

## ASBESTOS ABATEMENT CONTRACTORS LICENSING ACT (EXCERPT)

### Act 135 of 1986

#### CHAPTER II

#### **338.3201 Asbestos abatement contractors licensing board; created; purpose; appointment, qualifications, and terms of members; vacancies; expenses.**

Sec. 201. (1) There is created an asbestos abatement contractors licensing board in the department, which shall assist the department in administering and carrying out the provisions of this act. The board shall consist of 7 members to be appointed by the governor with the advice and consent of the senate.

(2) Of the 7 members appointed pursuant to subsection (1), 3 shall represent asbestos abatement contractors, 3 shall represent asbestos abatement laborers, and 1 shall represent the general public and be experienced in public health areas. Of the 3 members representing asbestos abatement laborers, no 2 shall belong to the same labor organization as defined in section 2 of Act No. 176 of the Public Acts of 1939, being section 423.2 of the Michigan Compiled Laws.

(3) Each member shall serve for a term of 3 years or until his or her successor is appointed and qualified. Of the members first appointed, 1 labor representative and 1 asbestos abatement contractor representative shall have a term of 1 year; 1 labor representative and 1 asbestos abatement contractor representative shall have a term of 2 years; and 1 labor representative, 1 asbestos abatement contractor representative, and 1 general public representative shall have a term of 3 years. Vacancies shall be filled for the unexpired terms in the same manner as original appointments. Members of the board shall serve without compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties under this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

#### **338.3203 Duties of board; special meetings; quorum; conducting business at public meeting; notice of meeting; availability of documents to public.**

Sec. 203. (1) The board shall do all of the following:

- (a) Organize and make rules governing the board's formal and informal procedures.
- (b) Meet not less than quarterly each year.
- (c) Keep a record of the proceedings and functions.

(2) A special meeting of the board may be called by the chairperson and shall be called upon receipt of a written request signed by 2 or more members of the board. Four members of the board constitute a quorum to conduct business.

(3) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(4) A written document prepared, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

#### **338.3205 Additional duties of board.**

Sec. 205. The board shall do all of the following:

(a) Make recommendations to the department concerning the denial, suspension, or revocation of licenses required pursuant to this act, and other enforcement matters under this act.

(b) Upon request by the department, advise the department on the preparation and distribution of information on asbestos.

(c) Advise the department on the promulgation of administrative rules pursuant to this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3207 Asbestos abatement contractor; license required; exception.**

Sec. 207. (1) Except as otherwise provided in subsection (2), an asbestos abatement contractor shall not engage in any activity involving the demolition, renovation, or encapsulation of friable asbestos materials without first receiving a license from the department.

(2) The licensing requirement of subsection (1) does not apply to any of the following if engaged in an asbestos abatement project that is incidental to the primary licensed trade and involves not more than 160 square feet or 260 linear feet of friable asbestos materials:

(a) A business entity licensed under article 7 of the skilled trades regulation act, MCL 339.5701 to 339.5739.

(b) A business entity licensed under article 8 of the skilled trades regulation act, MCL 339.5801 to 339.5819.

(c) A business entity licensed under article 11 of the skilled trades regulation act, MCL 339.6101 to 339.6133.

(d) A business entity licensed as a residential builder or a residential maintenance and alteration contractor under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1990, Act 2, Imd. Eff. Feb. 12, 1990;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998;—Am. 2016, Act 411, Eff. Apr. 4, 2017.

### **338.3209 Application for or renewal of license; requirements; fee.**

Sec. 209. (1) To apply for or renew a license, an asbestos abatement contractor shall do all of the following:

(a) Submit a completed application to the department on forms provided by the department. The asbestos abatement contractor shall state on the application whether or not the asbestos abatement contractor has liability insurance.

(b) Pay the fee required by subsection (2).

(c) Submit proof of Michigan workers' disability compensation insurance.

(d) Submit proof that all employees and agents of an asbestos abatement contractor who are responsible for, or are involved in, an asbestos abatement project have received training and become accredited as asbestos abatement workers or asbestos abatement contractors and supervisors as required under the asbestos workers accreditation act, 1988 PA 440, MCL 338.3401 to 338.3418.

(2) Subject to section 211, a license or renewal fee shall be paid as follows:

Number of employees to be engaged in

<u>asbestos abatement projects</u>	<u>License fee</u>	<u>License renewal fee</u>
4 or less	\$200.00	\$100.00
5 or more	\$400.00	\$300.00

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 2004, Act 261, Imd. Eff. July 23, 2004.

### **338.3211 Acknowledging receipt of application; notice of deficiency; issuance of license or denial of application; time; statement in license; grounds for denial of application; failure to issue license within certain time period; report; return of fee; proceedings for denial of license; "completed application" defined.**

Sec. 211. (1) Within 15 working days after receiving a license application, the department shall acknowledge receipt of the application and notify the applicant in writing, or make the information electronically available, of any deficiency in the application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. Within 60 calendar days after receiving a completed application, including all additional information requested by the department, the department shall issue a license or deny the license application. The 60-day time period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The license shall contain a statement in bold print that the issuance of a license does not imply asbestos indemnification coverage.

(2) The department shall deny a license application if the department determines that the applicant has not demonstrated the ability to comply with either of the following:

(a) The applicable requirements and procedures established by the department and the board under this act.

(b) Other state and federal law pertaining to the health and safety aspects of asbestos demolition, renovation, and encapsulation.

(3) Beginning the effective date of the amendatory act that added this subsection and notwithstanding any other provision of this act, if the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with asbestos and regulatory issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the time period described in this section.

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees under subsection (3).

(5) If the department denies a license, the department shall return to the applicant the application fee, less \$25.00 subject to subsection (3).

(6) Proceedings for the denial of a license under this act shall be in accordance with the administrative procedures act of 1969.

(7) As used in this section and section 209, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1998, Act 132, Imd. Eff. June 24, 1998;—Am. 2004, Act 261, Imd. Eff. July 23, 2004.

### **338.3213 Terms and conditions of license.**

Sec. 213. In granting a license, the department may, following review by the director of the department, impose reasonable terms and conditions to ensure continuous compliance with the requirements of this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3215 Revocation or suspension of license.**

Sec. 215. The department may revoke or suspend a license as provided under the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3217 Duration of license; conditions to renewal.**

Sec. 217. (1) Unless the department revokes or suspends a license, the license shall remain in effect for 1 year from the date of issuance.

(2) The department shall renew a license annually if the asbestos abatement contractor satisfies the following conditions:

(a) Submits a completed application for a renewal on forms provided by the department no sooner than 90 days before the license expires and not later than 30 days before the license expires. An application for renewal that is received after the time period described in this subdivision shall be treated as an initial application and shall require payment of an initial license fee, rather than a renewal license fee.

(b) Pays to the department the license renewal fee as specified in section 209.

(c) Has complied with all applicable requirements of this act and the rules promulgated under this act.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.

### **338.3219 Responsibility for removal of asbestos.**

Sec. 219. If the contract does not provide for asbestos abatement, a construction contractor or construction

subcontractor who contracts to provide an improvement to real property shall not be responsible to provide for the removal of asbestos discovered in the course of providing the improvement to the property. This section shall not apply to construction contractor and construction subcontractor contracts entered into prior to the effective date of this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3220 Asbestos abatement project; notice; fees; asbestos abatement fund; report; emergencies.**

Sec. 220. (1) An asbestos abatement contractor shall notify the department in writing of all of the following at least 10 days before beginning an asbestos abatement project exceeding 10 linear feet or 15 square feet, or both, of friable asbestos materials:

- (a) The name and address of the owner of the building or structure.
- (b) The location of the building or structure where the asbestos abatement project will be performed.
- (c) The schedule for the starting and completion of the asbestos abatement project which may not exceed 1 year in length.

(d) The amount of friable asbestos materials that will be removed or encapsulated.

(2) If during the course of a project and after a written contract is executed, a business entity that is exempt from licensure under section 207(2) and whose primary licensed trade is not that of an asbestos abatement contractor discovers that the removal or encapsulation of asbestos in an amount exceeding 10 linear feet or 15 square feet, or both, is required, that business entity shall notify the department of the asbestos abatement project before asbestos removal begins. Not more than 10 days after the discovery, the business entity shall provide written notification to the department in the manner described in subsection (1)(a) to (d).

(3) An asbestos abatement contractor providing written notification to the department pursuant to subsection (1) for an asbestos abatement project shall include a fee equal to 1% of the price of the contract for the asbestos abatement project and shall make available upon the request of the department a copy of the contract for the asbestos abatement project. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(4) In the case of a business entity that provides notice under subsection (2) for an asbestos abatement project that is incidental to the business entity's primary licensed trade and where asbestos is actually removed by that business entity, the primary licensed trade contractor shall include a fee of 1% of the asbestos abatement project portion of the contract price and shall make available upon the request of the department a copy of that portion of the contract covering the asbestos abatement. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(5) The asbestos abatement fund is created and shall exist in the state treasury and shall receive revenue as provided in this act and other revenue as the legislature may provide. The state treasurer shall direct the investment of the fund. All interest and earnings of the fund shall be retained by the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) Money in the asbestos abatement fund created in subsection (5) shall be used by the department only for the asbestos-related responsibilities of the department under this act which includes, but is not limited to, the inspection of asbestos abatement projects and the education of asbestos abatement contractors. It does not include use of the fund by the department for asbestos abatement projects on state owned property.

(7) Not later than October 1 of each year, the department shall report to the legislature and the applicable committees in the house of representatives and the senate on the amount of money generated by the fees charged under this section. The report shall include the number of asbestos abatement projects inspected and the number of citations issued for violations of this act and other applicable laws, rules, and regulations.

(8) Emergency asbestos abatement projects resulting from equipment failure or malfunctions are exempt from the 10-day written advance notice imposed under this section. The written notice in emergency situations shall be provided within 48 hours after the commencement of the asbestos abatement project except that the business entity shall contact the department telephonically immediately or as soon as possible after the discovery of the emergency situation.

**History:** Add. 1990, Act 2, Imd. Eff. Feb. 12, 1990;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.

### **338.3221 Post abatement air monitoring check; maximum level of asbestos fibers.**

Sec. 221. (1) Except as provided by this subsection, a building or structure owner or lessee shall have a post abatement air monitoring check performed by a qualified neutral party completely independent of the

asbestos abatement contractor at all asbestos abatement project sites involving a negative pressure enclosure as specified by 29 C.F.R. 1926.1101(g)(5)(i) that involve 10 or more linear feet or 15 or more square feet of friable asbestos materials. If the asbestos abatement contractor and the building or structure owner or lessee agree, the owner or lessee may have the post abatement air monitoring check required by this subsection performed by in-house personnel or by the asbestos abatement contractor.

(2) Whenever feasible, unless waived by the building or structure owner or lessee, the post abatement air monitoring check required by this section shall make use of aggressive air sampling methods as described in unit III.B.7.d. to appendix A to subpart E of part 763 of title 40 of the code of federal regulations, which is adopted in this act by reference.

(3) Upon request by the department, a post abatement air monitoring check taken pursuant to this section shall be reported to the department.

(4) After completion of the asbestos abatement project, the level of asbestos fibers per cubic centimeter of air that are more than 5 micrometers in length when sampled and analyzed according to method 7400 entitled "fibers" issued by the national institute of occupational safety and health (NIOSH) on 2/15/84 and revised on 5/15/89 which was published in the NIOSH manual of analytical methods, 3rd edition, shall not exceed 0.05 asbestos fibers at the asbestos abatement project site.

**History:** Add. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.