

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Asbestos Occupation
Workers

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Asbestos Occupation Workers

- II. Name of Occupational Board Responsible for Enforcement
 - A) Nebraska Department of Health and Human Services

- III. Public Purpose and Assumptions Underlying License Creation
 - A) Any person working on an asbestos project or in an asbestos occupation in Nebraska must obtain a license. An asbestos occupation means an inspector, management planner, project designer, project monitor, supervisor or worker. An asbestos project includes the following activities which may only be performed by licensed individuals: determining whether asbestos-containing material exists, assessing the condition of asbestos-containing material, preparing plans and specifications for an asbestos project, performing the asbestos project, and performing final clearance air sampling or soil sampling at the end of an asbestos project.

The license was created to protect the public, the licensee, and the environment from exposure to a known carcinogen.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 632 licensed Asbestos Occupation Workers in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There is no advisory board which oversees the Asbestos Occupation Worker occupations. The Asbestos Occupation Worker occupations are overseen by the Department of Health and Human Services.

- II. Who Appoints Members of the Board / Is Legislative Approval Required?
 - A) Not Applicable

- III. Term Length
 - A) Not Applicable

- IV. Qualifications for Membership of the Board
 - A) Not Applicable

- V. The Number of Meetings Required Per Year / Meetings Actually Held
 - A) Not Applicable

- VI. Annual Budget Information for the Previous Five Years
 - A) The cost of oversight for Asbestos Occupation Workers is included in various cash funds, including the Health and Human Services Cash Fund and Professional and Occupational Credentialing Cash Fund.
 - B) For FY 2014-2015: \$132,052
 - C) For FY 2015-2016: \$107,094
 - D) For FY 2016-2017: \$155,531
 - E) For FY 2017-2018: \$237,951
 - F) For FY 2018-2019: \$220,530

- VII. Statement from Occupational Board on Effectiveness of Regulations
 - A) The Department of Health and Human Services stated “the regulations have been approved by the [Federal] Environmental Protection Agency. Training providers approve to present these Nebraska disciplines follow a model accreditation program and issue a certificate that is accepted nationwide.”

AUTHORIZATION

- I. Statutory Authorization
 - A) Statutory authorization for the Asbestos Occupation Worker occupations may be found in the Nebraska Revised Statutes, sections [71-6301](#) to [71-6317](#), which may be cited as the Asbestos Control Act. For text of the Nebraska statutes relating to the Asbestos Worker occupations, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the licensure of Asbestos Occupation Workers may be found in the Nebraska Administrative Code [Title 178, Chapter 22](#).
- B) There are federal laws and federal rules and regulations which also relate to Asbestos Occupation Workers and asbestos removal. The United States Environmental Protection Agency has a website which links to those laws, rules, and regulations. The website may be found [here](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 672 Asbestos Occupation Worker licenses issued in the past five years, including 139 Asbestos Inspector licenses; 17 Asbestos Management Planner licenses; 4 Asbestos Project Designer licenses; 242 Asbestos Supervisor licenses; 266 Asbestos Worker licenses; 2 Limited Project Designer licenses; and 2 Project Monitor licenses.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There were no Asbestos Occupation Worker licenses denied in the past five years.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were seven Asbestos Occupation Worker licenses revoked in the past five years, including three Asbestos Worker licenses; two Asbestos Supervisor licenses; one Asbestos Project Designer license; and one Asbestos Inspector license.
- B) The licenses were revoked for unprofessional conduct.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There were 22 Asbestos Occupation Worker licenses penalized in the past five years.
- B) The penalties imposed were civil penalties for lack of using an appropriate respirator.

V. Comparison of How Other States Regulate This Occupation

- A) The majority of states have similar regulations that have been approved by the Environmental Protection Agency.

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) If the Asbestos Occupation Worker occupations were no longer licensed, certified, or regulated, there would be no oversight to provide protection to the public or the industry. Training providers would lose their accreditation. Those removing asbestos without the proper training could release carcinogenic material into the environment, and could breathe it in themselves, which would be hazardous to the public health, safety and welfare.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Asbestos Occupation Worker occupation by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO ASBESTOS CONTROL ACT

71-6301. Terms, defined. For purposes of the Asbestos Control Act, unless the context otherwise requires:

- (1) Asbestos means asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite;
- (2) Asbestos encapsulation project means activities which include the coating of asbestos-containing surface material with a bridging or penetrating type of sealing material for the intended purpose of preventing the continued release of asbestos fibers from the material into the air. Such project does not include the repainting of a previously painted nonfriable asbestos-containing surface which is not damaged primarily for improving the appearance of such surface;
- (3) Asbestos enclosure project means activities which physically isolate friable asbestos and which control and contain fibers released from asbestos-containing material by constructing a permanent airtight barrier between the asbestos-containing material and the occupied building space;
- (4) Asbestos occupation means an inspector, management planner, project designer, project monitor, supervisor, or worker;
- (5) Asbestos project means an asbestos enclosure project, an asbestos encapsulation project, an asbestos removal project, an asbestos-related demolition project, or an asbestos-related dismantling project but does not include (a) any activities which affect three square feet or less or three linear feet or less of asbestos-containing material on or in a structure or equipment or any appurtenances thereto or (b) any activities physically performed by a homeowner, a member of the homeowner's family, or an unpaid volunteer on or in the homeowner's residential property of four units or less;
- (6) Asbestos removal project means activities which include the physical removal of friable asbestos-containing material from the surface of a structure or from equipment which is intended to remain in place after the removal. Such project also includes the physical removal of asbestos from a structure or equipment after such structure or equipment has been removed as part of an asbestos-related dismantling project;
- (7) Asbestos-related demolition project means activities which include the razing of all or a portion of a structure which contains friable asbestos-containing materials or other asbestos-containing materials which may become friable when such materials are cut, crushed, ground, abraded, or pulverized;
- (8) Asbestos-related dismantling project means activities which include the disassembly, handling, and moving of the components of any structure or equipment which has been coated with asbestos-containing material without first removing such material from the structure or from the equipment;
- (9) Business entity means a partnership, limited liability company, firm, association, corporation, sole proprietorship, public entity, or other public or private business concern involved in an asbestos project except an entity solely involved as a management planner or project designer;
- (10) Demolition means the wrecking, razing, or removal of any structure or load-supporting structural item of any structure, including any related material handling operations, and includes the intentional burning of any structure;
- (11) Department means the Department of Health and Human Services;
- (12) Enclosure means the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air;
- (13) Friable asbestos means asbestos in a form which can be crumbled, pulverized, or reduced to powder by hand pressure;
- (14) Inspector means an individual who is licensed by the department to identify and assess the condition of asbestos-containing material;
- (15) Instructor means an individual who is approved by the department to teach an asbestos-related training course;
- (16) License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization;
- (17) Management planner means an individual who is licensed by the department to assess the hazard of materials containing asbestos, to determine the appropriate response actions, and to write management plans;
- (18) Project designer means an individual who is licensed by the department to formulate plans and write specifications for conducting asbestos projects;
- (19) Project monitor means an individual who is licensed by the department to observe abatement activities performed by contractors, to represent the building owner to ensure work is completed according to specifications and in compliance with statutes and regulations, and to perform air monitoring to determine final clearance;
- (20) Project review means review of a licensed business entity's proposed asbestos project;
- (21) Renovation means the altering of a structure, one or more structural items, or one or more equipment items in any way, including any asbestos project performed on a structure, structural item, or equipment item;
- (22) Supervisor means an individual who is licensed by the department to supervise and direct an asbestos project in accordance with the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to such act; and
- (23) Worker means an individual who is licensed by the department to clean, handle, repair, remove, encapsulate, haul, dispose of, or otherwise work with asbestos material in a nonsupervisory capacity.

Source: Laws 1986, LB 1051, § 1; Laws 1988, LB 1073, § 1; Laws 1990, LB 923, § 1; Laws 1993, LB 121, § 454; Laws 1995, LB 406, § 73; Laws 1996, LB 1044, § 761; Laws 2007, LB296, § 654; Laws 2007, LB463, § 1243. The

changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6302. Asbestos project; business entity; license required; exceptions; training course. Except as otherwise provided in this section or section 71-6309, a business entity shall not engage in an asbestos project unless the business entity holds a license for that purpose. A business entity which (1) only performs asbestos projects which are less than two hundred sixty linear feet or which are less than one hundred sixty square feet and linear feet in any combination or (2) uses its own employees for an asbestos project for the purpose of renovating, maintaining, or repairing its own facilities shall not be required to hold a license. Business entities not required to hold a license shall provide a training course to inform the employees of the health and safety aspects of the asbestos project, including the applicable state standards. The training course shall meet the standards for such course as prescribed in section 71-6310.01 and the rules and regulations adopted and promulgated pursuant to such section. The training course shall be available for review and approval upon inspection by the department.

Source: Laws 1986, LB 1051, § 2; Laws 1988, LB 1073, § 2; Laws 1990, LB 923, § 2; Laws 2002, LB 1021, § 98. Operative date January 1, 2003.

71-6303. Administration of act; rules and regulations; fees; department; powers and duties. (1) The department shall administer the Asbestos Control Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out the act. The department shall adopt state standards governing asbestos projects and may adopt or incorporate part or all of any federal standards in the state standards so long as state standards are no less stringent than federal standards.

(3)(a) The department shall prescribe fees based upon the following schedule:

(i) For a business entity license or license renewal, not less than two thousand dollars or more than five thousand dollars;

(ii) For waiver on an emergency basis of a business entity license, not less than two thousand dollars or more than five thousand dollars;

(iii) For waiver of a license for a business entity not primarily engaged in asbestos projects, not less than two thousand dollars or more than five thousand dollars;

(iv) For approval of an initial training course, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(v) For approval of a review course or a four-hour course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(vi) For an onsite inspection of an asbestos project other than an initial inspection, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual asbestos project is in progress; and

(vii) For a project review of each asbestos project of a licensed business entity which is equal to or greater than two hundred sixty linear feet or any combination which is equal to or greater than one hundred sixty square feet and linear feet, including any initial onsite inspection, not less than two hundred dollars or more than five hundred dollars.

(b) Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of three hundred dollars for a license and one hundred dollars for approval of a training course shall be retained by the department.

(c) All fees shall be based on the costs of administering the Asbestos Control Act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an asbestos project, the department shall conduct an onsite inspection of each licensed business entity's procedures for performing asbestos projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for asbestos projects. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of asbestos occupations and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act.

Source: Laws 1986, LB 1051, § 3; Laws 1988, LB 1073, § 3; Laws 1991, LB 703, § 52; Laws 1995, LB 406, § 74; Laws 1996, LB 1044, § 762; Laws 2002, LB 1021, § 99; Laws 2003, LB 242, § 144; Laws 2007, LB 296, § 655; Laws 2007, LB 463, § 1244. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6304. Business entity; license; qualifications. To qualify for a license, a business entity shall:

- (1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in asbestos projects;
- (2) Ensure that each employee or agent of the business entity who will come into contact with asbestos or who will be present on an asbestos project is licensed as required by the Asbestos Control Act;
- (3) Demonstrate to the satisfaction of the department that the business entity is capable of complying with all applicable requirements, procedures, and standards pertaining to the asbestos project;
- (4) Have access to at least one approved asbestos disposal site for deposit of all asbestos waste that the business entity will generate during the term of the license; and
- (5) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of asbestos occupations and the general public.

Source: Laws 1986, LB 1051, § 4; Laws 1988, LB 1073, § 4; Laws 2007, LB463, § 1245. Operative date December 1, 2008.

71-6305. License; application; contents. (1) To apply for a license, a business entity shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

- (2) The application shall include, but not be limited to:
 - (a) The name, address, and nature of the business entity;
 - (b) A statement that all individuals who will engage in any asbestos project for the business entity will be licensed as required by the Asbestos Control Act;
 - (c) A description of the protective clothing and respirators that the business entity will use;
 - (d) The name and address of each asbestos disposal site that the business entity will use;
 - (e) A description of the site decontamination procedures that the business entity will use;
 - (f) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the business entity will use;
 - (g) A description of the procedures that the business entity will use for handling waste containing asbestos;
 - (h) A description of the air monitoring procedures that the business entity will use;
 - (i) A description of the procedures that the business entity will use in cleaning up the asbestos project;
 - (j) The signature of the chief executive officer of the business entity or his or her designee; and
 - (k) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of the general public and all classes of asbestos occupations.

Source: Laws 1986, LB 1051, § 5; Laws 1988, LB 1073, § 5; Laws 2007, LB463, § 1246. Operative date December 1, 2008.

71-6306. License; term; renewal. (1) A license of a business entity shall expire on the first anniversary of its effective date unless it is renewed for one year as provided in this section.

(2) At least thirty days before the license expires, the department shall send to the licensee at his or her last-known address a renewal notice which states:

- (a) The date on which the current license expires;
 - (b) The date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and
 - (c) The amount of the renewal fee.
- (3) Before the license expires, the licensee may renew it for an additional one-year period if the licensee:
- (a) Is otherwise entitled to be licensed;
 - (b) Submits a renewal application to the department in the form required by the department; and
 - (c) Pays the renewal fee prescribed by the department.

Source: Laws 1986, LB 1051, § 6; Laws 1988, LB 1073, § 6; Laws 2007, LB463, § 1247. Operative date December 1, 2008.

71-6307. Licensee or business entity; records required; contents. The licensee or a business entity, whether excepted from the requirements for licensure by section 71-6302 or whether operating under a waiver, shall keep a record of each asbestos project and shall make the record available to the department at any reasonable time. All such records shall be kept for at least thirty years. Each record shall include:

- (1) The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project;
- (2) The location and description of the project and the amount of asbestos material that was removed;
- (3) The starting and completion dates of each instance of asbestos encapsulation, demolition, dismantling, maintenance, or removal;

- (4) A summary of the procedures that were used to comply with all applicable standards;
- (5) The name and address of each asbestos disposal site where the waste containing asbestos was deposited; and
- (6) Such other information as the department may deem necessary for the efficient administration and enforcement of the Asbestos Control Act and for the protection of the health, safety, and welfare of all classes of asbestos occupations and the general public.

Source: Laws 1986, LB 1051, § 7; Laws 1988, LB 1073, § 7; Laws 2007, LB463, § 1248. Operative date December 1, 2008.

71-6308. Repealed. Laws 1988, LB 1073, §20.

71-6309. Waiver of requirements; when authorized. (1) In the event of an emergency in which, in the opinion of the department, there is created a situation of present and severe danger which poses an immediate threat to the public health, safety, and welfare, the department may waive the requirement for licensure of an individual or business entity upon application and payment of the fee prescribed by the department. Such emergency waiver shall be limited to the time required to take protective measures.

(2) The department may, on a case-by-case basis, approve an alternative to a specific worker protection requirement for an asbestos project if the business entity submits a written description of the alternative procedure and demonstrates to the department's satisfaction that the proposed alternative procedure provides equivalent protection to the health, safety, and welfare of all classes of asbestos occupations and the general public.

(3) If the business entity is not primarily engaged in asbestos projects, the department may waive the requirement for a license upon application and payment of the fee prescribed by the department if worker protection requirements are met or an alternative procedure is approved pursuant to subsection (2) of this section and the health, safety, and welfare of the general public is protected.

Source: Laws 1986, LB 1051, § 9; Laws 1988, LB 1073, § 8; Laws 2007, LB296, § 656; Laws 2007, LB463, § 1249. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6309.01. Repealed. Laws 1995, LB 406, §96.

71-6310. Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications. (1) An individual shall not be eligible to work on an asbestos project unless the individual holds the appropriate class of license issued by the department. Application for a license shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the act as provided in section 71-6314.

(2) The department shall issue the following classes of licenses: Worker; supervisor; inspector; management planner; project monitor; and project designer. To qualify for a license of a particular class, an individual shall have (a) successfully completed a training course approved or administered by the department, (b) been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator, and (c) passed an examination approved or administered by the department with at least the minimum score prescribed by the department. An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

(3) As an alternative to the qualifications in subdivision (2)(a) of this section, an individual shall have completed a fully accredited United States Environmental Protection Agency Asbestos Hazard Emergency Response Act of 1986 training program or the individual shall be currently accredited by a United States Environmental Protection Agency fully accredited state asbestos model accreditation plan adopted pursuant to 40 C.F.R. 763. In addition to the alternative qualifications, the individual shall successfully complete a four-hour course approved by the department on Nebraska law, rules, and regulations and shall pass an examination thereon which shall be approved and may be administered by the department.

(4) The department may issue a limited license to a project designer or management planner who does not intend to enter any management plan, project design, or asbestos project worksite. An applicant for a limited license under this subsection shall not be required to comply with the requirements of subdivision (2)(b) of this section. A holder of a limited license shall not enter any management plan, project design, or asbestos project worksite. The limitation shall be endorsed upon the license. Violation of the limitation shall be grounds for disciplinary action against the license pursuant to section 71-6314. An individual holding a limited certificate on December 1, 2008, shall be deemed to be holding a limited license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such limited certificate as a limited license in accordance with such acts until the limited certificate would have expired under its terms.

(5) The department shall approve instructors of training courses. To qualify for approval, an individual shall have (a)

graduated from high school or obtained a general educational development certificate or equivalent document as determined by the department, (b) successfully completed an approved four-hour course on Nebraska law, rules, and regulations, and (c) at least one year of actual work experience in the asbestos industry.

Source: Laws 1986, LB 1051, § 10; Laws 1988, LB 352, § 144; Laws 1988, LB 1073, § 9; Laws 1995, LB 406, § 75; Laws 1997, LB 752, § 195; Laws 2007, LB463, § 1250. Operative date December 1, 2008.

71-6310.01. Asbestos occupations; training courses; approval. (1) The department shall approve training courses for each classification of asbestos occupation. Applicants for course approval shall meet the requirements for each course and shall submit an application on forms provided by the department together with the prescribed fee. Approved course providers shall use only approved instructors to teach each training course. The department shall conduct onsite inspections of the training courses offered by course providers.

(2) In order to be approved by the department, an initial inspector training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, at least four hours of hands-on training, individual respirator-fit testing, and a written examination; background information on asbestos and potential health effects related to exposure to asbestos; functions, qualifications, and the role of inspectors; legal liabilities and defenses; understanding building systems; public, employee, and occupant relations; preinspection planning and review of previous inspection records and inspecting for friable and nonfriable asbestos-containing material and assessing the condition of asbestos-containing material; bulk sampling and documentation of asbestos; inspector respiratory protection and personal protective equipment; and record keeping and inspection report writing, regulatory review, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(3) In order to be approved by the department, an initial management planner training course shall meet the following requirements: A three-day inspector training course as outlined in subsection (2) of this section and a two-day management planner training course including lectures, demonstrations, and a written examination; course overview; evaluation and interpretation of survey results, hazard assessment, and legal implications; evaluation and selection of control options; role of other professionals; developing an operations and maintenance plan; and regulatory review, record keeping for the management planner, assembling and submitting the management plan, financing abatement actions, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(4) In order to be approved by the department, an initial project designer training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, and a written examination; background information on asbestos and potential health effects related to asbestos exposure; overview of abatement construction projects; safety system design specifications, employee personal protective equipment, and additional safety hazards; fiber aerodynamics and control, designing abatement solutions, final clearance process, and budgeting and cost estimation; writing abatement specifications and preparing abatement drawings; contract preparation and administration and legal liabilities and defenses; replacement of asbestos with asbestos-free substitutes; role of other consultants; occupied buildings; and relevant federal, state, and local regulatory requirements and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(5) In order to be approved by the department, an initial project monitor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least six hours of hands-on training, and a written examination; roles and responsibilities of the project monitor; characteristics of asbestos and asbestos-containing materials; federal and state asbestos regulation overview; understanding building construction and building systems; asbestos abatement contracts, specifications, and drawings; response actions and abatement practices; asbestos abatement equipment; personal protective equipment; air monitoring strategies; safety and health issues other than asbestos; conducting visual inspections; final clearance process; legal responsibilities and liabilities of project monitors; record keeping and report writing; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(6) In order to be approved by the department, an initial supervisor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; the physical characteristics of asbestos and asbestos-containing materials and potential health effects related to asbestos exposure; employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements; respiratory protection programs, medical surveillance programs, and insurance and liability issues; record keeping for asbestos abatement projects and supervisory techniques for asbestos abatement activity; contract specifications; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(7) In order to be approved by the department, an initial worker training course shall meet the following requirements: A four-day training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; physical characteristics of asbestos, potential health effects related to asbestos exposure, employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements, procedures, and standards; establishment of respiratory protection programs; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(8) In order to be approved by the department, a course on Nebraska law, rules, and regulations required by subsection (3) of section 71-6310 shall consist of at least four hours of training on Nebraska law, rules, and regulations relating to asbestos. The written examination shall be approved and may be administered by the department. The passing score shall be determined by the department.

Source: Laws 1988, LB 1073, § 14; Laws 1995, LB 406, § 76; Laws 2007, LB463, § 1251. Operative date December 1, 2008.

71-6310.02. Asbestos occupations; license; renewal; continuing competency requirements. (1) Any individual licensed in any of the asbestos occupations prescribed in section 71-6310, as a condition for license renewal, shall complete continuing competency activities as required by the department and shall be examined and approved by a physician as prescribed for initial applicants in section 71-6310. The licensee shall submit evidence as required by the department of satisfaction of the requirements of this section.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

Source: Laws 1988, LB 1073, § 13; Laws 2002, LB 1021, § 100; Laws 2007, LB463, § 1252. Operative date December 1, 2008.

71-6310.03. Project designer or project monitor; duties. If a project designer or a project monitor is selected by the structure's owner or operator for an asbestos project, the project designer and project monitor shall be responsible for the following:

(1) Project designers shall prepare plans and specifications for business entities conducting asbestos projects. The plans and specifications shall be consistent with the criteria, requirements, and best interests of the structure's owner or operator and the requirements of the Asbestos Control Act. The project designer shall represent the owner or operator and ensure that these objectives are achieved by the business entity conducting the project throughout the project;

(2) Prior to preparing plans and specifications for any renovation project, a project designer shall ensure that any equipment items and any structural items of a structure affected by the renovation were inspected and assessed by a licensed inspector. Prior to preparing plans and specifications for any demolition, a project designer shall ensure that the entire structure was inspected and assessed by a licensed inspector. No dismantling or salvage operation shall begin before the inspection and assessment is completed;

(3) If a project designer or project monitor is selected by the owner or operator of the structure on or in which the asbestos project is conducted, he or she shall be independent of the business entity selected to perform the asbestos project. A private or public business entity which uses its own trained and licensed employees to perform asbestos projects may also use its own employees who are trained and licensed as project designers or project monitors to design and monitor projects conducted on or in its own structures; and

(4) If a project designer or project monitor is selected by the structure's owner or operator for an asbestos project, the project designer or project monitor shall oversee the activities of a business entity conducting an asbestos project to ensure that the requirements of the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to the act are met. Prior to allowing an asbestos project site to be returned to normal occupancy or function, a project designer or project monitor shall ensure that all waste, debris, and residue have been removed from the site in compliance with the act and the rules and regulations adopted and promulgated pursuant to the act.

Source: Laws 1995, LB 406, § 78; Laws 2007, LB463, § 1253. Operative date December 1, 2008.

71-6310.04. Fees. The department shall establish and collect fees for issuance and renewal of licenses as provided in sections 38-151 to 38-157 for individuals licensed under section 71-6310.

Source: Laws 2007, LB463, § 1254; Operative date December 1, 2008.

71-6311. Governmental body; contract with nonlicensee prohibited. No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any asbestos project which is two hundred sixty or more linear feet or one hundred sixty or more square feet and linear feet in any combination from a business entity which

does not hold a license from the department at the time the bid is submitted.

Source: Laws 1986, LB 1051, §11; Laws 1995, LB 406, §77.

71-6312. Violations; penalties. (1) An individual or business entity which engages in an asbestos project without a valid license, except as otherwise provided in the Asbestos Control Act, shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in an asbestos occupation without a valid license, except as otherwise provided in the act, shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any business entity which knowingly engages in an asbestos project but which uses employees who do not hold a license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) The civil penalties prescribed in subsections (1), (2), and (3) of this section shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(5) An individual or business entity which has been assessed a civil penalty under this section and subsequently engages in an asbestos project or an asbestos occupation without a valid license or using employees who do not hold a license, except as otherwise provided in the Asbestos Control Act:

(a) For a first offense, shall be guilty of a Class I misdemeanor; and

(b) For a second or subsequent offense, shall be guilty of a Class IV felony.

Source: Laws 1986, LB 1051, § 12; Laws 1988, LB 1073, § 10; Laws 1990, LB 923, § 3; Laws 2007, LB463, § 1255. Operative date December 1, 2008.

71-6313. Violations; action to enjoin. The Attorney General may institute an action in the name of the state for an injunction or other process against any business entity or individual to restrain or prevent any violation of the Asbestos Control Act or of any rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 1051, § 13; Laws 1988, LB 1073, § 11; Laws 2007, LB463, § 1256. Operative date December 1, 2008.

71-6314. Violations; citation; disciplinary actions; procedures; civil penalty; lien; enforcement. (1) When the department determines that a business entity that holds a license has violated the Asbestos Control Act or any rule and regulation adopted and promulgated pursuant to the act, the department may, rather than initially instituting disciplinary proceedings pursuant to subsection (2) of this section, within seven working days after a finding of a violation is made, issue a citation to the licensee. The citation shall be served upon the licensee personally or by certified mail. Each citation shall specifically describe the nature of the violation and identify the statute, rule, or regulation violated. When a citation is served upon the licensee, the licensee shall have seven working days to remedy the violation. If such violation has not been remedied at the end of such time, the department may take such other action as is deemed appropriate pursuant to the Asbestos Control Act and the Administrative Procedure Act.

(2) Independent of the provisions of subsection (1) of this section, a license or approval issued pursuant to the Asbestos Control Act may be denied, refused renewal, suspended, or revoked when the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license or approval, fails at any time to meet the qualifications for a license or approval, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for asbestos projects, or employs or permits an unlicensed individual to work in an asbestos occupation. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Asbestos Control Act or the rules and regulations adopted and promulgated under the acts.

(3) In addition to the disciplinary actions provided for in subsection (2) of this section, the department may assess a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars for each offense committed by any business entity licensed under the Asbestos Control Act or not less than one hundred dollars nor more than five thousand dollars for each offense committed by an individual licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(4) Whenever the department determines to deny, refuse to renew, suspend, or revoke a license or approval or assess a civil penalty, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a

hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(5) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under such act.

(6) Any civil penalty assessed and unpaid under the Asbestos Control Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 1051, § 14; Laws 1988, LB 352, § 145; Laws 1988, LB 1073, § 12; Laws 1995, LB 406, § 79; Laws 2007, LB463, § 1257. Operative date December 1, 2008.

71-6315. Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated. (1) All rules and regulations adopted prior to December 1, 2008, under the Asbestos Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Asbestos Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Asbestos Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1258; Operative date December 1, 2008.

71-6316. Act; districts exempt. The Asbestos Control Act shall not apply to a district as defined in section 70-601 or a district subject to sections 14-2101 to 14-2157.

Source: Laws 1988, LB 1073, §17; Laws 1992, LB 746, §74.

71-6317. Act, how cited. Sections 71-6301 to 71-6317 shall be known and may be cited as the Asbestos Control Act.

Source: Laws 1988, LB 1073, § 18; Laws 1995, LB 406, § 80; Laws 2007, LB463, § 1259. Operative date December 1, 2008.