

Section 1. Minnesota Statutes 1992, section 253B.23, subdivision 7, is amended to read:

Subd. 7. **APPEAL.** The commissioner or any other aggrieved party may appeal to the court of appeals from any order entered under this chapter as in other civil cases. Any order or judgment under this chapter or related case law may be appealed within 60 days after the order or entry of judgment. A judgment under section 253B.18, subdivision 1, may be appealed within 60 days after the date of the order entered under section 253B.18, subdivision 2.

Upon perfection of the appeal, the return shall be filed forthwith. The court of appeals shall hear the appeal within 60 days after service of the notice of appeal. This appeal shall not suspend the operation of the order appealed from until the appeal is determined, unless otherwise ordered by the court of appeals.

Presented to the governor May 17, 1993

Signed by the governor May 19, 1993, 3:21 p.m.

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#### CHAPTER 303—S.F.No. 502

*An act relating to health; asbestos abatement; modifying provisions relating to asbestos-related work, licenses, and fees; providing penalties; appropriating money; amending Minnesota Statutes 1992, sections 326.71, subdivisions 3, 4, 5, 6, 8, and by adding subdivisions; 326.72; 326.73; 326.74; 326.75; 326.76; 326.78; 326.785; 326.79; 326.80; and 326.81; repealing Minnesota Statutes 1992, sections 326.71, subdivision 7.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 326.71, subdivision 3, is amended to read:

Subd. 3. **ASBESTOS-CONTAINING MATERIAL.** "Asbestos-containing material" means material that contains more than one percent asbestos by weight microscopic visual estimation by area.

Sec. 2. Minnesota Statutes 1992, section 326.71, subdivision 4, is amended to read:

Subd. 4. **ASBESTOS-RELATED WORK.** "Asbestos-related work" means the enclosure, repair, removal, or encapsulation of asbestos-containing material in a quantity that meets or exceeds ~~the United States Environmental Protection Agency's requirement of 260 lineal feet of friable asbestos~~ asbestos-containing material on pipes or, 160 square feet of friable asbestos ~~asbestos-containing material on other facility components, or a total of 35 cubic feet of friable asbestos-containing material on or off all facility components in one facility. In the case of single or multifamily residences, "asbestos-related work" also means the~~

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enclosure, repair, removal, or encapsulation of greater than ten but less than 260 lineal feet of friable asbestos-containing material on pipes or ducts or greater than six but less than 160 square feet of friable asbestos-containing material on other facility components. This provision excludes asbestos-containing vinyl floor tiles and sheeting under 160 square feet. Asbestos-related work includes asbestos abatement area preparation; enclosure, removal, encapsulation, or repair operations; and an air quality monitoring specified in rule to assure that the abatement and adjacent areas are not contaminated with asbestos fibers during the project and after completion.

Sec. 3. Minnesota Statutes 1992, section 326.71, is amended by adding a subdivision to read:

Subd. 4a. **ASBESTOS INSPECTOR**. "Asbestos inspector" means an individual who inspects a site for the presence and condition of asbestos-containing material, or who reinspects a site to assess the condition of previously identified asbestos-containing material or the presence of other asbestos-containing material.

Sec. 4. Minnesota Statutes 1992, section 326.71, is amended by adding a subdivision to read:

Subd. 4b. **ASBESTOS MANAGEMENT ACTIVITY**. "Asbestos management activity" means the performance of periodic inspections to determine the existence and condition of asbestos-containing material, the development of site specific written programs for the maintenance of asbestos-containing material in a condition which prevents the release of asbestos fibers, the development of site specific written programs governing response procedures in the event of an asbestos fiber release episode, and the development of project specifications for asbestos-related work projects.

Sec. 5. Minnesota Statutes 1992, section 326.71, is amended by adding a subdivision to read:

Subd. 4c. **ASBESTOS MANAGEMENT PLANNER**. "Asbestos management planner" means an individual who develops a written site specific asbestos-containing material maintenance plan and a written site specific asbestos fiber release episode response plan addressing asbestos-containing material at the site.

Sec. 6. Minnesota Statutes 1992, section 326.71, is amended by adding a subdivision to read:

Subd. 4d. **ASBESTOS PROJECT DESIGNER**. "Asbestos project designer" means an individual who designs the asbestos-related work project specifications.

Sec. 7. Minnesota Statutes 1992, section 326.71, subdivision 5, is amended to read:

Subd. 5. **COMMISSIONER.** "Commissioner" means the commissioner of health and the commissioner's authorized delegates.

Sec. 8. Minnesota Statutes 1992, section 326.71, subdivision 6, is amended to read:

Subd. 6. **CONTRACTING ENTITY.** "Contracting entity" means a public or private body, board, natural person, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity that contracts with an employer or a person to do asbestos-related work for the benefit of the contracting entity.

Sec. 9. Minnesota Statutes 1992, section 326.71, subdivision 8, is amended to read:

Subd. 8. **EMPLOYER PERSON.** "Employer Person" means an individual, body, board, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity directly or indirectly employing an employee. This term also applies to private employers and to the state, its political subdivisions, and any boards, commissions, schools, institutions, or authorities created or recognized by them.

Sec. 10. Minnesota Statutes 1992, section 326.72, is amended to read:

#### 326.72 ASBESTOS LICENSE.

Subdivision 1. **WHEN LICENSE REQUIRED.** An employer or other A person within the state intending to directly perform or cause to be performed through subcontracting or similar delegation any asbestos-related work either for financial gain or with respect to the employer's or person's own property shall first apply for and obtain a license from the commissioner. The license shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and give the name and address of the employer or person to whom it is issued.

The domiciled owner of a single family residence is not required to hold a license or pay a project permit fee to conduct asbestos-related work in the domiciled residence.

Subd. 2. **DISPLAY OF LICENSE.** Licensees shall post a sign with the words, in letters four or more inches high, "licensed by the state of Minnesota for asbestos work" project permit, obtained from the commissioner after compliance with the provisions of section 326.74 and rules promulgated under section 326.78, in a conspicuous place outside of the asbestos abatement work area. The actual license or a copy certified by the commissioner shall be readily available at the work site for inspection by the commissioner, other public officials charged with the health, safety, and welfare of the state's citizens, and the contracting entity.

Sec. 11. Minnesota Statutes 1992, section 326.73, is amended to read:

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**326.73 EMPLOYEE ASBESTOS CERTIFICATIONS.**

**Subdivision 1. ASBESTOS-RELATED WORK CERTIFICATION.** Before an employee individual performs asbestos-related work, the employee individual shall first obtain a certificate from the commissioner certifying that the employee individual is qualified to perform the work. No certificate shall be issued unless the employee individual has shown evidence of training or experience in the general commercial ~~building~~ construction trades, has taken a course of training in asbestos control and removal, passed an examination in those subjects, and demonstrated to the commissioner the ability to perform asbestos-related work safely in accordance with the current state-of-the-art technology. The commissioner shall specify the course of training necessary. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the employee individual to whom it is issued. The certificate shall be carried by the employee individual and be readily available for inspection by the commissioner, other public officials charged with the health, safety, and welfare of the state's citizens, and the contracting entity.

**Subd. 2. ASBESTOS INSPECTOR CERTIFICATION.** Before an individual performs an asbestos inspection, the individual shall first obtain a certificate from the commissioner. The commissioner shall issue an asbestos inspector certificate to an individual who has shown evidence of completion of training on asbestos inspection specified by the commissioner in rule, passed an examination in that subject, and has shown evidence of experience as required by rule. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued.

**Subd. 3. ASBESTOS MANAGEMENT PLANNER CERTIFICATION.** Before an individual develops an asbestos management plan, the individual shall first obtain a certificate from the commissioner. The commissioner shall issue an asbestos management planner certificate to an individual who has shown evidence of completion of training on asbestos management plan development specified by the commissioner in rule, passed an examination in that subject, and has shown evidence of experience as required by rule. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued.

**Subd. 4. ASBESTOS PROJECT DESIGNER CERTIFICATION.** Before an individual designs an asbestos-related work project, the individual shall first obtain a certificate from the commissioner. The commissioner shall issue an asbestos project designer certificate to an individual who has shown evidence of completion of training on asbestos project design specified by the commissioner in rule, passed an examination in that subject, and has shown evidence of experience as required by rule. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued.

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Sec. 12. Minnesota Statutes 1992, section 326.74, is amended to read:

**326.74 REPORTING ASBESTOS WORK.**

~~An employer,~~ At least five calendar days before ~~engaging in~~ beginning any asbestos-related work, ~~shall give written notice shall be given to the commissioner of the project by the person holding the license issued under section 326.72, subdivision 1.~~ The notice shall contain the following information:

- (1) a brief description of the work to be performed;
- (2) the name of the contracting entity;
- (3) the location and address of the project work site;
- (4) the approximate duration of the project;
- (5) the approximate amount of the asbestos involved in the project;
- (6) the name of any project manager; and
- (7) other information required by the commissioner.

Sec. 13. Minnesota Statutes 1992, section 326.75, is amended to read:

**326.75 FEES.**

Subdivision 1. **LICENSING FEE.** ~~An employer or other~~ A person required to be licensed under section 326.72 shall, before receipt of the license and before causing asbestos-related work to be performed, pay the commissioner an annual license fee of \$100.

Subd. 2. **CERTIFICATION FEE.** ~~Employees~~ An individual required to be certified under section ~~326.72~~ 326.73, subdivision 1, shall, ~~before performing asbestos-related work,~~ pay the commissioner a certification fee of \$50 before the issuance of the certificate. The commissioner may establish by rule fees required before the issuance of asbestos inspector, asbestos management planner, and asbestos project designer certificates required under section 326.73, subdivisions 2, 3, and 4.

Subd. 3. **PERMIT FEE.** One calendar day before beginning asbestos-related work, ~~an employer a person~~ shall pay a project permit fee to the commissioner equal to one percent of the total costs of the asbestos-related work. For asbestos-related work performed in single or multifamily residences, of greater than ten but less than 260 linear feet of asbestos-containing material on pipes, or greater than six but less than 160 square feet of asbestos-containing material on other facility components, a person shall pay a project permit fee of \$35 to the commissioner.

Subd. 3a. **ASBESTOS-RELATED TRAINING COURSE FEE.** The commissioner shall establish by rule a fee to be paid by a training course provider upon application for approval or renewal of approval of each asbestos-related training course required for certification or registration.

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Subd. 4. **DEPOSIT OF FEES.** Fees collected under this section shall be deposited in the general state government special revenue fund.

Sec. 14. Minnesota Statutes 1992, section 326.76, is amended to read:

**326.76 DUTIES OF CONTRACTING ENTITIES.**

A contracting entity intending to have asbestos-related work or asbestos management activity performed for its benefit shall include in the specifications and contracts for the work a requirement that the work be performed by contractors and subcontractors licensed or certified by the commissioner under sections 326.70 to 326.81 and in accordance with rules prescribed by the commissioner related to asbestos abatement and asbestos management activity. No contracting entity shall allow asbestos-related work or asbestos management activity to be performed for its benefit unless it has seen that the employer person has a valid license or certificate. A contracting entity's failure to comply with this section does not relieve ~~an employer a person~~ from any of its responsibilities under sections 326.70 to 326.81.

Sec. 15. Minnesota Statutes 1992, section 326.78, is amended to read:

**326.78 DUTIES OF THE COMMISSIONER.**

Subdivision 1. **RULEMAKING.** The commissioner shall adopt and begin enforcement of rules necessary to implement sections 326.70 to 326.81. The rules adopted shall not be duplicative of rules adopted by the commissioner of the department of labor and industry. The rules shall include rules in the following areas:

- (1) application, enclosure, removal, and encapsulation procedures;
- (2) license and certificate qualification requirements;
- (3) examinations for obtaining a license and certificate;
- (4) training necessary for employee individual certification;
- (5) qualifications for managers of asbestos abatement projects;
- (6) abatement and asbestos management activity specifications;
- (7) any contractor bonding and insurance requirements deemed necessary by the commissioner;
- (8) license and certificate issuance and revocation procedures;
- (9) suspension or revocation of licenses or certificates;
- (10) license and certificate suspension and revocation criteria;
- (11) cleanup standards;

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- (12) continuing education requirements; and
- (13) other rules necessary to implement sections 326.70 to 326.81.

Subd. 2. **ISSUANCE OF LICENSES AND CERTIFICATES.** The commissioner may issue licenses to ~~employers~~ persons and certificates to individuals who meet the criteria in sections 326.70 to 326.82 and the commissioner's rules. Licenses and certificates shall be valid for at least 12 months, except that the initial certificate will be issued to expire one year after the completion date on the approved training course diploma.

Subd. 3. **DELEGATION.** The commissioner may, in writing, delegate the inspection and enforcement authority granted in sections 326.70 to 326.82 to other state agencies regulating asbestos.

Subd. 4. **ACCESS TO INFORMATION AND PROPERTY.** (a) Any person who the commissioner has reason to believe is engaged in asbestos-related work or asbestos management activity, or who is the owner of real property where the asbestos-related work or asbestos management activity is being undertaken, when requested by the commissioner, or any member, employee, or agent thereof who is authorized by the commissioner, shall furnish the commissioner any information that the person may have or may reasonably obtain that is relevant to the asbestos-related work or asbestos management activity within five working days of the request.

(b) The commissioner or any person authorized by the commissioner, upon presentation of credentials, and with reason to believe that violation of sections 326.70 to 326.82 may be occurring, may:

(1) examine and copy any books, papers, records, memoranda, or data related to the asbestos-related project of any person who has a duty to provide information to the ~~department~~ commissioner under paragraph (a); and

(2) enter upon any public or private property to take action authorized by this section including obtaining information from any person who has a duty to provide the information under paragraph (a), and conducting surveys or investigations.

Subd. 5. **SUBPOENAS.** In matters under investigation by or pending before the commissioner under sections 326.70 to 326.82, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of papers, books, records, documents, and other relevant evidentiary material. A person failing or refusing to comply with the subpoena or order may, upon application by the commissioner to the district court in any district, be ordered by the court to comply with the order or subpoena. The commissioner may also administer oaths and affirmations to witnesses. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon any person anywhere within the state by an officer authorized to serve subpoenas in

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civil actions, with the same fees and mileage costs paid, and in the manner as prescribed by law, for process of the state district courts. Fees and mileage and other costs of persons subpoenaed by the commissioner shall be paid in the manner prescribed for proceedings in district court.

Subd. 6. **CEASE AND DESIST ORDER.** (a) The commissioner may issue an order requiring an employer a person to cease asbestos-related work or asbestos management activity if the commissioner determines that a condition exists that poses an immediate danger to the public health. For purposes of this subdivision, an immediate danger to the public health exists if the commissioner determines that:

- (1) air quality standards are being exceeded;
- (2) asbestos-related work or asbestos management activity is being undertaken in a manner violative of applicable state or federal law;
- (3) the employer person or an employee individual working at the project site is not licensed or certified, or in possession of a current license or certificate, as the case may be; or
- (4) the employer asbestos-related work has not been reported the project under section 5 to the commissioner as required under section 326.74 and rules prescribed by the commissioner.

(b) The order is effective for a maximum of 60 days. Following issuance of the order, the commissioner shall provide the contractor or individual with an opportunity for a hearing under the contested case provisions of chapter 14. At the hearing, the commissioner shall decide whether to rescind, modify, or reissue the previously made order. A modified or reissued order is effective for a maximum of 60 days from the date of modification or reissuance.

Subd. 7. **ORDER FOR CORRECTIVE ACTION.** ~~After notice and opportunity for hearing under the contested case provisions of chapter 14;~~ the (a) Commissioner may issue an order requiring anyone violating sections 326.70 to 326.82 or a rule of the commissioner to take corrective action as the commissioner determines will accomplish the purpose of the project and prevent future violation. The order for corrective action shall ~~contain a date state~~ the conditions that constitute the violation, the specific law or rule violated, and the time by which the violation must be corrected.

(b) If the person believes that the information contained in the commissioner's order for corrective action is in error, the person may ask the commissioner to reconsider the parts of the order that are alleged to be in error. The request must be in writing, delivered to the commissioner by certified mail within seven calendar days of receipt of the order and:

- (1) specify which parts of the order for corrective action are alleged to be in error;

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(2) explain why they are in error; and

(3) provide documentation to support the allegation of error.

The commissioner shall respond to requests made under this provision within 15 calendar days after receipt of the request. A request for reconsideration does not stay the order for corrective action. After reviewing the request for reconsideration, the commissioner may provide additional time to comply with the order if necessary. The commissioner's disposition of a request for reconsideration is final.

Subd. 8. **INJUNCTIVE RELIEF.** In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in the district court in Ramsey county or, at the commissioner's discretion, in the district court in the county in which ~~an~~ asbestos-related work or asbestos management activity is being undertaken to halt the work or an activity connected with it. A temporary restraining order or other injunctive relief may be granted by the court in the proceeding if continuation of the work or an activity connected with it would result in an imminent risk of harm to any person.

Subd. 9. **PENALTIES.** (a) A person who violates any of the requirements of sections 326.70 to 326.81 or any requirement, rule, or order issued under those sections is subject to a civil penalty of not more than \$10,000 per day of violation. Penalties may be recovered in a civil action in the name of the state brought by the attorney general.

(b) The commissioner may issue an order assessing a penalty of not more than \$10,000 per violation to any person who violates any of the requirements of sections 326.70 to 326.81 or any requirement, rule, or order issued under those sections. A person subject to an administrative penalty order may request a contested case hearing under chapter 14 within 20 days from date of receipt of the penalty order. If the penalty order is not contested within 20 days of receipt, it becomes final and may not be contested.

(c) The amount of the penalty shall be based on the past history of same or similar violations, the severity of violation, the culpability of the person, and other relevant factors. The history of past violations shall include previous violations received by the person licensed as a different entity.

(d) Penalties assessed under sections 326.70 to 326.81 shall be paid to the commissioner for deposit in the state government special revenue fund. Unpaid penalties shall be increased to 125 percent of the original assessed amount if not paid within 60 days after the penalty order becomes final. After 60 days interest shall accrue on the unpaid penalty balance at the rate established in section 549.09.

Sec. 16. Minnesota Statutes 1992, section 326.785, is amended to read:

**326.785 ASBESTOS CONTAINMENT BARRIERS.**

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Notwithstanding Minnesota Rules, part ~~7005.1616~~ 4620.3500, subpart 4, item B, subitem (5), containment barriers, in the case of tunnel abatement enclosures, are limited to double critical barriers.

Sec. 17. Minnesota Statutes 1992, section 326.79, is amended to read:

**326.79 MISDEMEANOR PENALTY.**

A person who:

(1) hinders or delays the commissioner or the commissioner's authorized representative in the performance of the duty to enforce sections 326.70 to 326.81;

(2) undertakes asbestos-related work without a license or with a revoked, expired, or suspended license;

(3) refuses to make a license or certificate accessible to either the commissioner or the commissioner's authorized representative;

(4) uses an employee who does not have a certificate to do asbestos-related work;

(5) fails to report asbestos-related work as required by section 326.74;

(6) undertakes asbestos-related work or asbestos management activity for which the person is not qualified under ~~department~~ rules prescribed by the commissioner; or

(7) makes a material false statement related to a license, certificate, report, or other document required under sections 326.70 to 326.81

is guilty of a misdemeanor and may be sentenced to payment of a fine of not more than \$700, imprisonment for not more than 30 days, or both, for each violation.

Sec. 18. Minnesota Statutes 1992, section 326.80, is amended to read:

**326.80 SUSPENSIONS; REVOCATIONS; DENIALS.**

As an alternative, or in addition to, the criminal or any other penalties provided in ~~section 326.79~~ sections 326.70 to 326.81, the commissioner or the commissioner's designee may refuse to grant an initial license or certificate, or may suspend or revoke a license or certificate for repeated or serious violations of sections 326.70 to 326.81; violations of any requirement, rule, or order issued under those sections; violations of state or federal laws or regulations related to enclosure, repair, removal, encapsulation, or disposal of asbestos or asbestos management activity; violations of other Minnesota laws that indicate that the person is not fit to conduct asbestos-related work or asbestos management activity; where final agency action has been taken against a person in connection with asbestos-related work or asbestos management activity in another state or juris-

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dition; or where the person has been convicted of a criminal violation in connection with asbestos-related work or asbestos management activity in another state or jurisdiction. Any proceeding conducted under this section must be in accordance with procedures adopted by rule by the commissioner and the contested case procedures of chapter 14.

Sec. 19. Minnesota Statutes 1992, section 326.81, is amended to read:

**326.81 DISCRIMINATION; SANCTIONS.**

An employer A person who discriminates against or otherwise sanctions an employee who complains to or cooperates with the commissioner in administering sections 326.70 to 326.81 is guilty of a misdemeanor.

Sec. 20. **APPROPRIATION.**

\$264,000 is appropriated from the state government special revenue fund to the commissioner of health to regulate asbestos abatement activities as provided in this act. \$102,000 is for fiscal year 1994 and \$162,000 is for fiscal year 1995.

Sec. 21. **REPEALER.**

Minnesota Statutes 1992, section 326.71, subdivision 7, is repealed.

Presented to the governor May 17, 1993

Signed by the governor May 20, 1993, 2:06 p.m.

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**CHAPTER 304—S.F.No. 334**

*An act relating to traffic regulations; authorizing issuance of a citation to a driver and penalizing vehicle owner or lessee for failure to yield right-of-way to emergency vehicle; amending Minnesota Statutes 1992, section 169.20, by adding subdivisions.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 169.20, is amended by adding a subdivision to read:

Subd. 5a. CITATION. A peace officer may issue a citation in lieu of arrest to the driver of a motor vehicle if the peace officer has probable cause to believe that the driver has failed to yield the right-of-way to an emergency vehicle in violation of subdivision 5.

Sec. 2. Minnesota Statutes 1992, section 169.20, is amended by adding a subdivision to read:

Subd. 5b. VIOLATION; PENALTY FOR OWNERS AND LESSEES. (a) If a motor vehicle is operated in violation of subdivision 5, the owner of the

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