

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 650
Committee Substitute Favorable 4/22/93

Short Title: Asbestos Program Penalties.

(Public)

Sponsors:

Referred to:

March 29, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE IMPOSITION OF ADMINISTRATIVE PENALTIES
3 FOR VIOLATIONS OF ASBESTOS HAZARD MANAGEMENT PROVISIONS;
4 TO TRANSFER ASBESTOS RULE-MAKING AUTHORITY TO THE
5 COMMISSION FOR HEALTH SERVICES; AND TO CREATE CRIMINAL
6 PENALTIES FOR VIOLATIONS OF THE NATIONAL EMISSION
7 STANDARDS FOR HAZARDOUS AIR POLLUTANTS.

8 The General Assembly of North Carolina enacts:

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

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

- 16 (1) The degree and extent of harm to the natural resources of the State, to
17 the public health, or to private property resulting from the violation.
- 18 (2) The duration and gravity of the violation.
- 19 (3) The effect on air quality.
- 20 (4) The cost of rectifying the damage.
- 21 (5) The amount of money the violator saved by noncompliance.

1 (6) The prior record of the violator in complying or failing to comply with
2 Article 19 of this Chapter or any rule adopted pursuant to Article 19 of
3 this Chapter.

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

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

6 **"§ 130A-451. Commission to adopt rules.**

7 For the protection of the public health, the Commission shall adopt rules to
8 implement this ~~Article and AHERA.~~ Article, AHERA, and those parts of the National
9 Emission Standards for Hazardous Air Pollutants under section 112 of Title V of the
10 1990 amendments to the federal Clean Air Act (42 U.S.C. § 7412 et seq.) that pertain to
11 demolitions and renovations."

12 Sec. 3. G.S. 143-215.107(a)(5) reads as rewritten:

13 "(5) To develop and adopt such emission control standards as in the
14 judgment of the Commission may be necessary to prohibit, abate or
15 control air pollution commensurate with established air quality
16 standards. Such standards may be applied uniformly to the State as a
17 whole or to any area of the State designated by the Commission. The
18 Commission for Health Services shall adopt those rules that implement
19 section 112 of Title V of the federal Clean Air Act that pertain to
20 demolitions and renovations."

21 Sec. 4. Article 1 of Chapter 130A of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 130A-26.2. Criminal violation of Article 19.**

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

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

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

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

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

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

42 (3) An act done in reliance on the written advice or emergency on-site
43 direction of an employee of the Department. In emergencies, oral
44 advice may be relied upon if written confirmation is delivered to the

1 employee as soon as practicable after receiving and relying on the
2 advice.

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

9 (5) Violations of permit limitations causing no significant harm to the
10 environment or risk to the public health, safety, or welfare for which
11 no enforcement action or civil penalty could have been imposed under
12 any written civil enforcement guidelines in use by the Department at
13 the time. This subdivision shall not be construed to require the
14 Department to develop or use written civil enforcement guidelines.

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

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

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

34 (g) Any person who knowingly and willfully violates Article 19 of this Chapter,
35 any rule adopted pursuant to G.S. 130A-451, or any term, condition, or requirement of a
36 permit issued pursuant to G.S. 130A-449 shall be guilty of a Class J felony, punishable
37 by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation,
38 provided that the fine shall not exceed a cumulative total of five hundred thousand
39 dollars (\$500,000) for each period of 30 days during which a violation continues, or by
40 imprisonment not to exceed three years, or by both. For the purposes of this subsection,
41 the phrase 'knowingly and willfully' shall mean intentionally and consciously as the
42 courts of this State, according to the principles of common law, interpret the phrase in
43 the light of reason and experience.

- 1 (h) (1) Any person who knowingly violates Article 19 of this
2 Chapter, any rule adopted pursuant to G.S. 130A-451, or any term,
3 condition, or requirement of a permit issued pursuant to G.S. 130A-
4 449 who knows at the time that he thereby places another person in
5 imminent danger of death or personal bodily injury shall be guilty of
6 a Class H felony punishable by imprisonment not to exceed 10 years
7 or by fine not to exceed two hundred fifty thousand dollars
8 (\$250,000) per day of violation, provided that this fine shall not
9 exceed a cumulative total of one million dollars (\$1,000,000) for
10 each period of 30 days during which a violation continues, or by
11 both, in the discretion of the court.
- 12 (2) For the purposes of this subsection, a person's state of mind is knowing
13 with respect to:
- 14 a. His conduct, if he is aware of the nature of his conduct;
15 b. An existing circumstance, if he is aware or believes that the
16 circumstance exists; or
17 c. A result of his conduct, if he is aware or believes that his
18 conduct is substantially certain to cause danger of death or
19 serious bodily injury.
- 20 (3) Under this subsection, in determining whether a defendant who is a
21 natural person knew that his conduct placed another person in
22 imminent danger of death or serious bodily injury:
- 23 a. The person is responsible only for actual awareness or actual
24 belief that he possessed; and
25 b. Knowledge possessed by a person other than the defendant but
26 not by the defendant himself may not be attributed to the
27 defendant.
- 28 (4) It is an affirmative defense to a prosecution under this subsection that
29 the conduct charged was conduct consented to by the person
30 endangered and that the danger and conduct charged were reasonably
31 foreseeable hazards of an occupation, a business, or a profession; or of
32 medical treatment or medical or scientific experimentation conducted
33 by professionally approved methods and such other person had been
34 made aware of the risks involved prior to giving consent. The
35 defendant may establish an affirmative defense under this subdivision
36 by a preponderance of the evidence.
- 37 (i) Any person convicted of an offense under subsection (g), or (h) of this section
38 following a previous conviction under this section shall be subject to a fine, or
39 imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of
40 imprisonment provided in the subsection under which the second or subsequent
41 conviction occurs.
- 42 (j) Any person who knowingly makes any false statement, representation, or
43 certification in any application, record, report, plan, or other document filed or required
44 to be maintained under Article 19 of this Chapter, or any rule adopted pursuant to

1 Article 19 of this Chapter; or who falsifies, tampers with, or knowingly renders
2 inaccurate any recording or monitoring device or method required to be operated or
3 maintained under Article 19 of this Chapter, or any rule adopted pursuant to Article 19
4 of this Chapter shall be guilty of a misdemeanor punishable by a fine not to exceed ten
5 thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both."

6 Sec. 5. G.S. 130A-29(c) reads as rewritten:

7 "(c) The Commission shall adopt rules:

- 8 (1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
- 9 (2) Establishing standards for approving sewage-treatment devices and
10 holding tanks for marine toilets as provided in G.S. 75A-6(o);
- 11 (3) Establishing specifications for sanitary privies for schools where
12 water-carried sewage facilities are unavailable as provided in G.S.
13 115C-522;
- 14 (4) Establishing requirements for the sanitation of local confinement
15 facilities as provided in Part 2 of Article 10 of Chapter 153A of the
16 General Statutes;
- 17 (5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.
- 18 (6) Requiring proper treatment and disposal of sewage and other waste
19 from chemical and portable toilets; ~~and~~
- 20 (7) Establishing statewide health outcome objectives and delivery
21 ~~standards.~~ standards; and
- 22 (8) Implementing those parts of the National Emission Standards for
23 Hazardous Air Pollutants under section 112 of the 1990 amendments
24 to the federal Clean Air Act (42 U.S.C. § 7412 et seq.) that pertain to
25 demolitions and renovations."

26 Sec. 6. This act becomes effective October 1, 1993, and applies to all
27 violations occurring on or after that date.