARAGRAPH (IV) SHALL BE PAID ON AN ANNUAL BASIS FOR LARGE CONTIGUOUS FACILITY COMPLEXES AND ON AN INDIVIDUAL NOTIFICATION BASIS FOR SMALL NONCONTIGUOUS FACILITIES.

(V) REQUIREMENTS TO PREVENT ANY REAL OR POTENTIAL CONFLICT OF INTEREST BETWEEN THE IDENTIFICATION OF ASBESTOS-CONTAINING MATERIALS AND THE ABATEMENT OF SUCH MATERIALS IN PUBLIC AND COMMERCIAL BUILDINGS, INCLUDING REQUIREMENTS THAT PROJECT MANAGERS BE USED ON PROJECTS OF A CERTAIN SIZE, THAT PROJECT MANAGERS BE INDEPENDENT OF THE ABATEMENT CONTRACTOR AND WORK STRICTLY ON BEHALF OF THE BUILDING OWNER TO THE EXTENT FEASIBLE, AND THAT BUILDING OWNERS MAY SEEK WAIVERS FROM THE PROJECT MANAGER REQUIREMENTS.

(f) (I) TO ADOPT RULES PURSUANT TO SECTION 24-4-103, C.R.S., SETTING OUT REQUIRED TRAINING FOR PERSONS APPLYING FOR CERTIFICATION, RECERTIFICATION, OR RENEWAL OF CERTIFICATES AS REQUIRED BY REGULATIONS PROMULGATED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY OR THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.

(II) TRAINING REQUIRED PURSUANT TO THIS PARAGRAPH (f) SHALL NOT BE UNDULY DUPLICATIVE OR EXCESSIVE.

(III) REFRESHER COURSES SHALL BE REQUIRED ANNUALLY.

SECTION 3. The introductory portion to 25-7-506 (2) and 25-7-506 (5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

25-7-506. Certificate of trained supervisors - application - approval by division - responsibilities of trained supervisors - renewal of a certificate.

(2) Within thirty days after receiving a completed application and the results of the examination administered pursuant to paragraph (b) of this subsection (2), the division shall issue a certification valid for ~~one year~~ A ONE-, THREE-, OR FIVE-YEAR PERIOD from the date of issuance upon a finding:

~~(5) Any certificate that has lapsed shall be deemed to have expired. A certificate issued pursuant to this section may be renewed prior to expiration upon payment of a renewal fee set by the commission. An individual may reinstate an expired certificate within two years of such expiration upon payment of a reinstatement fee set by the commission. An individual whose certificate has lapsed for a period longer than two years after expiration shall apply to the division for certification as required by this section and shall not be recertified until the division determines that such individual has complied with the provisions of subsections (1) and (2) of this section.~~

SECTION 4. Part 5 of article 7 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

25-7-507.5. Renewal of certificates - recertification. (1) ANY CERTIFICATE ISSUED PURSUANT TO THIS PART 5 THAT HAS LAPSED SHALL BE DEEMED TO HAVE EXPIRED.

(2) (a) A CERTIFICATE ISSUED PURSUANT TO THIS PART 5 MAY BE RENEWED PRIOR TO EXPIRATION UPON PAYMENT OF A RENEWAL FEE SET BY THE COMMISSION.

(b) RENEWAL OF A CERTIFICATE MAY BE MADE FOR TIME PERIODS OF ONE, THREE, OR FIVE YEARS PURSUANT TO RULES PROMULGATED BY THE COMMISSION.

(3) AN INDIVIDUAL MAY REINSTATE AN EXPIRED CERTIFICATE WITHIN ONE YEAR AFTER SUCH EXPIRATION UPON PAYMENT OF A REINSTATEMENT FEE IN AN AMOUNT SET BY THE COMMISSION.

(4) AN INDIVIDUAL WHOSE CERTIFICATE HAS LAPSED FOR A PERIOD LONGER THAN ONE YEAR AFTER EXPIRATION SHALL APPLY TO THE DIVISION FOR CERTIFICATION AS REQUIRED BY THIS PART 5 AND SHALL NOT BE RECERTIFIED UNTIL THE DIVISION DETERMINES THAT SUCH INDIVIDUAL HAS FULLY COMPLIED WITH THE REQUIREMENTS OF THIS PART 5 AND ANY RULES PROMULGATED PURSUANT THERETO.

(5) (a) ANY INDIVIDUAL WHOSE CERTIFICATE HAS LAPSED BECAUSE SUCH INDIVIDUAL HAS NOT COMPLETED THE REFRESHER COURSE REQUIRED PURSUANT TO SECTION 25-7-503 (1) (f), MAY COMPLETE SUCH REFRESHER COURSE WITHIN ONE YEAR AFTER THE DATE THE CERTIFICATE LAPSES.

(b) COMPLETION OF THE REFRESHER COURSE SHALL BE A REQUIREMENT FOR RECERTIFICATION.

(c) (I) THE COMMISSION SHALL PROMULGATE RULES GOVERNING REFRESHER TRAINING PROGRAMS FOR PERSONS IN BOTH SCHOOL AND NONSCHOOL ASBESTOS ABATEMENT. SUCH PROGRAMS SHALL NOT EXCEED THE REQUIREMENTS OF REFRESHER TRAINING MANDATED UNDER THE FEDERAL "ASBESTOS HAZARD

EMERGENCY RESPONSE ACT OF 1986" (PUBLIC LAW 99-519) AND ANY RULES PROMULGATED PURSUANT TO SUCH FEDERAL LAW.

(II) IN ADOPTING RULES THE COMMISSION SHALL ENSURE THAT REFRESHER TRAINING REQUIREMENTS ARE RELATED TO ENSURING CONTINUING COMPETENCY IN ASBESTOS ABATEMENT PROCEDURES.

(III) THE DIVISION SHALL IMPLEMENT A SYSTEM OF TESTING TO MEASURE THE KNOWLEDGE OBTAINED BY CERTIFIED PERSONS ATTENDING THE REFRESHER TRAINING PROGRAMS. SUCH TESTING SHALL NOT EXCEED THE REQUIREMENTS OF REFRESHER TRAINING MANDATED PURSUANT TO FEDERAL LAW.

SECTION 5. 25-7-508 (2) (a) (II), (2) (b), and (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

25-7-508. Grounds for disciplinary action - letters of admonition - denial of certification - suspension, revocation, or refusal to renew - requirement for corrective education - administrative fines. (2) (a) The division may take disciplinary action in the form of the issuance of a letter of admonition or, in conformity with the provisions of article 4 of title 24, C.R.S., the suspension, revocation, or refusal to renew certification pursuant to section 25-7-505, 25-7-506, or 25-7-507, should the division find that a person certified under this part 5:

(II) (A) Has been subject to a disciplinary action relating to a certification or other form of registration or license to practice asbestos abatement under this part 5 or any related occupation in any other state, territory, or country for disciplinary reasons, which action shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of certification by the division.

(B) This subparagraph (II) shall apply only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those set out as grounds for disciplinary action pursuant to this part 5.

(C) A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT TO A CHARGE OF VIOLATING A LAW OR REGULATION GOVERNING THE PRACTICE OF ASBESTOS REMOVAL IN ANOTHER STATE, TERRITORY, OR COUNTRY THAT IS ACCEPTED BY THE DISCIPLINING BODY OF SUCH OTHER STATE, TERRITORY, OR COUNTRY MAY BE CONSIDERED TO BE THE SAME AS A FINDING OF GUILT FOR PURPOSES OF A HEARING CONDUCTED BY THE DIVISION PURSUANT TO THIS SUBSECTION (2).

(b) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the division, does not warrant ~~formal action~~ SUSPENSION OR REVOCATION by the division but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the certified person against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the division to a certified person complained against, such certified person shall be advised that ~~he~~ SUCH PERSON has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against ~~him~~ SUCH PERSON to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be

deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(6) If a certification is revoked by the division, the person against whom such action was taken shall not apply for recertification for a period of ~~six months~~ ONE YEAR after such revocation and shall be required to demonstrate compliance with any disciplinary action imposed by the division and to demonstrate competency in asbestos abatement procedures prior to receiving a new certificate.

SECTION 6. 25-7-512, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-7-512. Repeal of part. This part 5 is repealed, effective ~~July 1, 1996~~ JULY 1, 2001. Prior to such repeal, the functions of the division under this part 5 shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 7. 24-34-104 (24.2), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24.2) ~~The functions of the division of administration in the department of public health and environment relating to asbestos control performed in accordance with part 5 of article 7 of title 25, C.R.S., shall terminate on July 1, 1996.~~

SECTION 8. 24-34-104 (30) (a), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (30) (a) The following functions of the specified agency shall terminate on July 1, 2001:

(IV) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON JULY 1, 2010: THE CERTIFICATION OF PERSONS IN CONNECTION WITH THE CONTROL OF ASBESTOS PURSUANT TO PART 5 OF ARTICLE 7 OF TITLE 25, C.R.S.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to applications received, certificates issued, and acts committed on or after said date.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 17, 1995