

# ASSEMBLY, No. 1238

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

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**SYNOPSIS**

Establishes licensing and permit requirements and provides for adoption of standards and regulations for inspection of asbestos in certain structures.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the inspection of asbestos hazards and  
2 amending and supplementing P.L.1984, c.173.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 1 of P.L.1984, c.173 (C.34:5A-32) is amended to  
8 read as follows:

9 1. The Legislature finds that the inspection, application,  
10 enclosure, removal and encapsulation of asbestos when improperly  
11 performed creates unnecessary health and safety hazards which are  
12 detrimental to the State's interest in protecting the health, safety,  
13 and welfare of all citizens thereby exposed to such asbestos  
14 hazards.

15 (cf: P.L.1994, c.21, s.1)

16

17 2. Section 2 of P.L.1984, c.173 (C.34:5A-33) is amended to  
18 read as follows:

19 2. The Legislature declares it to be its purpose and policy to  
20 reduce asbestos-related hazards by:

21 a. Encouraging contracting parties, citizens and insurance  
22 companies in their efforts to reduce disabling asbestos hazards and  
23 to stimulate initiation of new and to perfect existing programs for  
24 controlling the inspection, application, use and removal of asbestos,  
25 an extremely dangerous substance;

26 b. Creating a climate for developing innovative methods,  
27 techniques and approaches for dealing with life-destroying asbestos  
28 materials;

29 c. Encouraging competence and knowledge in the field of  
30 asbestos inspection, application, enclosure, repair, removal, and  
31 encapsulation by the licensing of employers, including contractors,  
32 and the permitting of employees in an effort to ensure that  
33 incompetent work will not pose a health and safety threat to the  
34 public-at-large through subsequent exposure to asbestos;

35 d. Providing for the adoption of standards for the inspection,  
36 application, enclosure, removal, encapsulation, storage, sale,  
37 disposal and use of asbestos and asbestos-containing material; and

38 e. Establishing an enforcement program for these standards,  
39 which shall include reporting procedures.

40 (cf: P.L.1994, c.21, s.2)

41

42 3. Section 3 of P.L.1984, c.173 (C.34:5A-34) is amended to  
43 read as follows:

44 3. As used in this act:

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1       a. "Asbestos" means the asbestiform varieties of chrysotile  
2 (serpentine); crocidolite (riebeckite); amosite  
3 (cummingtonitegrunerite); anthophyllite; termolite; and  
4 actinolite;
- 5       b. "Asbestos-containing material" means any material which  
6 contains more than **【1%】** one percent asbestos by weight;
- 7       c. "Employee" means any person suffered or permitted to work  
8 by an employer;
- 9       d. "Employer" means a body, board, person, corporation,  
10 partnership, proprietorship, joint venture, fund, authority or similar  
11 entity employing, permitting or suffering another to work. In the  
12 case of a corporation, the officers of the corporation and any agents  
13 having the management of the corporation shall be deemed to be  
14 employers of the employees of the corporation for the purposes of  
15 this act. This term shall apply to private employers and to the State,  
16 its political subdivisions, and any boards, commissions, schools,  
17 institutions, or authorities created or recognized thereby;
- 18       e. "Friable" means asbestos-containing material that when dry  
19 may be crumbled, pulverized or reduced to powder by hand  
20 pressure, and includes previously nonfriable asbestos-containing  
21 material after that material becomes damaged to the extent that  
22 when dry it may be crumbled, pulverized or reduced to powder by  
23 hand pressure.
- 24       f. "Structure" means any institutional, commercial, public,  
25 industrial, or residential facility, installation, or building excluding  
26 any residential apartment building with fewer than 10 units or  
27 detached single-family home.  
28 (cf: P.L.1994, c.21, s.3)  
29
- 30       4. Section 4 of P.L.1984, c.173 (C.34:5A-35) is amended to  
31 read as follows:  
32       4. Any private or public agency letting contracts for any  
33 activity involving the inspection, application, enclosure, repair,  
34 removal or encapsulation of asbestos in **【any】** a structure for which  
35 a license is required shall include in these contracts specifications  
36 that these contracts are to be performed by contractors and  
37 subcontractors licensed by the Commissioner of Labor and  
38 Workforce Development.  
39 (cf: P.L.1994, c.21, s.4)  
40
- 41       5. Section 5 of P.L.1984, c.173 (C.34:5A-36) is amended to  
42 read as follows:  
43       5. No employer shall either directly or indirectly perform any  
44 of the functions of inspection, application, enclosure, removal, or  
45 encapsulation of asbestos in **【any】** a structure, nor enter into any  
46 contract with the owner or the owner's representative for the  
47 employer to perform such work or services, without first obtaining a  
48 nontransferable license from the Commissioner of Labor and

1 Workforce Development, except private employers subject to the  
2 federal **【Occupational Safety and Health Act of 1970】**  
3 “Occupational Safety and Health Act of 1970”  
4 (29 U.S.C. s. 651 et seq.) who use their own employees to inspect,  
5 apply, enclose, remove, repair, or encapsulate asbestos in their own  
6 facility, or as otherwise exempted pursuant to section 7 of P.L.1994,  
7 c.21 (C.34:5A-43).

8 This license shall be in writing, shall be dated when issued, shall  
9 contain an expiration date, and shall be signed by the commissioner.  
10 The commissioner may issue employer licenses with such  
11 conditions as the commissioner deems necessary, and as adopted by  
12 regulation, specifying the scope of work authorized by such license.  
13 No license shall be issued by the commissioner unless the employer  
14 has completed a course of training certified by, and satisfactorily  
15 has completed an examination approved by, the Department of  
16 Health. The license shall give the name and address of the  
17 employer to whom it is issued. Licensed employers shall post a  
18 sign indicating, in letters more than four inches in height,  
19 "LICENSED BY THE STATE OF NEW JERSEY FOR  
20 ASBESTOS WORK," readily visible outdoors at the work site. The  
21 actual license shall be readily available at the work site for  
22 inspection by representatives of the Commissioners of Labor and  
23 Workforce Development and Health and the contracting agency.  
24 (cf: P.L.1994, c.21, s.5)  
25

26 6. Section 6 of P.L.1984, c.173 (C.34:5A-37) is amended to  
27 read as follows:

28 6. Every employee performing functions of inspection,  
29 application, enclosure, repair, removal, or encapsulation of  
30 asbestos, with the exception of employees of an employer subject to  
31 the federal **【Occupational Safety and Health Act of 1970】**  
32 “Occupational Safety and Health Act of 1970” (29 U.S.C. s. 651 et  
33 seq.) inspecting, applying, enclosing, repairing, removing, or  
34 encapsulating asbestos at the employer's own facility, or as  
35 otherwise exempted pursuant to section 7 of P.L.1994, c.21  
36 (C.34:5A-43), shall first procure from the Commissioner of Labor  
37 and Workforce Development a performance permit. No permit  
38 shall be issued unless the employee has taken a course of training in  
39 asbestos inspection, control, and removal, passed an examination  
40 thereon, and demonstrated the ability to perform asbestos  
41 inspection, control, and removal safely, in accordance with the  
42 current state-of-the-art technology. The Commissioner of Health  
43 shall certify the course of training and approve the examination  
44 necessary for a permit. This permit shall be in writing, shall be  
45 dated when issued, shall contain an expiration date, and shall be  
46 signed by the Commissioner of Labor and Workforce Development.  
47 It shall give the name and address of the employee to whom it is  
48 issued. The permit shall be carried upon the worker's person and be

1 readily available for inspection by representatives of the  
2 Commissioners of Labor and Workforce Development and Health  
3 and the contracting agency. The Commissioner of Labor and  
4 Workforce Development may place reasonable conditions on  
5 employee permits which specify the scope of work authorized by  
6 such permit.

7 (cf: P.L.1994, c.21, s.6)

8  
9 7. (New section) A permitted employee pursuant to section 6  
10 of P.L.1984, c.173 (C.34:5A-37) shall perform initial, ongoing, and  
11 final inspections for asbestos in a structure for which a license is  
12 required. An employee performing inspections in a structure shall  
13 be employed by a licensed employer pursuant to section 5 of  
14 P.L.1984, c.173 (C.34:5A-36) who is separate from and  
15 independent of other licensed employers performing asbestos  
16 related work in the structure.

17  
18 8. Section 8 of P.L.1984, c.173 (C.34:5A-39) is amended to  
19 read as follows:

20 8. Not later than six months after the effective date of this act,  
21 the Commissioners of Labor and Workforce Development and  
22 Health jointly shall, in consultation with the Commissioner of  
23 Environmental Protection, adopt all standards and regulations which  
24 they deem necessary for the proper administration and enforcement  
25 of this act. These standards and regulations shall include, but shall  
26 not be limited to, protective equipment specifications; inspection,  
27 application, enclosure, removal, and encapsulation procedures;  
28 administrative penalties; waste disposal; self-monitoring; cleanup;  
29 health checkup; license and permit issuance, suspension, renewal  
30 and revocation; fee charges; experience necessary for license or  
31 permit qualification; general subject matter of qualifying  
32 examinations; and continuing education. Any suspension,  
33 revocation, or refusal to renew any permit or license pursuant to this  
34 act shall be effectuated as follows: the department that is  
35 responsible for the issuance of the permit or license may suspend,  
36 revoke, or refuse to renew any license or permit because of a  
37 violation of any provision of this act. Prior to that suspension,  
38 revocation, or failure to renew, the department shall afford the  
39 applicant, licensee, or permit holder an opportunity for a hearing in  
40 accordance with the provisions of the "Administrative Procedure  
41 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except that, if the  
42 department has reason to believe that a condition exists at a job site  
43 which poses an imminent threat to the public health, safety or  
44 welfare, it may order the immediate suspension of the license,  
45 permit, or certification pending the outcome of the hearing.

46 (cf: P.L.1994, c.21, s.9)

47  
48 9. This act shall take effect immediately.

STATEMENT

This bill amends P.L.1994, c.21 (C.34:5A-32 et seq.), commonly referred to as the Asbestos Control and Licensing Act, and applies the provisions of the law to the inspection of asbestos in a structure. This bill establishes both employer license and employee permit requirements and provides for the adoption of standards and regulations by the Commissioner of Labor and Workforce Development and the Commissioner of Health for the inspection of asbestos. In doing so, this bill also extends the enforcement provisions established in section 9 and 10 of P.L.1994, c.21 (C.34:5A-40 and C.34:5A-41) to include violations as they relate to the inspection of asbestos. The law currently applies to the application, enclosure, repair, removal and encapsulation of asbestos.

Further, this bill requires a permitted employee to perform initial, ongoing, and final inspections for asbestos in a structure for which a license for asbestos control is required. To ensure that all inspections are performed in the best interest of the public's health and safety, the employee must be employed by a licensed employer who is separate from and independent of other licensed employers performing asbestos related work in the structure.

Finally, under this bill, the term "structure" is defined to mean any institutional, commercial, public, industrial, or residential facility, installation, or building excluding any residential apartment building with fewer than 10 units or detached single-family home.