

ASSEMBLY, No. 4393

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 16, 2020

Sponsored by:

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Increases maximum penalty for certain violations concerning asbestos hazard abatement; allocates moneys from increased penalties to asbestos control and licensure programs.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain asbestos violations and amending
2 P.L.1984, c.173.

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

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7 1. Section 9 of P.L.1984, c.173 (C.34:5A-40) is amended to
8 read as follows:

9 9. **【This act】** P.L.1984, c.173 (C.34:5A-32 et seq.) , and its
10 standards and regulations, shall be enforced by the Commissioners
11 of Labor and Health, who have the right-of-entry to all pertinent
12 premises and records for purposes of inspection and information.
13 Both commissioners may employ the following powers and
14 remedies in enforcing their respective responsibilities under **【this**
15 **act】** P.L.1984, c.173 (C.34:5A-32 et seq.) :

16 a. Whenever either commissioner finds that a person has
17 violated any provision of **【this act】** P.L.1984, c.173 (C.34:5A-32 et
18 seq.) for which that commissioner has the responsibility of
19 enforcement, that commissioner may issue an administrative order
20 specifying the provision or provisions of the act which the person
21 has violated, ordering abatement of the violation and giving notice
22 of the person's right to a hearing on the matters contained in the
23 order. The person shall have 10 calendar days from receipt of the
24 order within which to deliver to the commissioner a written request
25 for a hearing. After the hearing, and upon finding that a violation
26 has occurred, the commissioner may issue a final order. If no
27 hearing is requested, the order shall become final upon expiration of
28 the 10-day period. A request for a hearing shall not automatically
29 stay the effect of an administrative order. A stay of an
30 administrative order may only be granted by the commissioner upon
31 a written request and a factual basis clearly supporting the
32 appropriateness of the stay.

33 b. Either commissioner may institute an action or proceeding in
34 the Superior Court for injunctive or other relief for any violation of
35 **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) for which that
36 commissioner has the responsibility of enforcement and the court
37 may proceed in the action in a summary manner. In the proceeding,
38 the relief may restrain any violation or compel the taking of any
39 action required pursuant to **【this act】** P.L.1984, c.173 (C.34:5A-32
40 et seq.) , and the court may grant temporary or interlocutory relief.
41 The relief may include, singularly or in combination:

42 (1) A temporary or permanent restraining order or injunctive
43 relief;

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 (2) Assessment of the violator for the costs of any investigation
2 or inspection leading to the establishment of the violation and for
3 the reasonable costs of preparing and litigating the case; and

4 (3) Assessment of the violator for the costs incurred by the State
5 in correcting or terminating any adverse health and environmental
6 effects resulting from the violation.

7 c. Either commissioner may assess a civil administrative
8 penalty for any violation of **【this act】** P.L.1984, c.173 (C.34:5A-32
9 et seq.) for which that commissioner has the responsibility of
10 enforcement not to exceed **【\$25,000】** \$100,000 for each violation.
11 Each day during which the violation continues shall constitute an
12 additional, separate and distinct offense. No assessment shall be
13 levied pursuant to this section until after the violator has been
14 notified by certified mail or personal service. The notice shall
15 include a reference to the section of the statute violated, a concise
16 statement of the facts alleged to constitute a violation, a statement
17 of the amount of civil administrative penalties to be imposed, and a
18 statement of the violator's right to a hearing. The violator shall
19 have 10 calendar days from receipt of the notice within which to
20 deliver to the commissioner a written request for a hearing. After
21 the hearing, and upon finding that a violation has occurred, the
22 commissioner may issue a final order after assessing the amount of
23 the fine specified in the notice. If no hearing is requested, the
24 notice shall become a final order after the expiration of the 10-day
25 period. Payment of the assessment is due when a final order is
26 issued or the notice becomes a final order. The authority to levy a
27 civil administrative penalty is in addition to all other enforcement
28 provisions and the payment of any assessment shall not be deemed
29 to affect the availability of any other enforcement provisions in
30 connection with the violation for which the assessment is levied.
31 The department may compromise any civil administrative penalty
32 assessed under this section in an amount the department determines
33 appropriate. Any penalty imposed pursuant to this section may be
34 recovered with costs in a summary proceeding commenced by the
35 commissioner pursuant to "the penalty enforcement law," N.J.S.
36 2A:58-1 et seq. The balance of a penalty imposed pursuant to this
37 section in excess of \$25,000 shall be allocated to the Department of
38 Labor and Workforce Development and used to fund asbestos
39 control and licensure programs.

40 d. A person who violates an administrative order issued
41 pursuant to subsection a. of this section, or a court order issued
42 pursuant to subsection b. of this section, or who fails to pay in full
43 an administrative assessment pursuant to subsection c. of this
44 section is subject, upon order of a court of competent jurisdiction,
45 to a civil penalty not to exceed \$50,000 per day for such violation.

46 The pursuit of any of the remedies specified in this section shall
47 not preclude the commissioner from seeking any other remedy.

48 (cf: P.L.1994, c.21, s.10)

10. Any person who knowingly hinders or delays the Commissioners of Labor and Workforce Development or Health or the authorized representative thereof, in the performance of the duty to enforce **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) , or knowingly submits false or misleading information on any license or permit application required by **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) , or fails to obtain licenses or permits required by the provisions of **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) , or refuses to make these licenses or permits accessible to either commissioner, or the authorized representative thereof, or otherwise violates any provision of **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) or any regulation adopted under **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) , shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than **【\$25,000】** \$100,000 in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2. The balance of a penalty imposed pursuant to this section in excess of \$25,000 shall be allocated to the Department of Labor and Workforce Development and used to fund asbestos control and licensure programs.

(cf: P.L.2012, c.17, s.405)

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30 This bill would increase the maximum penalty for certain
31 violations of P.L.1984, c.173 (C.34:5A-32 et seq.), unofficially
32 known as the "Asbestos Control and Licensing Act," from \$25,000
33 to \$100,000. The bill would allocate any moneys in excess of
34 \$25,000 from a penalty assessed pursuant to P.L.1984, c.173 to the
35 Department of Labor and Workforce Development to fund asbestos
36 control and licensure programs.