

OCCUPATIONS CODE

TITLE 12. PRACTICES AND TRADES RELATED TO WATER, HEALTH, AND SAFETY

SUBTITLE B. PRACTICES RELATED TO HEALTH AND SAFETY

CHAPTER 1954. ASBESTOS HEALTH PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1954.001. SHORT TITLE. This chapter may be cited as the Texas Asbestos Health Protection Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.002. DEFINITIONS. In this chapter:

(1) "Air monitoring" means the collection of airborne samples for analysis of asbestos fibers.

(2) "Asbestos" means:

(A) an asbestiform variety of chrysotile, amosite, crocidolite, tremolite, anthophyllite, or actinolite; or

(B) a material that contains one percent or more of a substance described by Paragraph A.

(3) "Asbestos abatement" means a removal, encapsulation, or enclosure of asbestos to reduce or eliminate or that has the effect of reducing or eliminating:

(A) a concentration of asbestos fibers; or

(B) an asbestos-containing material.

(4) "Asbestos-related activity" means:

(A) the removal, encapsulation, or enclosure of asbestos;

(B) the performance of an asbestos survey;

(C) the development of an asbestos management plan or response action;

(D) the collection or analysis of an asbestos sample; or

(E) the performance of another activity for which a license is required under this chapter.

(5) "Asbestos removal" means an action that disturbs, dislodges, strips, or otherwise takes away asbestos fibers.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

5.318(11), eff. April 2, 2015.

(7) "Commissioner" means the commissioner of state health services.

(8) "Department" means the Department of State Health Services.

(9) "Encapsulation" means a method of control of asbestos fibers in which the surface of an asbestos-containing material is penetrated by or covered with a coating prepared for that purpose.

(10) "Enclosure" means the construction of an airtight wall and ceiling around an asbestos-containing material.

(10-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(11) "Public building" means a building used or to be used for a purpose that involves public access or occupancy and includes a building that is vacant at any time, including during preparation for actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of a process or function that is hazardous to human health or safety;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building that has not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.252, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(11), eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND
DEPARTMENT

Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The executive commissioner shall adopt substantive and procedural rules as necessary or desirable for the executive commissioner, the department, and the commissioner to discharge their powers and duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.254, eff. April 2, 2015.

Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION LEVELS. (a) The executive commissioner may adopt rules defining the maximum airborne asbestos concentrations that are:

(1) permissible outside of a regulated containment area during an abatement activity; and

(2) acceptable for final clearance.

(b) The executive commissioner may not by rule identify any level of asbestos concentration as a safe exposure level because any exposure to airborne asbestos is considered to involve some risk.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.255, eff. April 2, 2015.

Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The executive commissioner may adopt rules specifying:

(1) performance standards at least as stringent as applicable federal standards; and

(2) work practices that affect asbestos removal or encapsulation in a public building.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.256, eff. April 2, 2015.

Sec. 1954.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt a rule restricting advertising or competitive bidding by a person licensed or registered under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In adopting rules to prohibit a false, misleading, or deceptive practice, the executive commissioner may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of the personal appearance or voice of the person in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.257, eff. April 2, 2015.

Sec. 1954.055. RECIPROCITY AGREEMENT. The executive commissioner may adopt rules under this chapter to effect reciprocity agreements with other states.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.258, eff. April 2, 2015.

Sec. 1954.056. FEES. (a) The executive commissioner shall set fees under this chapter in amounts that are reasonable and necessary. The executive commissioner shall set fees for issuing or renewing a license in amounts designed to allow the department to recover from the license holders all of the department's direct and indirect costs in administering and enforcing this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(12), eff. April 2, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

5.318(12), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(12), eff. April 2, 2015.

(e) The fees collected by the department under this chapter shall be deposited to the credit of the asbestos removal licensure fund account in the general revenue fund. The fees may be used only by the department for the purposes of this chapter. Not more than 25 percent of the fees collected may be applied for administrative costs necessary to implement this chapter. The remainder shall be used for enforcement personnel necessary to investigate compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.259, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(12), eff. April 2, 2015.

Sec. 1954.057. GENERAL INVESTIGATIVE AUTHORITY. (a) The department may conduct any inspection or cause the production of any documentary or other evidence that the department considers necessary to determine whether a license should be:

- (1) issued, delayed, or denied; or
- (2) modified, suspended, or revoked.

(b) The department may require additional written information and assurances from the applicant or license holder at any time after the filing of an application for a license and before the expiration of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.058. AUTHORITY TO CONTRACT FOR INSPECTIONS. The department may contract with any person to perform inspections necessary to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.059. ASBESTOS SITE INSPECTIONS. (a) The department shall inspect:

(1) an asbestos abatement contractor during an abatement project at least annually; and

(2) other licensed organizations in accordance with department rules.

(b) The department shall require a building or facility owner or the owner's authorized representative to complete an immediate inspection for asbestos if the department determines after an asbestos site inspection that there appears to be a danger or potential danger to:

(1) the occupants of the building;

(2) workers in the building or facility; or

(3) the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.260, eff. April 2, 2015.

Sec. 1954.060. DEMOLITION AND RENOVATION ACTIVITIES; INSPECTIONS. (a) The executive commissioner may adopt and the department may enforce rules regarding demolition and renovation activities to protect the public from asbestos emissions. At a minimum, the rules must be sufficient to permit the department to obtain authority from the United States Environmental Protection Agency to implement and enforce in this state the provisions of 40 C.F.R. Part 61, Subpart M, that establish the requirements applicable to the demolition and renovation of a facility, including the disposal of asbestos-containing waste materials.

(b) An employee or agent of the department may enter a facility, as that term is defined by 40 C.F.R. Section 61.141, to inspect and investigate conditions to determine compliance with the rules adopted under Subsection (a).

(c) The department may exempt a demolition or renovation project from the rules relating to demolition and renovation activities adopted under Subsection (a) if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the department determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required under department rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.454(a), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.261, eff. April 2, 2015.

Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN SOLID WASTE FACILITIES. The executive commissioner and the Texas Commission on Environmental Quality by rule shall adopt a joint memorandum of understanding regarding the inspection of solid waste facilities that receive asbestos.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.262, eff. April 2, 2015.

Sec. 1954.062. DISSEMINATION OF INFORMATION; EDUCATIONAL PROGRAMS OR EXHIBITS. (a) The department may:

(1) develop and distribute to the public information regarding asbestos;

(2) conduct educational programs regarding asbestos; and

(3) assemble or sponsor informational or educational exhibits regarding asbestos.

(b) The department may respond to a request for information or assistance relating to asbestos control and abatement from a federal facility or another facility not included within the scope of this chapter. The department may collect fees for those services in the manner provided by Subchapter D, Chapter 12, Health and

Safety Code, for public health services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.063. COMPLAINTS; RAPID RESPONSE TASK FORCE. (a) The department shall investigate any complaint involving the control and abatement of asbestos.

(b) The department shall maintain a rapid response task force to investigate each complaint received by the department regarding:

(1) possible health hazards to workers or the public;
or

(2) contamination of the environment.

(c) The rapid response task force shall investigate a complaint not later than 48 hours after the time of the complaint to the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 1954.101. LICENSE REQUIRED FOR CERTAIN ACTIVITIES.

(a) Unless a person is licensed under this chapter, the person may not:

(1) remove asbestos from or encapsulate or enclose asbestos in a public building or supervise that removal, encapsulation, or enclosure;

(2) perform or supervise maintenance, repair, installation, renovation, or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos materials in a public building;

(3) perform an asbestos survey or inspection of a public building, including the sampling and assessment of exposure;

(4) provide plans, instructions, or schedules for the management of asbestos in a public building;

(5) provide monitoring services for airborne asbestos dust using:

(A) transmission electron microscopy;

(B) phase contrast microscopy; or

(C) another analytical method approved by the department;

(6) provide an analysis of:

(A) a bulk material sample for asbestos content or asbestos concentration; or

(B) an airborne sample using:

(i) transmission electron microscopy;

(ii) phase contrast microscopy;

(iii) polarized light microscopy;

(iv) scanning electron microscopy; or

(v) another analytical method approved by the department;

(7) design and prepare abatement project plans and specifications for asbestos abatement in a public building;

(8) handle an asbestos abatement contract on behalf of another person;

(9) transport an asbestos-containing material from a facility for disposal; or

(10) sponsor or certify an initial or refresher training course required for licensing or registration under this chapter.

(b) In accordance with a schedule established by department rules, a person may not sponsor or certify an asbestos training course required for licensing or registration under this chapter unless the person is licensed as a training sponsor.

(c) The department may waive the requirement for a license on receipt of notice of an emergency that results from a sudden unexpected event that is not a planned renovation or demolition.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.263, eff. April 2, 2015.

Sec. 1954.102. LICENSE CLASSIFICATIONS. (a) The executive commissioner shall determine and specify the scope, purpose, eligibility, qualifications, and compliance requirements for each class of license and any other license necessary for the

executive commissioner and department to carry out their duties under this chapter.

(b) A person must be licensed as:

(1) an asbestos abatement supervisor, if the person is an individual who:

(A) supervises the removal, encapsulation, or enclosure of asbestos; and

(B) is designated as the competent person, as that term is defined by 29 C.F.R. Section 1926.1101;

(2) an asbestos abatement contractor, if the person is designated as the contractor for a project:

(A) in which asbestos abatement, encapsulation, or enclosure will be conducted; and

(B) that is not designated as a small-scale, short-duration activity;

(3) an inspector, if the person is an individual who performs an asbestos survey of a facility;

(4) a management planner, if the person develops a management plan or an inspection or survey report;

(5) an air-monitoring technician, if the person is a technician who performs air monitoring for an asbestos abatement project or related activity;

(6) a consultant, if the person designs specifications for an asbestos abatement project;

(7) a transporter, if the person engages in the transportation of asbestos-containing materials from a facility in this state; or

(8) a training sponsor, if the person sponsors or certifies an asbestos training or refresher course.

(c) A laboratory may be licensed as an asbestos laboratory only if the laboratory:

(1) is accredited by the National Voluntary Laboratory and Analytical Proficiency Accreditation or is enrolled in the EPA Proficiency Analytical Testing rounds, as appropriate; or

(2) has similar qualifications as required by the executive commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.264, eff. April 2, 2015.

Sec. 1954.103. REGISTRATION REQUIRED FOR CERTAIN ACTIVITIES. An individual must be registered as an asbestos abatement worker if the individual:

(1) removes, encapsulates, encloses, loads, or unloads asbestos in the scope of employment; or

(2) performs maintenance, repair, installation, renovation, or cleaning activities that may dislodge, break, cut, abrade, or impinge on asbestos-containing materials.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.104. RESILIENT FLOOR-COVERING MATERIAL. (a) For purposes of this section, "resilient floor-covering material" includes sheet vinyl flooring, resilient tile such as vinyl composition tile, asphalt tile, rubber tile, and associated adhesives.

(b) The licensing and registration requirements of this chapter do not apply to an activity that involves resilient floor-covering material if the removal of the material is performed consistently with:

(1) work practices published by the resilient floor-covering industry; or

(2) other methods determined by the commissioner to provide public health protection from asbestos exposure.

(c) A person who removes resilient floor-covering material must have completed a training course on the work practices described by Subsection (b) for a minimum of eight hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.455(a), eff. Sept. 1, 2003.

Sec. 1954.105. APPLICATION FOR LICENSE. (a) An applicant for a license to engage in asbestos abatement or in another asbestos-related activity for which a license is required under

this chapter must:

(1) submit an application to the department on a form prescribed by the department; and

(2) pay to the department a nonrefundable application fee in the amount set by the executive commissioner by rule.

(b) An application for a license must be signed by the applicant and must include, as applicable:

(1) the applicant's business name and address;

(2) a written respiratory protection plan;

(3) a list of the asbestos-related activities that the applicant has performed during the preceding 12 months; and

(4) additional information the department requires.

(c) To be issued a license, an applicant must also provide to the department, as applicable:

(1) a certificate of good standing issued by the secretary of state, if the applicant is a corporation or other business entity;

(2) a certificate from the secretary of state authorizing the applicant to conduct business in this state, if the applicant is a foreign corporation;

(3) a state sales tax number; and

(4) a certificate of insurance, issued for the purpose of licensing under this chapter, that demonstrates:

(A) asbestos abatement liability coverage for an asbestos abatement contractor performing work for hire;

(B) professional liability insurance coverage for errors and omissions for a consultant, inspector, or asbestos laboratory performing work for hire;

(C) liability insurance to transport for hire asbestos-containing materials for purposes of disposal; and

(D) if workers' compensation insurance is required by the owner of the public building or by the specifications for the asbestos-related activity, either:

(i) proof of workers' compensation insurance issued by a company licensed to issue workers' compensation insurance in this state and written in this state on the Texas form; or

(ii) evidence of self-insurance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.265, eff. April 2, 2015.

Sec. 1954.106. ELIGIBILITY FOR LICENSE. (a) To qualify for a license under this chapter, an applicant must meet the requirements of this section and any other requirements established by the executive commissioner, including asbestos-related education or experience requirements.

(b) A person engaged in removing, encapsulating, or enclosing asbestos must demonstrate to the department that the person:

(1) completed in the preceding 12 months:

(A) a thorough and detailed training course on asbestos removal, encapsulation, and enclosure approved by the United States Environmental Protection Agency or the department; and

(B) a physical examination that meets the requirements stated in the asbestos regulations of the United States Environmental Protection Agency or the United States Occupational Safety and Health Administration;

(2) is capable of complying with all applicable standards of the department, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other state or federal agency authorized to regulate activities affecting the control and abatement of asbestos; and

(3) has access to at least one appropriate disposal site for deposit of any asbestos waste the person generates during the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.266, eff. April 2, 2015.

Sec. 1954.107. RESTRICTED LICENSE FOR CERTAIN APPLICANTS.

(a) An individual may apply for a restricted license as an asbestos abatement supervisor without the experience the executive commissioner by rule may require to be licensed as an asbestos abatement supervisor if the individual:

- (1) is an employee of a building owner or manager; and
- (2) meets all other qualifications or requirements for a license.

(b) The authority granted by a license issued under this section is restricted to supervising those practices and procedures described by 40 C.F. R. Part 763, Subpart E, Appendix B, relating to small-scale, short-duration operations, maintenance, and repair activities involving asbestos-containing materials, for buildings under the control of the license holder's employer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.267, eff. April 2, 2015.

Sec. 1954.108. APPLICATION FOR REGISTRATION OR RENEWAL; ELIGIBILITY. (a) An application for registration or the renewal of registration as an asbestos abatement worker must be made on a form provided by the department. An application for registration must be accompanied by a nonrefundable fee set by the executive commissioner by rule.

(b) The executive commissioner shall determine the criteria for registration or the renewal of registration as an asbestos abatement worker.

(c) A physical examination for an asbestos abatement worker must be conducted in accordance with the physical examination requirements described by Section 1954.106(b)(1)(B).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.268, eff. April 2, 2015.

Sec. 1954.109. EXAMINATIONS. The executive commissioner

may:

- (1) require or authorize the use of standardized examinations for licensing or registration under this chapter; and
- (2) set fees for the administration of the examinations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.269, eff. April 2, 2015.

Sec. 1954.110. EXAMINATION RESULTS. (a) The department shall notify each person who takes a licensing or registration examination under this chapter of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a testing service, the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a testing service will be delayed for more than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a licensing or registration examination, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.111. TERMS OF LICENSE OR REGISTRATION; NONASSIGNABILITY. (a) The terms of a license or registration are subject to amendment or modification by a rule adopted or order issued under this chapter.

(b) A license or registration may not be assigned to another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.112. REPLACEMENT LICENSE. A license holder may request a replacement license certificate by completing an appropriate application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER D. PROVISIONAL LICENSE OR REGISTRATION

Sec. 1954.151. PROVISIONAL LICENSE OR REGISTRATION.

(a) The department may grant a provisional license or registration to an applicant for a license or registration in this state who:

(1) has been licensed or registered in good standing to perform the relevant asbestos-related activity for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) is currently licensed or registered in that jurisdiction;

(3) has passed a national or other examination recognized by the executive commissioner relating to the relevant asbestos-related activity, if the executive commissioner requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity; and

(4) is sponsored by a person licensed under this chapter with whom the provisional license or registration holder will practice during the time the person holds the provisional license or registration.

(b) The department may waive the requirement of Subsection (a)(4) if the department determines that compliance with the requirement would be a hardship to the applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.270, eff. April 2, 2015.

Sec. 1954.152. TERM OF LICENSE OR REGISTRATION. A provisional license or registration is valid until the date the

department approves or denies the provisional license or registration holder's application for a license or registration under Subchapter C.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION. The department shall issue a license or registration under Subchapter C to a provisional license or registration holder who is eligible to be licensed or registered under rules adopted under Section 1954.055 or who:

(1) passes the part of the examination under Section 1954.109 that relates to the applicant's knowledge and understanding of the laws and rules relating to the performance of the relevant asbestos-related activity in this state, if the executive commissioner requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity;

(2) meets the relevant academic and experience requirements for the license or registration, as verified by the department; and

(3) satisfies any other applicable license or registration requirement under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.271, eff. April 2, 2015.

Sec. 1954.154. DECISION ON APPLICATION. (a) The department shall approve or deny a provisional license or registration holder's application for a license or registration not later than the 180th day after the date the provisional license or registration is issued.

(b) The department may extend the 180-day period if the department has not received the results of an examination before the end of that period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER E. LICENSE OR REGISTRATION EXPIRATION AND RENEWAL

Sec. 1954.201. LICENSE EXPIRATION AND RENEWAL. (a) A license issued under this chapter expires on the second anniversary of its effective date and may be renewed as provided by this subchapter. A person whose license has expired may not engage in an activity for which a license is required until the license is renewed.

(b) The executive commissioner by rule may adopt a system under which licenses expire on various dates during the year. For a year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.272, eff. April 2, 2015.

Sec. 1954.202. NOTICE OF LICENSE EXPIRATION. At least one month before a license issued under this chapter expires, the department shall send by first-class mail to the license holder at the license holder's last known address a notice that states:

- (1) the date on which the license expires;
- (2) the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and
- (3) the amount of the renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.203. PROCEDURE FOR LICENSE RENEWAL. (a) A person may renew an unexpired license for an additional two-year term if the person:

- (1) is otherwise entitled to be licensed;
- (2) submits to the department a renewal application on

the form required by the department;

(3) pays to the department a nonrefundable renewal fee;

(4) has successfully completed:

(A) the requirements for renewal; and

(B) a current physical examination; and

(5) has complied with any final order resulting from a violation of this chapter.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including any examination requirements, for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.273, eff. April 2, 2015.

Sec. 1954.204. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.205. TERM OF REGISTRATION; PROCEDURE FOR REGISTRATION RENEWAL. (a) The executive commissioner shall set the term of registration of an asbestos abatement worker.

(b) The procedures provided by this subchapter for the renewal of a license apply to the renewal of an asbestos abatement worker registration.

(c) An asbestos abatement worker who is required to complete periodic retraining must submit evidence of that retraining with the worker's application for renewal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.274, eff. April 2, 2015.

SUBCHAPTER F. PRACTICE BY HOLDER OF LICENSE OR REGISTRATION

Sec. 1954.251. RECORDS. (a) A license holder shall keep an appropriate record of each asbestos-related activity the license holder performs in a public building. The record must include, as applicable:

(1) the name and address of each individual who supervised the asbestos-related activity;

(2) the location and a description of the project and the approximate amount of asbestos material that was removed or encapsulated;

(3) the date on which the asbestos-related activity began and the date on which it was completed;

(4) a summary of the procedures used to comply with all applicable standards;

(5) the name and address of each disposal site where the asbestos-containing waste was deposited; and

(6) any other information the department requires.

(b) The license holder shall keep the records required by this section for at least 30 years, or as long as required by federal law or regulation.

(c) The license holder shall make the records available to the department at any reasonable time.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.252. NOTICE OF ASBESTOS REMOVAL, ENCAPSULATION,

OR ENCLOSURE. (a) A person engaged in removing asbestos from or encapsulating or enclosing asbestos in a public building shall notify the department in writing at least 10 days before the date the person begins the removal, encapsulation, or enclosure project according to applicable laws.

(b) Notwithstanding Subsection (a), a person may give the required notice orally if the removal, encapsulation, or enclosure project is of an emergency nature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.253. SUPERVISION BY ASBESTOS ABATEMENT SUPERVISOR. The removal of asbestos from or the encapsulation or enclosure of asbestos in a public building must be supervised by an individual licensed as an asbestos abatement supervisor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.254. CONFLICT OF INTEREST FOR CERTAIN LICENSE HOLDERS. A person licensed under this chapter to perform asbestos inspections or surveys, write management plans, or design abatement specifications for an asbestos abatement project may also engage in the removal of asbestos from the building or facility at which an asbestos abatement project takes place only if the person is retained to remove the asbestos by a municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.255. CONFLICT OF INTEREST FOR INDEPENDENT THIRD-PARTY MONITOR. (a) In this section, "independent third-party monitor" means a person retained to collect area air samples for analysis by and for the owner of the building or facility being abated.

(b) An independent third-party monitor may not be employed by the asbestos abatement contractor to analyze an area sample collected during the abatement project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.256. APPROVAL OF ASBESTOS TRAINING; RECORD OF ATTENDEES. (a) The executive commissioner shall adopt an asbestos

training approval plan to approve the training required for a person to be licensed or registered under this chapter. In adopting the plan, the executive commissioner shall adopt by reference the Model Accreditation Plan developed by the United States Environmental Protection Agency.

(b) The executive commissioner may establish other requirements or change the number, design, or content of the plan adopted under Subsection (a) as the executive commissioner determines desirable, provided that the plan is at least as comprehensive and stringent as the Model Accreditation Plan.

(c) A licensed training sponsor may sponsor an asbestos training course only if the course is approved by the department for that purpose.

(d) A licensed training sponsor shall provide to the department in accordance with department rules a record of the persons who attend an asbestos training course for licensing or registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.275, eff. April 2, 2015.

Sec. 1954.257. DUTIES REGARDING EMPLOYEE OR AGENT. A person engaged in an asbestos-related activity shall ensure that each employee or agent who will come in contact with asbestos or who will be responsible for the activity:

(1) is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(2) has completed the applicable training course relating to asbestos control and abatement developed and approved by the United States Environmental Protection Agency or the department under Section 1954.256; and

(3) is supplied with approved equipment in good working order for the protection of the person, the public, and the environment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.258. COMPLIANCE WITH STANDARDS NOT A DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards adopted by the executive commissioner under this chapter does not constitute a defense to a civil action for damages arising from a work activity affecting asbestos.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.276, eff. April 2, 2015.

Sec. 1954.259. SURVEY REQUIRED. (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.456(a), eff. Sept. 1, 2003.

Sec. 1954.260. DURATION OF ASBESTOS SURVEY. An asbestos survey performed for a public building as required by this chapter and any other law is valid if the survey was performed in compliance with the laws in effect at the time the survey was completed and the survey identifies any asbestos-containing building material, the location of that material, and any other asbestos condition in the building. Any renovation, construction, or other activity for which an asbestos survey is required shall be conducted without the requirement of obtaining a new asbestos survey if a valid asbestos survey exists.

Acts 2003, 78th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 1954.301. DISCIPLINARY POWERS OF DEPARTMENT. (a) If an act or omission of a person licensed under this chapter constitutes grounds prescribed for disciplinary action under Section 1954.302, the department, after providing the person with notice and an opportunity for a hearing, shall:

- (1) revoke or suspend the person's license;
- (2) suspend the license on an emergency basis;
- (3) modify the license; or
- (4) reprimand the person.

(b) If an act or omission of a person registered under this chapter constitutes grounds for disciplinary action under Section 1954.303, the department, after providing the person with notice and an opportunity for a hearing, shall:

- (1) refuse to renew the person's registration;
- (2) revoke or suspend the registration;
- (3) suspend the registration on an emergency basis;

or

- (4) reprimand the person.

(c) After providing the sponsor of an asbestos training course with notice and an opportunity for a hearing, the department may:

- (1) revoke or suspend the approval of the course; or

(2) suspend the approval of the course on an emergency basis.

(d) The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.277, eff. April 2, 2015.

Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER. The executive commissioner by rule shall adopt the criteria for the department to take disciplinary action against a license holder under Section 1954.301. At a minimum, the criteria must require disciplinary action against a license holder who:

(1) commits fraud or deception in obtaining or attempting to obtain a license or a contract to perform an asbestos-related activity;

(2) fails at any time to meet the qualifications for a license;

(3) violates a rule adopted under this chapter;

(4) violates an applicable federal or state standard for asbestos-related activities; or

(5) falsifies or fails to maintain a record of an asbestos-related activity required by a federal agency or by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.278, eff. April 2, 2015.

Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON. The department shall take disciplinary action under Section 1954.301 against a person registered under this chapter who:

(1) fraudulently or deceptively assigns, obtains, or attempts to assign or obtain a registration or the renewal of a registration; or

(2) violates:

(A) a federal, state, or local asbestos law or rule; or

(B) an order issued by the executive commissioner or department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.279, eff. April 2, 2015.

Sec. 1954.304. ACTION BASED ON COMPLAINTS AGAINST ASBESTOS ABATEMENT SUPERVISOR. (a) If the department receives three validated complaints against an asbestos abatement supervisor regarding noncompliance with this chapter, the department shall:

(1) revoke the supervisor's license; and

(2) issue to the supervisor a registration.

(b) A registration issued under this section expires six months from the date of issuance. The asbestos abatement supervisor may reapply for a license after the registration expires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.305. PROCEDURE FOR EMERGENCY SUSPENSION. (a) The suspension on an emergency basis of a license or registration or of the approval of an asbestos training course is effective immediately.

(b) The department shall provide to the person whose license, registration, or asbestos training course approval is suspended on an emergency basis an opportunity for a hearing not

later than the 20th day after the date of the suspension.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and hearing required under this subchapter and judicial review of a final administrative decision issued under this subchapter are governed by Chapter 2001, Government Code, and the department rules for contested case hearings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.280, eff. April 2, 2015.

Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION OR SUSPENSION. A person whose license is revoked or suspended may not reapply for a license until after the period stated in a schedule established by department rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.281, eff. April 2, 2015.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the department shall consider:

- (1) the seriousness of the violation;
- (2) any hazard created to the health and safety of the public;
- (3) the person's history of previous violations; and
- (4) any other matter that justice may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The department may impose an administrative penalty under this subchapter only after the person charged with a violation is given the opportunity for a hearing.

(b) If a hearing is held, the department shall make findings of fact and issue a written decision as to:

- (1) the occurrence of the violation; and
- (2) the amount of any penalty that is warranted.

(c) If the person charged with a violation fails to exercise the opportunity for a hearing, the department, after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(d) Not later than the 30th day after the date an order is issued after determining that a violation occurred, the department shall inform the person charged with the violation of the amount of any penalty imposed.

(e) The department may consolidate a hearing under this section with another proceeding.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.354. OPTIONS FOLLOWING DECISION. (a) Not later

than the 30th day after the date the department's decision or order becomes final as provided by Section [2001.144](#), Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond in a form approved by the court that is for the amount of the penalty and is effective until judicial review of the department's decision or order is final; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.355. COLLECTION OF PENALTY. At the request of

the department, the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a decision or order of the department imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the department shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1954.401. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring a civil suit for injunctive relief, the assessment and recovery of a civil

penalty, or both, against a person who:

(1) appears to have violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter; or

(2) owns a public building or is the owner's agent and has contracted with or otherwise permitted a person who is not licensed or registered under this chapter to perform in the building an activity for which a license or registration is required.

(b) A civil penalty may not exceed \$10,000 a day for each violation. Each day a violation occurs or continues to occur is a separate violation for purposes of imposing a penalty.

(c) In determining the amount of a civil penalty, the court shall consider:

(1) the seriousness of the violation;

(2) any hazard created to the health and safety of the public;

(3) the person's history of previous violations; and

(4) the demonstrated good faith of the person charged with the violation.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.402. CRIMINAL PENALTY. (a) A person required to be licensed under this chapter commits an offense if the person:

(1) removes asbestos from a public building or encapsulates the asbestos without a license after having been previously assessed a civil or administrative penalty for removing or encapsulating asbestos without a license; or

(2) fails to keep records as required by Section [1954.251](#) after having been previously assessed a civil or administrative penalty for failing to keep records.

(b) An offense under this section is a misdemeanor

punishable by a fine not to exceed \$20,000, unless the defendant has been previously convicted under this section, in which event the offense is punishable by:

(1) a fine not to exceed \$25,000;

(2) confinement in jail for not more than two years;

or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.