

As Amended by House Committee

Session of 2016

HOUSE BILL No. 2516

By Committee on Energy and Environment

1-22

1 AN ACT concerning the department of health and environment; relating to  
2 the asbestos control act, licensing requirements; air fee fund, transfers;  
3 amending K.S.A. 65-5301, 65-5303, 65-5304, 65-5307, 65-5309 and  
4 65-5311 and K.S.A. 2015 Supp. 65-5310 and 65-5314 and repealing the  
5 existing sections; also repealing K.S.A. 65-5308.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 65-5301 is hereby amended to read as follows: 65-  
9 5301. As used in this act:

10 (a) "Asbestos project" means an activity undertaken to remove or  
11 encapsulate friable asbestos containing materials.

12 (b) "Business entity" means a partnership, firm, association,  
13 corporation, sole proprietorship; or other business concern.

14 ~~(c) "Certificate" means an authorization issued by the secretary~~  
15 ~~permitting an individual person to engage in an asbestos project.~~

16 ~~(d)~~ (d) "License" means an authorization issued by the secretary  
17 permitting a business entity to engage in an asbestos project.

18 ~~(e)~~ (e) "Secretary" means the secretary of health and environment.

19 ~~(f)~~ (f) "Friable asbestos containing material" means any material that  
20 contains more than 1% asbestos, by weight, which is applied to ceilings,  
21 walls, structural members, piping, ductwork or any other part of a building  
22 and which, when dry, may be crumbled, pulverized or reduced to powder  
23 by hand pressure.

24 ~~(g)~~ (g) "Asbestos" means that asbestiform varieties of: Chrysotile,  
25 crocidolite, amosite, anthophyllite, tremolite and actinolite.

26 Sec. 2. K.S.A. 65-5303 is hereby amended to read as follows: 65-  
27 5303. The secretary shall administer the provisions of this act. In  
28 administering the provisions of this act, the secretary shall:

29 (a) Prescribe fees for the issuance and renewal of ~~certificates and~~  
30 licenses. The fees shall be based upon the amount of revenue determined  
31 by the secretary to be required for proper administration of the provisions  
32 of this act;

33 (b) conduct on-site inspections of procedures being utilized by a  
34 licensee for removing and encapsulating asbestos during an actual asbestos  
35 project;

36 (c) inspect and approve asbestos disposal sites; and

1 (d) adopt rules and regulations necessary for the administration of  
2 this act including, but not limited to, requirements, procedures and  
3 standards relating to asbestos projects as are necessary to protect the public  
4 health and safety.

5 Sec. 3. K.S.A. 65-5304 is hereby amended to read as follows: 65-  
6 5304. In order to qualify for a license, a business entity shall:

7 (a) Ensure that each employee or agent of the business entity who  
8 will come into contact with asbestos or who will engage in an asbestos  
9 project is ~~certified~~ *trained in accordance with all applicable asbestos*  
10 *training provisions required by the United States department of labor and*  
11 *the environmental protection agency;*

12 (b) demonstrate to the satisfaction of the secretary that the business  
13 entity is capable of complying with all applicable requirements,  
14 procedures, standards of the United States environmental protection  
15 agency and the United States occupational safety and health administration  
16 and the secretary;

17 (c) have access to at least one approved asbestos disposal site for  
18 deposit of all asbestos waste that the business entity will generate during  
19 the term of the license; and

20 (d) comply with all rules and regulations adopted by the secretary  
21 under this act.

22 Sec. 4. K.S.A. 65-5307 is hereby amended to read as follows: 65-  
23 5307. (a) Every licensee shall keep a record of each asbestos project it  
24 performs and shall make the record available to the secretary at any  
25 reasonable time. Records required by this section shall be kept for not less  
26 than ~~six~~ *three* years. The record shall include:

27 (1) The name; ~~and address and certificate number~~ of the individual  
28 person who supervised the asbestos project and of each employee or agent  
29 of the licensee who worked on the project;

30 (2) the location and a description of the project and the amount of  
31 asbestos material that was removed;

32 (3) the starting and completion dates of each instance of removal or  
33 encapsulation;

34 (4) a summary of the procedures that were used to comply with all  
35 applicable standards;

36 (5) the name and address of each asbestos disposal site where the  
37 waste containing asbestos was deposited; and

38 (6) any other information which may be required by the secretary.

39 (b) Every licensee, state agency or political or taxing subdivision of  
40 the state that engages in an asbestos project shall notify the secretary, in  
41 the manner prescribed by the secretary, of the proposed date on which the  
42 project is to be initiated.

43 Sec. 5. K.S.A. 65-5309 is hereby amended to read as follows: 65-

1 5309. (a) The secretary shall establish by rules and regulations a  
2 reasonable schedule of fees for licensure, ~~for certification~~ and for project  
3 evaluations under this act. The fee schedule shall be established on the  
4 basis of determination by the secretary of the amount of revenue required  
5 for administration of the provisions of this act.

6 (b) The secretary shall remit all moneys received from the fees  
7 established pursuant to this section to the state treasurer in accordance with  
8 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt  
9 of each such remittance, the state treasurer shall deposit the entire amount  
10 in the state treasury to the credit of the ~~state general air fee~~ **state general**  
11 fund.

12 Sec. 6. K.S.A. 2015 Supp. 65-5310 is hereby amended to read as  
13 follows: 65-5310. (a) The secretary may deny, suspend or revoke any  
14 license issued under this act if the secretary finds, after notice and hearing  
15 conducted in accordance with the provisions of the Kansas administrative  
16 procedure act, that the applicant for license or licensee, whichever is  
17 applicable, has:

18 (1) Fraudulently or deceptively obtained or attempted to obtain a  
19 license;

20 (2) failed at any time to meet the qualifications for a license or to  
21 comply with any provision or requirement of this act or any rules and  
22 regulations adopted by the secretary under this act;

23 (3) failed at any time to meet any applicable federal or state standard  
24 for removal or encapsulation of asbestos; or

25 (4) employed or permitted an ~~uncertified~~ *untrained* individual person  
26 to work on an asbestos project.

27 ~~(b) The secretary may deny, suspend or revoke any certificate issued~~  
28 ~~under this act if the secretary finds, after notice and hearing conducted in~~  
29 ~~accordance with the provisions of the Kansas administrative procedure act,~~  
30 ~~that the applicant for certificate or certificate holder, whichever is~~  
31 ~~applicable, has:~~

32 ~~(1) Fraudulently or deceptively obtained or attempted to obtain a~~  
33 ~~certificate; or~~

34 ~~(2) failed at any time to meet the qualifications for a certificate or to~~  
35 ~~comply with any provision or requirement of this act or any rules and~~  
36 ~~regulations adopted by the secretary under this act.~~

37 ~~(e) Before any license or certificate is denied, suspended or revoked,~~  
38 ~~the secretary shall conduct a hearing thereon in accordance with the~~  
39 ~~provisions of the Kansas administrative procedure act.~~

40 ~~(d) (c) Any individual person or business entity aggrieved by a~~  
41 ~~decision or order of the secretary may appeal the order or decision in~~  
42 ~~accordance with the provisions of the Kansas judicial review act.~~

43 ~~(e) (d) (1) If the secretary finds that the public health or safety is~~

1 endangered by the continuation of an asbestos project, the secretary may  
2 temporarily suspend, without notice or hearing in accordance with the  
3 emergency adjudication procedures of the provisions of the Kansas  
4 administrative procedure act, the license of the business entity ~~or the~~  
5 ~~certificate of any person~~ engaging in such asbestos project.

6 (2) In no case shall a temporary suspension of a license ~~or certificate~~  
7 under this section be in effect for a period of time in excess of 90 days. At  
8 the end of such period of time, the license ~~or certificate~~ shall be reinstated  
9 unless the secretary has suspended or revoked the license ~~or certificate~~,  
10 after notice and hearing, or the license has expired as otherwise provided  
11 under this act.

12 Sec. 7. K.S.A. 65-5311 is hereby amended to read as follows: 65-  
13 5311. (a) In an emergency that results from a sudden, unexpected event  
14 that is not a planned renovation or demolition, the secretary may waive the  
15 requirement for a license.

16 (b) The secretary may approve, on a case-by-case basis, an alternative  
17 to a required public health protection procedure for an asbestos project if  
18 the business entity or state or political or taxing subdivision of the state  
19 submits a written description of the alternative procedure to the secretary  
20 and demonstrates to the satisfaction of the secretary that the proposed  
21 alternative procedure provides equivalent protection.

22 (c) If a business entity or state or political or taxing subdivision of the  
23 state is not primarily engaged in the removal or encapsulation of asbestos,  
24 the secretary may waive the requirement for a license ~~or employee~~  
25 ~~certification~~ if public health protection requirements are met or an  
26 alternative procedure is approved under subsection (b).

27 Sec. 8. K.S.A. 2015 Supp. 65-5314 is hereby amended to read as  
28 follows: 65-5314. (a) Any business entity which violates any provision of  
29 this act or any rules and regulations adopted under this act, in addition to  
30 any other penalty provided by law, may incur a civil penalty imposed  
31 under subsection (b) in an amount not to exceed \$5,000 for each violation  
32 and, in the case of a continuing violation, every day such violation  
33 continues shall be deemed a separate violation.

34 (b) The secretary, upon a finding that a business entity has violated  
35 any provision of this act or any rules and regulations adopted under this  
36 act, may impose a civil penalty within the limits provided in this section  
37 upon such business entity, which civil penalty shall be in an amount to  
38 constitute an actual and substantial economic deterrent to the violation for  
39 which the civil penalty is assessed.

40 (c) No civil penalty shall be imposed under this section except upon  
41 the written order of the secretary after notification and hearing, if a hearing  
42 is requested, in accordance with the provisions of the Kansas  
43 administrative procedure act.

1 (d) Any business entity aggrieved by an order of the secretary made  
2 under this section may appeal such order to the district court in the manner  
3 provided by the Kansas judicial review act. An appeal to the district court  
4 or to an appellate court shall not stay the payment of the civil penalty. If  
5 the court sustains the appeal, the secretary shall refund forthwith the  
6 payment of any civil penalty to the business entity with interest at the rate  
7 established by K.S.A. 16-204, and amendments thereto, from the date of  
8 payment of the penalty.

9 (e) Any penalty recovered pursuant to the provisions of this section  
10 shall be remitted to the state treasurer, deposited in the state treasury and  
11 credited to the ~~state general air fee~~ **state general** fund.

12 Sec. 9. K.S.A. 65-5301, 65-5303, 65-5304, 65-5307, 65-5308, 65-  
13 5309 and 65-5311 and K.S.A. 2015 Supp. 65-5310 and 65-5314 are hereby  
14 repealed.

15 Sec. 10. This act shall take effect and be in force from and after its  
16 publication in the statute book.