

[First Reprint]

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)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

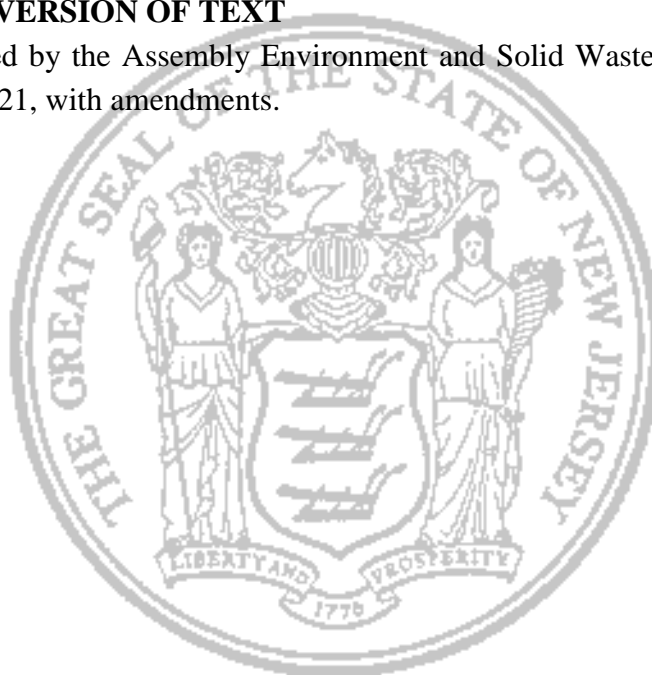
Assemblywoman Swain

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 reported by the Assembly Environment and Solid Waste Committee on March 15, 2021, with amendments.



(Sponsorship Updated As Of: 6/21/2021)

1 AN ACT concerning certain asbestos violations and amending
 2 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 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
 11 ¹**【Commissioners】** Commissioner¹ of Labor ¹and Workforce
 12 Development¹ and ¹the Commissioner of¹ Health, who have the
 13 right-of-entry to all pertinent premises and records for purposes of
 14 inspection and information. Both commissioners may employ the
 15 following powers and remedies in enforcing their respective
 16 responsibilities under **【this act】** P.L.1984, c.173 (C.34:5A-
 17 32 et seq.).

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

35 b. Either commissioner may institute an action or proceeding in
 36 the Superior Court for injunctive or other relief for any violation of
 37 **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) for which that
 38 commissioner has the responsibility of enforcement and the court
 39 may proceed in the action in a summary manner. In the proceeding,
 40 the relief may restrain any violation or compel the taking of any
 41 action required pursuant to **【this act】** P.L.1984, c.173 (C.34:5A-
 42 32 et seq.), and the court may grant temporary or interlocutory
 43 relief. The relief may include, singularly or in combination:

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted March 15, 2021.

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

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

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

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

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

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

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

4
5 2. Section 10 of P.L.1984, c.173 (C.34:5A-41) is amended to
6 read as follows:

7 10. Any person who knowingly hinders or delays the
8 Commissioners of Labor and Workforce Development or Health or
9 the authorized representative thereof, in the performance of the duty
10 to enforce **【this act】** P.L.1984, c.173 (C.34:5A-32 et seq.) , or
11 knowingly submits false or misleading information on any license
12 or permit application required by **【this act】** P.L.1984, c.173
13 (C.34:5A-32 et seq.) , or fails to obtain licenses or permits required
14 by the provisions of **【this act】** P.L.1984, c.173 (C.34:5A-
15 32 et seq.), or refuses to make these licenses or permits accessible
16 to either commissioner, or the authorized representative thereof, or
17 otherwise violates any provision of **【this act】** P.L.1984, c.173
18 (C.34:5A-32 et seq.) or any regulation adopted under **【this act】**
19 P.L.1984, c.173 (C.34:5A-32 et seq.) , shall, upon conviction, be
20 guilty of a crime of the third degree and, notwithstanding the
21 provisions of N.J.S.2C:43-3, shall be subject to a fine of not more
22 than **【\$25,000】** \$100,000 in addition to any other appropriate
23 disposition authorized by subsection b. of N.J.S.2C:43-2. The
24 balance of a penalty imposed pursuant to this section in excess of
25 \$25,000 shall be allocated to the Department of Labor and
26 Workforce Development and used to fund asbestos control and
27 licensure programs.

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

29
30 3. This act shall take effect immediately.