

BILL ANALYSIS

Senate Research Center
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H.B. 1927
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Business & Commerce
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Engrossed

DIGEST AND PURPOSE

Current state law requires the abatement of asbestos in public buildings. However, there is no law prohibiting the installation or reinstallation of materials that contain asbestos in public buildings. H.B. 1927 prohibits a person from installing building materials without first obtaining a material safety data sheet or from installing materials that contain more than one percent asbestos in public buildings and provides penalties for violations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 1 (Section 161.402 Health and Safety Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 161, Health and Safety Code, by adding Subchapter Q, as follows:

SUBCHAPTER Q. INSTALLATION OF ASBESTOS

Sec. 161.401. DEFINITIONS. Defines “asbestos,” “contractor,” and “public building.”

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. Requires the Texas Board of Health (board) to adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. Prohibits a person from installing materials or replacement parts in a public building if the person does not obtain a required material safety data sheet or the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Sec. 161.403. INJUNCTION. (a) Authorizes the attorney general or the appropriate district or county attorney, in the name of the state, to bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. Authorizes the action to be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.

(b) Authorizes the district court to grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Sec. 161.404. CIVIL PENALTY. (a) Provides that a contractor who violates this subchapter is subject to a civil penalty not to exceed \$10,000 a day for each violation. Provides that each day of violation constitutes a separate violation for purposes of penalty assessment.

(b) Requires the court, in determining the amount of the civil penalty, to consider certain requirements.

(c) Authorizes the attorney general or the appropriate district or county attorney, in the name of the state, to bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) Authorizes the party bringing the suit to combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.403 or file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) Requires a penalty collected under this section by the attorney general to be deposited in the state treasury to the credit of the general revenue fund. Requires a penalty collected under this section by a district or county attorney to be deposited to the credit of the general fund of the county in which the suit was heard.

Sec. 161.405. RECOVERY OF COSTS. Authorizes the party bringing a suit under Section 161.403 or 161.404 to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Sec. 161.406. ADMINISTRATIVE PENALTY. (a) Authorizes the Texas Department of Health (department) to impose an administrative penalty on a contractor who violates this subchapter.

(b) Prohibits the amount of the penalty from exceeding \$10,000 a day for a violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) Requires the penalty amount to be based on certain factors.

(d) Authorizes the enforcement of the penalty to be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a contractor who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) Authorizes the attorney general may sue to collect the penalty.

(f) Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 161.407. REMEDIES CUMULATIVE. Provides that the civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

SECTION 2. Effective date: September 1, 2001. Makes application of this Act prospective.