

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 650

Short Title: Asbestos Program Penalties.

(Public)

Sponsors: Representatives Gottovi; and Bowman.

Referred to: Environment.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE IMPOSITION OF ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF ASBESTOS HAZARD MANAGEMENT; TO TRANSFER ASBESTOS RULE-MAKING AUTHORITY TO THE COMMISSION FOR HEALTH SERVICES; AND TO CREATE CRIMINAL PENALTIES FOR VIOLATIONS OF THE FEDERAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-22 is amended by adding a new subsection to read:

"(b1) The Secretary may impose an administrative penalty on any person who violates Article 19 of this Chapter or any rule adopted pursuant to Article 19 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars (\$10,000) for each day the violation continues. In determining the amount of the penalty, the Secretary shall consider the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money the violator saved by noncompliance.
- (6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or any rule adopted pursuant to Article 19 of this Chapter.

1 (7) The cost to the State of the enforcement procedures."

2 Sec. 2. G.S. 130A-451 reads as rewritten:

3 **"§ 130A-451. Commission to adopt rules.**

4 For the protection of the public health, the Commission shall adopt rules to
5 implement this ~~Article and AHERA.~~ Article, AHERA, and those parts of the emission
6 standards for hazardous air pollutants under section 112 of the Clean Air Act of 1990, as
7 amended, 42 U.S.C. § 7412 (1992), that pertain to demolitions and renovations."

8 Sec. 3. G.S. 143-215.106 reads as rewritten:

9 **"§ 143-215.106. Administration of air quality program.**

10 The Department shall administer the air quality program of the ~~State.~~ State, except
11 for those parts of the emission standards for hazardous air pollutants under section 112
12 of the Clean Air Act of 1990, as amended, 42 U.S.C. § 7412 (1992), that pertain to
13 demolitions and renovations."

14 Sec. 4. G.S. 130A-26.1 reads as rewritten:

15 **"§ 130A-26.1. Criminal violation of Article 9.**

16 (a) The definition of 'person' set out in G.S. 130A-290 shall apply to this section.
17 In addition, for purposes of this section, the term 'person' shall also include any
18 responsible corporate or public officer or employee.

19 (b) No proceeding shall be brought or continued under this section for or on
20 account of a violation by any person who has previously been convicted of a federal
21 violation based upon the same set of facts.

22 (c) In proving the defendant's possession of actual knowledge, circumstantial
23 evidence may be used, including evidence that the defendant took affirmative steps to
24 shield himself from relevant information. Consistent with the principles of common
25 law, the subjective mental state of defendants may be inferred from their conduct.

26 (d) For the purposes of the felony provisions of this section, a person's state of
27 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is
28 the subject of the prosecution is the result of any of the following occurrences or
29 circumstances:

30 (1) A natural disaster or other act of God which could not have been
31 prevented or avoided by the exercise of due care or foresight.

32 (2) An act of third parties other than agents, employees, contractors, or
33 subcontractors of the defendant.

34 (3) An act done in reliance on the written advice or emergency on-site
35 direction of an employee of the Department. In emergencies, oral
36 advice may be relied upon if written confirmation is delivered to the
37 employee as soon as practicable after receiving and relying on the
38 advice.

39 (4) An act causing no significant harm to the environment or risk to the
40 public health, safety, or welfare and done in compliance with other
41 conflicting environmental requirements or other constraints imposed in
42 writing by environmental agencies or officials after written notice is
43 delivered to all relevant agencies that the conflict exists and will cause
44 a violation of the identified standard.

1 (5) Violations of permit limitations causing no significant harm to the
2 environment or risk to the public health, safety, or welfare for which
3 no enforcement action or civil penalty could have been imposed under
4 any written civil enforcement guidelines in use by the Department at
5 the time, including but not limited to, guidelines for the pretreatment
6 permit civil penalties. This subdivision shall not be construed to
7 require the Department to develop or use written civil enforcement
8 guidelines.

9 (6) Occasional, inadvertent, short-term violations of permit limitations
10 causing no significant harm to the environment or risk to the public
11 health, safety, or welfare. If the violation occurs within 30 days of a
12 prior violation or lasts for more than 24 hours, it is not an occasional,
13 inadvertent, short-term violation.

14 (e) All general defenses, affirmative defenses, and bars to prosecution that may
15 apply with respect to other criminal offenses under State criminal offenses may apply to
16 prosecutions brought under this section or other criminal statutes that refer to this
17 section and shall be determined by the courts of this State according to the principles of
18 common law as they may be applied in the light of reason and experience. Concepts of
19 justification and excuse applicable under this section may be developed in the light of
20 reason and experience.

21 (e1) Any person who negligently violates Article 19 of this Chapter, any rule
22 adopted pursuant to G.S. 130A-451, or any term, condition, or requirement of a permit
23 issued pursuant to G.S. 130A-449 shall be guilty of a misdemeanor punishable by a fine
24 not to exceed fifteen thousand dollars (\$15,000) per day of violation, not to exceed a
25 cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days
26 during which a violation continues, or by imprisonment not to exceed six months, or by
27 both.

28 (f) Any person who knowingly and willfully does any of the following shall be
29 guilty of a Class I felony, punishable by a fine not to exceed one hundred thousand
30 dollars (\$100,000) per day of violation, provided that this fine shall not exceed a
31 cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days
32 during which a violation continues, or by imprisonment not to exceed five years, or by
33 both:

34 (1) Transports or causes to be transported any hazardous waste identified
35 or listed under G.S. 130A-294(c) to a facility which does not have a
36 permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921,
37 **et seq.**

38 (2) Transports or causes to be transported such hazardous waste with the
39 intent of delivery to a facility without a permit.

40 (3) Treats, stores, or disposes of such hazardous waste without a permit or
41 interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, **et seq.**, or
42 in knowing violation of any material condition or requirement or such
43 permit or applicable interim status rules.

1 (g) Any person who knowingly and willfully does any of the following shall be
2 guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand
3 dollars (\$100,000) per day of violation, provided that the fine shall not exceed a
4 cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days
5 during which a violation continues, or by imprisonment not to exceed three years, or by
6 both:

- 7 (1) Transports or causes to be transported hazardous waste without a
8 manifest as required under G.S. 130A-294(c).
- 9 (2) Transports hazardous waste without a United States Environmental
10 Protection Agency identification number as required by rules
11 promulgated under G.S. 130A-294(c).
- 12 (3) Omits material information or makes any false material statement or
13 representation in any application, label, manifest, record, report,
14 permit, or other document filed, maintained, or used for purposes of
15 compliance with rules promulgated under G.S. 130A-294(c).
- 16 (4) Generates, stores, treats, transports, disposes of, exports, or otherwise
17 handles any hazardous waste or any used oil burned for energy
18 recovery and who knowingly destroys, alters, conceals, or fails to file
19 any record, application, manifest, report, or other document required to
20 be maintained or filed for purposes of compliance with rules
21 promulgated under G.S. 130A-294(c).
- 22 (5) Violates Article 19 of this Chapter, any rule adopted pursuant to G.S.
23 130A-451, or any term, condition, or requirement of a permit issued
24 pursuant to G.S. 130A-449.

25 (h) For the purposes of subsections (f) and (g) of this section, the phrase
26 'knowingly and willfully' shall mean intentionally and consciously as the courts of this
27 State, according to the principles of common law interpret the phrase in the light of
28 reason and experience.

- 29 (i) (1) Any person who knowingly transports, treats, stores,
30 disposes of, or exports any hazardous waste or used oil regulated
31 under G.S. 130A-294(c) in violation of subsection (f) or (g) of this
32 section, or any person who knowingly violates Article 19 of this
33 Chapter, any rule adopted pursuant to G.S. 130A-451, or any term,
34 condition, or requirement of a permit issued pursuant to G.S. 130A-
35 449 who knows at the time that he thereby places another person in
36 imminent danger of death or personal bodily injury shall be guilty of
37 a Class H felony punishable by imprisonment not to exceed 10 years
38 or by fine not to exceed two hundred fifty thousand dollars
39 (\$250,000) per day of violation, provided that this fine shall not
40 exceed a cumulative total of one million dollars (\$1,000,000) for
41 each period of 30 days during which a violation continues, or by
42 both, in the discretion of the court.
- 43 (2) For the purposes of this subsection, a person's state of mind is knowing
44 with respect to:

- 1 a. His conduct, if he is aware of the nature of his conduct;
2 b. An existing circumstance, if he is aware or believes that the
3 circumstance exists; or
4 c. A result of his conduct, if he is aware or believes that his
5 conduct is substantially certain to cause danger of death or
6 serious bodily injury.
- 7 (3) Under this subsection, in determining whether a defendant who is a
8 natural person knew that his conduct placed another person in
9 imminent danger of death or serious bodily injury:
10 a. The person is responsible only for actual awareness or actual
11 belief that he possessed; and
12 b. Knowledge possessed by a person other than the defendant but
13 not by the defendant himself may not be attributed to the
14 defendant.
- 15 (4) It is an affirmative defense to a prosecution under this subsection that
16 the conduct charged was conduct consented to by the person
17 endangered and that the danger and conduct charged were reasonably
18 foreseeable hazards of an occupation, a business, or a profession; or of
19 medical treatment or medical or scientific experimentation conducted
20 by professionally approved methods and such other person had been
21 made aware of the risks involved prior to giving consent. The
22 defendant may establish an affirmative defense under this subdivision
23 by a preponderance of the evidence.
- 24 (j) Any person convicted of an offense under subsection (f), (g), or (h) of this
25 section following a previous conviction under this section shall be subject to a fine, or
26 imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of
27 imprisonment provided in the subsection under which the second or subsequent
28 conviction occurs.
- 29 (k) Any person who knowingly makes any false statement, representation, or
30 certification in any application, record, report, plan, or other document filed or required
31 to be maintained under Article 19 of this Chapter, or any rule adopted pursuant to
32 Article 19 of this Chapter; or who falsifies, tampers with, or knowingly renders
33 inaccurate any recording or monitoring device or method required to be operated or
34 maintained under Article 19 of this Chapter or any rule adopted pursuant to Article 19
35 of this Chapter, shall be guilty of a misdemeanor punishable by a fine not to exceed ten
36 thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both."
- 37 Sec. 5. This act becomes effective October 1, 1993, and applies to all
38 violations occurring on or after that date.