

1-1 AN ACT
1-2 relating to the installation of asbestos in public buildings;
1-3 providing penalties.
1-4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-5 SECTION 1. Chapter 161, Health and Safety Code, is amended
1-6 by adding Subchapter Q to read as follows:
1-7 SUBCHAPTER Q. INSTALLATION OF ASBESTOS
1-8 Sec. 161.401. DEFINITIONS. In this subchapter:
1-9 (1) "Asbestos" means the asbestiform varieties of
1-10 chrysotile, amosite, crocidolite, tremolite, anthophyllite, and
1-11 actinolite.
1-12 (2) "Contractor" means a person who constructs,
1-13 repairs, or maintains a public building as an independent
1-14 contractor. The term includes a subcontractor.
1-15 (3) "Public building" means a building used or to be
1-16 used for purposes that provide for public access or occupancy. The
1-17 term does not include:
1-18 (A) an industrial facility to which access is
1-19 limited principally to employees of the facility because of
1-20 processes or functions that are hazardous to human safety or
1-21 health;
1-22 (B) a federal building or installation;
1-23 (C) a private residence;
1-24 (D) an apartment building with not more than
2-1 four dwelling units; or
2-2 (E) a manufacturing facility or building that is
2-3 part of a facility to which access is limited to workers and
2-4 invited guests under controlled conditions.
2-5 Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS
2-6 INSTALLATION OR REINSTALLATION PROHIBITED. The board shall adopt
2-7 rules designating the materials or replacement parts for which a
2-8 person must obtain a material safety data sheet before installing
2-9 the materials or parts in a public building. A person may not
2-10 install materials or replacement parts in a public building if:
2-11 (1) the person does not obtain a required material
2-12 safety data sheet; or
2-13 (2) the materials or parts, according to the material
2-14 safety data sheet, contain more than one percent asbestos and there
2-15 is an alternative material or part.
2-16 Sec. 161.403. INJUNCTION. (a) The attorney general or the
2-17 appropriate district or county attorney, in the name of the state,
2-18 may bring an action for an injunction or other process against a
2-19 contractor who is violating or threatening to violate this
2-20 subchapter. The action may be brought in a district court of
2-21 Travis County or of a county in which any part of the violation or
2-22 threatened violation occurs.
2-23 (b) The district court may grant any prohibitory or
2-24 mandatory relief warranted by the facts, including a temporary
2-25 restraining order, temporary injunction, or permanent injunction.
2-26 Sec. 161.404. CIVIL PENALTY. (a) A contractor who
2-27 violates this subchapter is subject to a civil penalty not to
3-1 exceed \$10,000 a day for each violation. Each day of violation
3-2 constitutes a separate violation for purposes of penalty

3-3 assessment.

3-4 (b) In determining the amount of the civil penalty, the

3-5 court shall consider:

3-6 (1) the contractor's previous violations;

3-7 (2) the seriousness of the violation, including the

3-8 nature, circumstances, extent, and gravity of the violation;

3-9 (3) whether the health and safety of the public was

3-10 threatened by the violation;

3-11 (4) the demonstrated good faith of the contractor; and

3-12 (5) the amount necessary to deter future violations.

3-13 (c) The attorney general or the appropriate district or

3-14 county attorney, in the name of the state, may bring an action

3-15 under this section in a district court of Travis County or of a

3-16 county in which any part of the violation occurs.

3-17 (d) The party bringing the suit may:

3-18 (1) combine a suit to assess and recover civil

3-19 penalties with a suit for injunctive relief brought under Section

3-20 161.403; or

3-21 (2) file a suit to assess and recover civil penalties

3-22 independently of a suit for injunctive relief.

3-23 (e) A penalty collected under this section by the attorney

3-24 general shall be deposited in the state treasury to the credit of

3-25 the general revenue fund. A penalty collected under this section

3-26 by a district or county attorney shall be deposited to the credit

3-27 of the general fund of the county in which the suit was heard.

4-1 Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit

4-2 under Section 161.403 or 161.404 may recover reasonable expenses

4-3 incurred in obtaining injunctive relief, civil penalties, or both,

4-4 including investigation costs, court costs, reasonable attorney's

4-5 fees, witness fees, and deposition expenses.

4-6 Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department

4-7 may impose an administrative penalty on a contractor who violates

4-8 this subchapter.

4-9 (b) The amount of the penalty may not exceed \$10,000 a day

4-10 for a violation. Each day a violation continues or occurs is a

4-11 separate violation for the purpose of imposing a penalty.

4-12 (c) The penalty amount shall be based on:

4-13 (1) the seriousness of the violation, including the

4-14 nature, circumstances, extent, and gravity of the violation;

4-15 (2) the history of previous violations;

4-16 (3) the amount necessary to deter a future violation;

4-17 (4) efforts to correct the violation; and

4-18 (5) any other matter that justice may require.

4-19 (d) The enforcement of the penalty may be stayed during the

4-20 time the order is under judicial review if the contractor pays the

4-21 penalty to the clerk of the court or files a supersedeas bond with

4-22 the court in the amount of the penalty. A contractor who cannot

4-23 afford to pay the penalty or file the bond may stay the enforcement

4-24 by filing an affidavit in the manner required by the Texas Rules of

4-25 Civil Procedure for a party who cannot afford to file security for

4-26 costs, subject to the right of the department to contest the

4-27 affidavit as provided by those rules.

5-1 (e) The attorney general may sue to collect the penalty.

5-2 (f) A proceeding to impose the penalty is considered to be a
5-3 contested case under Chapter 2001, Government Code.
5-4 Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty,
5-5 administrative penalty, and injunction authorized by this
5-6 subchapter are in addition to any other civil, administrative, or
5-7 criminal action provided by law.
5-8 SECTION 2. This Act takes effect September 1, 2001, and
5-9 applies only to the installation or reinstallation of asbestos on
5-10 or after that date. The installation or reinstallation of asbestos
5-11 before the effective date of this Act is governed by the law in
5-12 effect on the date the asbestos was installed, and the former law
5-13 is continued in effect for that purpose.

President of the Senate Speaker of the House
I certify that H.B. No. 1927 was passed by the House on April
5, 2001, by a non-record vote.

Chief Clerk of the House
I certify that H.B. No. 1927 was passed by the Senate on May
15, 2001, by the following vote: Yeas 30, Nays 0, 1 present, not
voting.

Secretary of the Senate

APPROVED: _____
Date

Governor