

An Act

ENROLLED SENATE
BILL NO. 1198

By: Justice of the Senate

and

Jordan of the House

An Act relating to occupational safety; amending 40 O.S. 2011, Sections 141.19, as amended by Section 135, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2015, Section 141.19), 412, 451, 452 and 456, which relate to Department of Labor Revolving Fund, violations, definitions, license requirements and injunctive relief; modifying deposits and use of certain fund; modifying definition; granting authority to the Commissioner of Labor to establish by rule a schedule of administrative penalties and fines for violation of certain occupational standards and controls; creating a revolving fund for the Department of Labor; naming fund the "Department of Labor Administrative Penalty Revolving Fund"; stating purpose of fund; providing for deposits and transfer funding to General Revenue Fund each fiscal year; making administrative fines in addition to criminal fines; directing deposit of certain fees collected; modifying language; removing certain exemption from certification fees; deleting language; providing for codification; and providing an effective date.

SUBJECT: Administrative fines and fees of the Department of Labor

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 2011, Section 141.19, as amended by Section 135, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2015, Section 141.19), is amended to read as follows:

Section 141.19. There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies designated for deposit in such fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended ~~as directed by the Legislature~~ by the Department of Labor for operations and expenses relating to its statutory duties and responsibilities. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 2. AMENDATORY 40 O.S. 2011, Section 412, is amended to read as follows:

Section 412. A. Any person failing to comply with any standard or interfering with, impeding or obstructing in any manner the administration of standards pursuant to the provisions of the Oklahoma Occupational Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor.

B. Any person who violates any of the provisions of the Oklahoma Occupational Health and Safety Standards Act, upon conviction, shall be guilty of a misdemeanor and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

C. The Attorney General, on the request of the Commissioner, shall bring an action against any person violating any of the provisions of the Oklahoma Occupational Health and Safety Standards Act or violating any order or determination of the Commissioner promulgated pursuant to the Oklahoma Occupational Health and Safety Standards Act.

D. The Commissioner of Labor may promulgate rules establishing a schedule of administrative penalties and fines for violations of the Oklahoma Occupational Health and Safety Standards Act which may be in addition to or in lieu of the criminal penalties provided in this section. The promulgation of an administrative fine schedule shall grant the Commissioner authority to impose those administrative fines for any violation of the Oklahoma Occupational

Health and Safety Standards Act. Funds collected as payment from a violator for administrative fines imposed for a violation of the Oklahoma Occupational Health and Safety Standards Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund created in Section 3 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Administrative Penalty Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all administrative fines collected by the Department for violations of the Oklahoma Occupational Health and Safety Standards Act and the Oklahoma Asbestos Control Act, and any rules promulgated thereto. All monies accruing to the credit of the fund are hereby directed to be transferred by the Commissioner of Labor to the State Treasurer for deposit and credit to the General Revenue Fund at the end of each fiscal year.

SECTION 4. AMENDATORY 40 O.S. 2011, Section 451, is amended to read as follows:

Section 451. As used in the Oklahoma Asbestos Control Act:

1. "Friable asbestos material" means any material that contains asbestos of more than one percent (1%) or more that can be crumbled, pulverized or reduced to powder by hand pressure;

2. "Friable asbestos material abatement" means the removal, encapsulation or enclosure of friable asbestos containing material;

3. "Friable asbestos material encapsulation" means the application of a bonding agent called a sealant, which penetrates and hardens the asbestos material or covers the surface of the material with a protective coating, thus preventing fiber release from the asbestos material;

4. "Friable asbestos material removal" means the actual physical removal of any friable asbestos containing material from a

facility, when the asbestos is either attached to or detached from any device or structure;

5. "Contractor" means any public or private entity that engages in friable asbestos containing material abatement in any facility in this state except private residences or apartment houses of less than six family units;

6. "Commissioner" means the Commissioner of Labor.

SECTION 5. AMENDATORY 40 O.S. 2011, Section 452, is amended to read as follows:

Section 452. A. No contractor shall abate any friable material containing asbestos without having first obtained a license to do so from the Commissioner of Labor. The Commissioner shall issue an asbestos abatement license to a qualified contractor upon proper application, as determined by the Commissioner. The Commissioner of Labor may promulgate rules establishing a schedule of administrative fees for the application, licensing, examination, certification of asbestos abatement contractors and workers employed by a contractor for asbestos abatement, as well as a fee to be paid by contractors to the Department of Labor for each separate containment area, glovebag, or miniature containment area of any asbestos abatement project. The fees stated in this section on the effective date of this act shall remain in effect until such rules become effective, at which time the fees stated in this section shall be superseded by rule. The annual fee for such license shall be Five Hundred Dollars (\$500.00). The fee shall be deposited into the Department of Labor Revolving Fund. A nonrefundable initial application fee of One Thousand Dollars (\$1,000.00) shall be charged and deposited into the Department of Labor Revolving Fund. The Commissioner may deny a license to applicants whose past abatement performance for abatement of friable asbestos does not comply with federal and other states' requirements. A minimum waiting period ~~of one hundred twenty (120) days~~ shall be established at the discretion of the Commissioner of Labor and will be required before issuance of a license to permit the Commissioner to perform a work performance investigation of the applicant.

The annual fee for examining and certifying workers employed by a contractor for asbestos abatement shall be Twenty-five Dollars

(\$25.00). The fee shall be deposited in the Department of Labor Revolving Fund. Uncertified workers shall not be used on any asbestos abatement projects.

B. The state and political subdivisions thereof, counties and political subdivisions thereof and municipalities and political subdivisions thereof, and their supervisors and employees, shall not be exempt from any certification fees required by this section when such entities act as a contractor. ~~Any contractor not performing abatement work which falls under the jurisdiction of the Commissioner during the period of the issued license shall be considered a new applicant for purposes of licensing and training.~~

C. A fee of Six Hundred Dollars (\$600.00) shall be paid by contractors to the Department of Labor, ~~to be deposited in the General Revenue Fund,~~ for each separate containment area of any asbestos abatement project. The fee collected shall be deposited by the Department of Labor into the Department of Labor Revolving Fund. There shall be a minimum number of ~~three~~ inspections of each containment area as deemed necessary by the Commissioner of Labor. For projects which are not a part of a definite containment area, or are performed with multiple glovebags or miniature containments, a fee of Two Hundred Dollars (\$200.00), plus Five Dollars (\$5.00) per such glovebag or miniature containment, shall be ~~made~~ paid to the Department of Labor for deposit into the Department of Labor Revolving Fund.

Asbestos abatement projects performed on properties owned by the state or any political subdivision thereof shall not be exempt from this fee.

D. Any asbestos abatement contractor transporting asbestos-containing material shall be required to provide to the Commissioner a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of environmental impairment insurance.

E. No state agency or political subdivision thereof, county or political subdivision thereof, or municipalities or political subdivisions thereof shall solicit or receive any estimate or bid for abatement of asbestos from any person or party who is not a licensed asbestos abatement contractor.

SECTION 6. AMENDATORY 40 O.S. 2011, Section 456, is amended to read as follows:

Section 456. A. In addition to any administrative or civil penalty, any person who violates any of the provisions of the Oklahoma Asbestos Control Act or who violates any rule or order promulgated pursuant thereto shall be guilty of a misdemeanor and may be enjoined from continuing such action. Upon conviction thereof, ~~said person~~ the violator shall be punished by imprisonment in the county jail for not more than six (6) months ~~and~~ or by a fine of not less than One Hundred Dollars (\$100.00), or both such fine and imprisonment. Each day's violations shall constitute a separate violation.

B. The Attorney General shall, upon request of the Commissioner, bring an action for injunction against any person violating any provision of the Oklahoma Asbestos Control Act or violating any order or determination of the Commissioner. In any action for injunction, any finding of the Commissioner, after notice, shall be prima facie evidence of the facts found therein.

C. A district attorney, upon request of the Commissioner, shall prosecute any violation of the Oklahoma Asbestos Control Act.

D. The Commissioner of Labor may promulgate rules establishing a schedule of administrative penalties and fines for violations of the Oklahoma Asbestos Control Act which may be in addition to or in lieu of the criminal penalties provided in this section. The promulgation of an administrative fine schedule shall grant the Commissioner authority to impose those administrative fines for any violation of the Oklahoma Asbestos Control Act. Funds collected as payment from a violator for administrative fines imposed for a violation of the Oklahoma Asbestos Control Act shall be deposited to the Department of Labor Administrative Penalty Revolving Fund created in Section 3 of this act.

SECTION 7. This act shall become effective November 1, 2016.

Passed the Senate the 3rd day of March, 2016.

Anthony Sycamore
Presiding Officer of the Senate

Passed the House of Representatives the 11th day of April, 2016.

John R. Dingens
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 12th
day of April, 2016, at 3:35 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 18th
day of April, 2016, at 2:49 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 18th
day of April, 2016, at 3:05 o'clock P M.
By: Chi Benz