

S3712 MAZIARZ Same as A 7702 John

MAZIARZ

Amd SS901, 903 & 909, Lab L

Establishes sanctions against asbestos contractors and substantially owned-affiliated entities of such contractors, who violate certain licensing and certification requirements for asbestos handling; defines relevant terms.

Department of Labor

STATE OF NEW YORK

3712

2007-2008 Regular Sessions

IN SENATE

March 14, 2007

Introduced by Sen. MAZIARZ -- (at request of the Department of Labor) --
read twice and ordered printed, and when printed to be committed to
the Committee on Labor

AN ACT to amend the labor law, in relation to regulation of asbestos
projects

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Section 901 of the labor law, as added by chapter 775 of
2 the laws of 1986, subdivisions 5 and 7 as amended, subdivision 12 as
3 added and subdivision 13 as renumbered by chapter 520 of the laws of
4 1989, is amended to read as follows:

5 § 901. Definitions. As used in this article, the following terms have
6 the meanings indicated:

7 1. "Approved asbestos safety program" means a program approved by the
8 commissioner of health providing training in the handling and use of
9 asbestos and asbestos material, education concerning safety and health
10 risks inherent in such handling and use and training in techniques for
11 minimizing exposure of the public to asbestos fibers.

12 2. "Asbestos" means any naturally occurring hydrated mineral silicate
13 separable into commercially usable fibers, including chrysotile (serpen-
14 tine), amosite (cummingtonite-grunerite), crocidolite (riebeckite),
15 tremolite, anthrophyllite and actinolite.

16 3. "Asbestos contract" means an oral or written agreement contained in
17 one or more documents for the performance of work on an asbestos project
18 and includes all labor, goods and services.

19 4. "Asbestos handling certificate" means a certificate issued by the
20 commissioner pursuant to the provisions of this article to a person who
21 has satisfactorily completed an approved asbestos safety program.

22 5. "Asbestos handling license" means a license issued by the commis-
23 sioner pursuant to the provisions of this article to [~~*~~] an asbestos
24 contractor engaged in an asbestos project.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

LBD09880-02-7

S. 3712

2

1 6. "Asbestos material" means any material containing more than one
2 percent by weight of asbestos.

3 7. "Asbestos project" means work undertaken [~~by a contractor~~] which
4 involves the removal, encapsulation, enclosure, repair or disturbance of
5 friable or non-friable asbestos, or any handling of asbestos material
6 that may result in the release of asbestos fiber except for work in an
7 owner-occupied single family dwelling performed by the owner of such
8 dwelling and, for the purpose of compliance with regulations promulgated
9 pursuant to subdivision one of section nine hundred six of this article,
10 except for in-plant operations as defined in subdivision [~~twelve~~] thir-
11 teen of this section. Where all asbestos work on a project is subcon-
12 tracted to [~~a~~] an asbestos contractor with an asbestos handling license,
13 only that part of the work involving asbestos shall be deemed to be an
14 asbestos project.

15 8. "Commissioner" means the commissioner of labor.

16 9. [~~"Contractor"~~] "Asbestos contractor" means the state, any political
17 subdivision of the state, a public authority or any other governmental
18 agency or instrumentality thereof, self-employed person, company, unin-
19 corporated association, firm, partnership or corporation, limited
20 liability corporation or professional limited liability corporation and
21 any owner or operator thereof, which engages in any portion of an asbes-
22 tos project or employs persons engaged in an asbestos project.

23 10. "Department" means the department of labor.

24 11. "Entity" means a partnership, association, joint venture, company,
25 sole proprietorship, corporation, limited liability corporation, profes-
26 sional limited liability corporation or any other form of doing busi-
27 ness.

28 12. "Friable" means [~~that condition of~~] any material that when dry,
29 can be crumbled, pulverized, [~~powdered,~~] crushed or [~~exposed asbestos~~
30 ~~which~~] reduced to powder by hand pressure or is capable of being
31 released into the air by hand pressure.

32 [~~12-~~] 13. "In-plant operations" means work within the premises of an
33 employer other than the state, any political subdivision of the state, a
34 public authority or other governmental agency or instrumentality there-
35 of, in an area to which persons other than employees of that employer
36 directly involved in the work will not have access during the course of
37 the work and which is performed in a manner consistent with federal
38 regulations promulgated under the federal occupational safety and health
39 act pursuant to chapter [~~17~~] 15 of title twenty-nine of the United
40 States code, and is performed in a manner which will not expose the
41 public or employees of that employer not directly involved with the
42 asbestos project to asbestos fibers in excess of background levels or
43 .01 fibers per cubic centimeter, provided that the work involves the
44 encapsulation, enclosure, removal, repair, disturbance or handling of
45 (a) less than one hundred sixty square feet or two hundred sixty linear
46 feet of asbestos or asbestos material and is performed by employees of
47 such employer or (b) [~~built up roofing, roofing shingles, asbestos~~
48 ~~cement or galbestos siding, shingle siding, transite piping or vinyl~~
49 ~~asbestos tile~~] any quantity of non-friable organically bound asbestos
50 material.

51 [~~13-~~] 14. "Non-friable organically bound (NOB) asbestos material"
52 means a wide range of non-friable asbestos materials embedded in flexi-
53 ble-to-rigid asphalt or vinyl matrices, including but not limited to,
54 flooring materials, adhesives, mastics, asphalt shingles, roofing mate-
55 rials and caulks.

S. 3712

3

1 15. "Parent company" means an entity that directly, or indirectly
2 through one or more intermediaries, controls the asbestos contractor.

3 16. "Person" means any natural person.

4 17. "Subsidiary" means an entity that is controlled directly, or indi-
5 rectly through one or more intermediaries, by an asbestos contractor or
6 by the asbestos contractor's parent company.

7 18. "Substantially owned-affiliated entity" means, in relation to any
8 asbestos contractor, any (a) parent company of the asbestos contractor,
9 (b) subsidiary of the asbestos contractor, (c) successor of the asbestos
10 contractor, (d) entity in which the parent company of the asbestos
11 contractor owns more than fifty percent of the voting stock, (e) entity
12 in which one or more of the top five shareholders of the asbestos
13 contractor individually or collectively also owns a controlling share of
14 the voting stock, or (f) entity which exhibits any other indicia of
15 control over the asbestos contractor or over which the asbestos contrac-
16 tor exhibits control, regardless of whether the controlling party or
17 parties have any identifiable or documented ownership interest. Such
18 indicia shall include, but not be limited to, power or responsibility
19 over employment decisions, access to and/or use of the relevant entity's
20 assets or equipment, power or responsibility over contracts of the enti-
21 ty, responsibility for maintenance or submission of certified payroll
22 records, and influence over the business decisions of the relevant enti-
23 ty.

24 19. "Successor" means an entity engaged in work substantially similar
25 to that of the predecessor, where there is substantial continuity of
26 operation with that of the predecessor.

27 § 2. Subdivision 1 of section 903 of the labor law, as amended by
28 chapter 520 of the laws of 1989, is amended to read as follows:

29 1. All applications for asbestos handling licenses or certificates
30 shall be submitted in writing on forms furnished by the commissioner and
31 shall contain such information which the commissioner may require. An
32 application for an asbestos handling license shall contain a [~~verified~~]
33 statement by the asbestos contractor or its duly authorized represen-
34 tative, which shall be subscribed by the asbestos contractor or its duly
35 authorized representative and affirmed as true under penalties of perju-
36 ry, that all persons employed by the asbestos contractor on any asbestos
37 project whose duties involve the removal, encapsulation, enclosure,
38 repair or disturbance of [~~friable~~] asbestos, or any handling of asbestos
39 material that may result in the release of asbestos fiber or the super-
40 vision thereof, shall have valid asbestos handling certificates and that
41 the asbestos contractor will abide by all the rules and regulations
42 promulgated pursuant to this article. The commissioner shall have the
43 authority to deny the issuance or renewal of a license or certificate
44 for good cause shown, including the [~~applicant's~~] serious violation of
45 state, federal or local laws [~~with regard to the applicant's conduct of~~
46 ~~any job involving asbestos or asbestos material~~] by the applicant or by
47 any substantially owned-affiliated entity of the applicant with regard
48 to the conduct of any job involving asbestos or asbestos material, or
49 for any serious violation or violations that resulted in a suspended or
50 revoked license or certificate during the previous five years.

51 § 3. Section 909 of the labor law, as added by chapter 775 of the laws
52 of 1986, subdivision 1 as amended and subdivisions 2, 3 and 4 as renum-
53 bered by chapter 190 of the laws of 1990 and subdivision 2 as amended by
54 chapter 520 of the laws of 1989, is amended to read as follows:

55 § 909. Civil penalties and revocation. 1. a. The commissioner may
56 impose a civil penalty upon [~~a~~] an asbestos contractor of up to [~~one~~]

S. 3712

4

1 two thousand five hundred dollars for the initial violation of section
2 nine hundred two of this article and up to [~~two~~] four thousand [~~five~~
3 hundred] dollars for the second or subsequent violation of such section.
4 Any substantially owned-affiliated entity of such asbestos contractor
5 shall be held jointly and severally liable for the payment of such civil
6 penalty. The commissioner may issue an order directing payment of such
7 civil penalty by the asbestos contractor and substantially owned-affili-
8 ated entity.

9 b. If, after an investigation and a formal hearing, the commissioner
10 finds that [~~*~~] an asbestos contractor has violated any provision of this
11 article, other than section nine hundred two or any rule or regulation
12 promulgated hereunder, the commissioner shall, by an order which shall
13 describe in detail the nature of the violation or violations, assess the
14 asbestos contractor a civil penalty of not more than the greater of
15 twenty-five percent of the monetary value of the contract upon which the
16 violation was found to have occurred or five thousand dollars per
17 violation. Any asbestos contractor who, having previously been assessed
18 a civil penalty under this section, or whose substantially owned-affili-
19 ated entity having previously been assessed a civil penalty under this
20 section, violates any provision of this article or any rule or regu-
21 lation promulgated hereunder, shall be subject to a civil penalty of not
22 more than the greater of fifty percent of the monetary value of the
23 contract upon which the violation was found to have occurred or twenty-
24 five thousand dollars per violation. Each day a violation continues may
25 be considered a separate violation under this section. In assessing the
26 amount of penalty, the commissioner shall give due consideration to the
27 size of the asbestos contractor's business, the good faith of the
28 contractor, the gravity of the violation and the history of previous
29 violations by the asbestos contractor and/or any substantially owned-af-
30 filiated entity of such asbestos contractor. Any substantially owned-af-
31 filiated entity of such asbestos contractor shall be held jointly and
32 severally liable for the payment of such civil penalty. The commissioner
33 may issue an order directing payment of such civil penalty by the asbes-
34 tos contractor and any substantially owned-affiliated entity.

35 2. If, after an investigation and a formal hearing, the commissioner
36 finds that [~~*~~] an asbestos contractor has violated any provision of this
37 article or any rule or regulation promulgated hereunder within three
38 years of the last assessment of a civil penalty against the asbestos
39 contractor or any substantially owned-affiliated entity of the asbestos
40 contractor under this article, or has been found to have committed seri-
41 ous violations of other state, federal or local laws with regard to the
42 [~~contractor's~~] conduct of the asbestos contractor or any substantially
43 owned-affiliated entity of such asbestos contractor at or on any asbes-
44 tos project or that such asbestos contractor or any substantially owned-
45 affiliated entity of such asbestos contractor has otherwise demonstrated
46 a lack of responsibility in the conduct of any job involving asbestos or
47 asbestos material of such seriousness as to warrant the revocation of
48 the asbestos contractor's license, or the license of any substantially
49 owned-affiliated entity of such asbestos contractor, the commissioner
50 may, by an order which describes in detail the nature of the violation
51 or violations, revoke the asbestos contractor's asbestos handling
52 license or the asbestos handling license of any substantially owned-af-
53 filiated entity of such asbestos contractor and neither such asbestos
54 contractor nor any substantially owned-affiliated entity of such asbes-
55 tos contractor shall [~~not~~] be eligible to apply for a new asbestos
56 handling license for a period of up to two years.

S. 3712

5

1 3. If, after an investigation and a formal hearing, the commissioner
2 finds that a person who has been issued an asbestos handling certificate
3 has willfully violated any provision of this article, or any rule or
4 regulation promulgated hereunder, the commissioner may, by order which
5 describes in detail the nature of the violation or violations, suspend
6 or revoke the asbestos handling certificate of such person.

7 4. Any person or asbestos contractor who may be adversely affected by
8 an order issued under this section may challenge the validity or appli-
9 cability of such order by commencing a proceeding pursuant to article
10 seventy-eight of the civil practice law and rules. The commissioner may
11 file with the county clerk of the county where the ~~[employer]~~ person,
12 asbestos contractor, or substantially owned-affiliated entity of such
13 person or contractor resides or has a place of business, the order
14 containing the amount of civil penalty, unless a proceeding for judicial
15 review as provided in this article shall then be pending or the time for
16 initiation of such proceeding has not expired. The filing of such order
17 or decision shall have the full force and effect of a judgment duly
18 docketed in the office of such clerk. The order or decision may be
19 enforced by and in the name of the commissioner in the same manner, and
20 with like effect, as that prescribed by the civil practice law and rules
21 for the enforcement of a money judgment.

22 5. When any person or corporation, or any officer or shareholder who
23 owns or controls at least ten per centum of the outstanding stock of
24 such corporation, has been convicted of a felony offense for conduct
25 directly relating to obtaining or attempting to obtain, an asbestos
26 handling certificate or asbestos handling license or performing or
27 attempting to perform an asbestos contract such person or corporation
28 shall be ineligible to be issued an asbestos handling certificate or
29 asbestos handling license for a period of five years from the date of
30 conviction.

31 6. Nothing in this section shall be construed as affecting any
32 provision of any other law or regulation relating to the issuance of
33 asbestos handling certificates or asbestos handling licenses.

34 § 4. This act shall take effect immediately.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S3712

SPONSOR: MAZIARZ

TITLE OF BILL:

An act to amend the labor law, in relation to regulation of asbestos projects

PURPOSE OF BILL:

The bill amends Article 30 of the Labor Law to allow the Department of Labor to impose sanctions and licensing restrictions on entities substantially related to those who have previously violated asbestos law and regulations, and makes technical changes to make the statute consistent with state and federal regulatory provisions.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends Labor Law § 901 to add definitions of the terms "entity", "parent company", "subsidiary", "substantially-owned affiliated entity" "successor," and "non-friable organically bound asbestos material," and to change existing definitions of "asbestos project," "contract," "friable," and "in plant operations."

Section 2 of the bill amends Labor Law § 903 to grant the Commissioner of Labor discretion to deny the issuance or renewal of asbestos licenses to "substantially owned affiliated entities" of persons or entities who have previously committed serious violations of law with regard to asbestos jobs. It also makes technical changes to conform the statute's language with federal and state asbestos regulations.

Section 3 of the bill amends Labor Law § 909 to increase the amount of civil penalties for asbestos violations from \$1500 to \$2500 for initial violations and from \$2500 to \$4000 for second or subsequent violations. It provides for collection of civil penalties from, license revocation and debarment for, "substantially owned affiliated entities" of asbestos violators.

Section 3 of the bill provides that the legislation shall take effect immediately.

EXISTING LAW:

Article 30 of the Labor Law provides for denial or revocation of licenses issued to asbestos contractors, and the collection of civil penalties from asbestos contractors, for legal violations. However, the law is silent with respect to providing any such sanctions upon successors or other entities related to such violators.

PRIOR LEGISLATIVE HISTORY:

This bill is substantially similar to S6454 from 2004, which passed the Senate and, as A10954, did not move from the Assembly Labor Committee. It also passed the Senate as S5310 in 2005, but did not gain introduction in the Assembly that year. It was again introduced in the Senate in 2006.

STATEMENT IN SUPPORT:

Currently, the Labor Law does not explicitly enable the State to sanction anyone other than the individual or company found to have violated the asbestos laws and regulations. As a result, unscrupulous contractors can avoid the consequences of their actions by either filing for bankruptcy, or ceasing to do business under a particular name and creating another corporate entity. This newly created corporation can then continue to violate asbestos law without facing the consequences of its prior acts.

The bill will resolve this problem by allowing the Department of Labor to impose sanctions on successor and related corporations. To effectuate this purpose, the bill adopts the definition of "substantially related affiliated entity" used in Labor Law § 220-b to insure that companies subject to debarment from public works contracts cannot avoid that sanction by reincorporating or forming a successor. These provisions will strengthen the Department of Labor's ability to punish asbestos violators, and prevent them from repeating their acts.

Finally, the bill adds definitions that make the terminology used in the Labor Law asbestos provisions consistent with state and federal regulations.

BUDGET IMPLICATIONS:

There may be an increase in revenue due to the increased penalties.

EFFECTIVE DATE:

Immediately.
