

(2) Every contractor shall provide a copy of the informational material described in section 1 of this act to customers required to receive contractor disclosure notice under RCW 18.27.114.

(3) No cause of action may lie against the state, a real property lender, or a contractor arising from the provisions of sections 1 and 2 of this act.

(4) For the purpose of this section, "real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, or individual that makes loans secured by real property in this state.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act are each added to chapter 60.04 RCW.

NEW SECTION. Sec. 4. This act shall take effect July 1, 1989.

Passed the Senate March 7, 1988.

Passed the House March 5, 1988.

Approved by the Governor March 24, 1988.

Filed in Office of Secretary of State March 24, 1988.

CHAPTER 271

[Substitute House Bill No. 1592]

ASBESTOS—WORKERS' COMPENSATION—ASBESTOS PROJECTS

AN ACT Relating to industrial insurance benefits for occupational diseases; amending RCW 51.12.100, 51.32.180, 49.26.100, 49.26.110, 49.26.120, and 49.26.130; adding new sections to chapter 49.26 RCW; adding a new section to chapter 51.12 RCW; creating a new section; prescribing penalties; making an appropriation; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 51.12 RCW to read as follows:

(1) The department shall furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if (a) there are objective clinical findings to substantiate that the worker has an asbestos-related claim for occupational disease and (b) the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered under this title. The department shall render a decision as to the liable insurer and shall continue to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

(2) The benefits authorized under subsection (1) of this section shall be paid from the medical aid fund, with the self-insurers and the state fund each paying a pro rata share, based on number of worker hours, of the costs necessary to fund the payments. For the purposes of this subsection only,

the employees of self-insured employers shall pay an amount equal to one-half of the share charged to the self-insured employer.

(3) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a self-insurer or the state fund, then the self-insurer or state fund shall reimburse the medical aid fund for all benefits paid and costs incurred by the fund.

(4) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program other than the federal social security, old age survivors, and disability insurance act, 42 U.S.C. or an insurer under the maritime laws of the United States:

(a) The department shall pursue the federal program insurer on behalf of the worker or beneficiary to recover from the federal program insurer the benefits due the worker or beneficiary and on its own behalf to recover the benefits previously paid to the worker or beneficiary and costs incurred;

(b) For the purpose of pursuing recovery under this subsection, the department shall be subrogated to all of the rights of the worker or beneficiary receiving compensation under subsection (1) of this section; and

(c) The department shall not pursue the worker or beneficiary for the recovery of benefits paid under subsection (1) of this section unless the worker or beneficiary receives recovery from the federal program insurer, in addition to receiving benefits authorized under this section. The director may exercise his or her discretion to waive, in whole or in part, the recovery of any such benefits where the recovery would be against equity and good conscience.

(5) The provisions of subsection (1) of this section shall not apply if the worker or beneficiary refuses, for whatever reason, to assist the department in making a proper determination of coverage. If a worker or beneficiary refuses to cooperate with the department, self-insurer, or federal program insurer by failing to provide information that, in the opinion of the department, is relevant in determining the liable insurer, or if a worker refuses to submit to medical examination, or obstructs or fails to cooperate with the examination, the department shall reject the application for benefits. No information obtained under this section is subject to release by subpoena or other legal process.

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit.

(7) This section shall expire July 1, 1993.

Sec. 2. Section 51.12.100, chapter 23, Laws of 1961 as last amended by section 21, chapter 350, Laws of 1977 ex. sess. and RCW 51.12.100 are each amended to read as follows:

(1) The provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made under this title prior to the final determination under the maritime laws, such benefits shall be repaid by the worker or beneficiary if recovery is subsequently made under the maritime laws.

***Sec. 3. Section 51.32.180, chapter 23, Laws of 1961 as last amended by section 53, chapter 350, Laws of 1977 ex. sess. and RCW 51.32.180 are each amended to read as follows:**

Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title (~~PROVIDED, HOWEVER, That~~) except as follows: (1) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (2) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.

*Sec. 3 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4. The department of labor and industries shall conduct a study of the program established by section 1 of this act. The department's study shall include the use of benefits under the program and the cost of the program. The department shall report the results of the study to the economic development and labor committee of the senate and the commerce and labor committee of the house of representatives, or the appropriate successor committees, at the start of the 1993 regular legislative session.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act shall take effect July 1, 1988, and shall apply to all claims filed on or after that date or pending a final determination on that date.

Sec. 6. Section 1, chapter 387, Laws of 1985 and RCW 49.26.100 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 49.26.100 through 49.26.140.

(1) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

(2) "Department" means the department of labor and industries.

(3) "Person" means any partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

(4) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project.

(5) ~~((Qualified))~~ Certified asbestos worker" means an individual who is certified by the department to ((undertake)) work on an asbestos project.

~~((5))~~ (6) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18-.27 RCW that submits a bid or contracts to ((perform the removal or encapsulation of)) remove or encapsulate asbestos for another and is certified by the department to remove or encapsulate asbestos.

(7) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner.

NEW SECTION. Sec. 7. A new section is added to chapter 49.26 RCW to read as follows:

(1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as required by all applicable federal and state requirements.

(2) Except as provided in section 13 of this act, a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, shall be included as part of the written notice of the asbestos project required in RCW 49.26.120. A copy of the written report or statement shall be given to the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material containing asbestos. A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees.

NEW SECTION. Sec. 8. A new section is added to chapter 49.26 RCW to read as follows:

(1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and submitting the report of the inspection, or submitting a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under section 7 of this act; and (b) submitting the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of section 7 of this act and RCW 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements. Any costs resulting from the halt of the project incurred by contractors or other parties affected by the halt of the project shall be paid by the owner or the owner's agent.

(2) It is the responsibility of any contractor registered under chapter 18.27 RCW to request in writing a copy of the written report or statement required under section 7 of this act from the owner or the owner's agent. No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) Any partnership, firm, corporation or sole proprietorship that begins any construction, renovation, remodeling, maintenance, repair, or demolition without meeting the requirements of section 7 of this act and the notification requirement under RCW 49.26.120 shall lose the exemptions provided in RCW 49.26.110 and 49.26.120 for a period of not less than six months.

(4) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule adopted under this chapter shall be revoked for a period of not less than six months.

(5) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140.

****NEW SECTION. Sec. 9. A new section is added to chapter 49.26 RCW to read as follows:***

A safety conference shall be held for all asbestos projects within seven days before the start of actual work. A weekly safety conference shall suffice for purposes of this section as long as all asbestos projects that will be started that week at the same location are discussed. The conference shall include representatives of the owner or contracting agency, the certified asbestos contractor, the employer, the employees of the certified asbestos contractor and the employer including the certified asbestos workers, and the employees' representatives or collective bargaining representatives. It shall include a discussion of the employer's and contractor's safety program and such means, methods, devices, processes, practices, conditions, or operations the employer and contractors intend to use in providing a safe work environment.

Minutes shall be kept of each safety meeting and shall include the date of the meeting, the names of the individuals in attendance and the issues discussed. One copy of the meeting minutes shall be kept on file at the company and one copy shall be given to the employees' collective bargaining representative, or employee representative, if any, and shall be posted as prescribed by the department in a place that is easily accessible to employees.

*Sec. 9 was vetoed, see message at end of chapter.

Sec. 10. Section 2, chapter 387, Laws of 1985 and RCW 49.26.110 are each amended to read as follows:

(1) No ((contractor,)) employee((;)) or other individual is eligible to do work ((on an asbestos project)) governed by this chapter unless issued a certificate by the department except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under section 8(3) of this 1988 act, and conducted in its own facility and by its own employees under the direct, on-site supervision of a ((qualified)) certified asbestos ((worker)) supervisor. For the purposes of this chapter, on-site supervision shall include all activities taking place in the performance of a contract at one project location. In cases excepted under this section, the partnership, firm, corporation or sole

proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos. To qualify for a certificate (~~(, the contractor, employee, or other individual)~~): (a) Certified asbestos workers and supervisors must have successfully completed a ((basic)) training course of at least thirty hours, provided or approved by the department, on the health and safety aspects of the removal and encapsulation of asbestos including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination, and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought; and (b) all applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department. ((This training is)) These requirements are intended to represent the minimum ((training and education)) requirements for certification and shall not preclude contractors or employers from providing additional education or training. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor.

(2) The department may deny, suspend, or revoke a certificate, ((in accordance with chapter 34.04 RCW)) as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under section 8 of this 1988 act, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be suspended or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(3) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department.

NEW SECTION. Sec. 11. A new section is added to chapter 49.26 RCW to read as follows:

Before working on an asbestos project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her asbestos contractor's certificate coincide.

Sec. 12. Section 4, chapter 387, Laws of 1985 and RCW 49.26.120 are each amended to read as follows:

(1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a ~~((qualified))~~ certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor except, in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship which has not lost this exemption under section 8(3) of this 1988 act, and conducted in its own facility and by its own employees under the direct, on-site supervision of a ~~((qualified))~~ certified asbestos ~~((worker))~~ supervisor. In cases excepted under this section, the partnership, firm, corporation or sole proprietorship shall submit a written description to the department of the kinds of asbestos projects expected to be undertaken and the procedures to be used in undertaking asbestos projects, which description shall demonstrate competence in performing the work in compliance with the requirements of this chapter, rules adopted under this chapter, and any other requirements of law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos. The department ~~((may))~~ shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in section 13 of this 1988 act. The notice shall include a written description containing such information as the department requires by rule, including the written report or statement required under section 7 of this 1988 act. The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule clarify the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

(2) The department shall by rule, after consultation with the state fire protection policy board, establish policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have rendered it likely that asbestos has been or will be disturbed or released into the air.

NEW SECTION. Sec. 13. A new section is added to chapter 49.26 RCW to read as follows:

Prenotification to the department under RCW 49.26.120, including submission of the report or statement required under section 7 of this act, shall not be required for:

(1) Any asbestos project involving less than eleven square feet of surface area, or less than ten linear feet of pipe unless the surface area of the pipe is greater than eleven square feet. The person undertaking such a project shall keep the reports, or statements, and written descriptions required under section 7 of this act and RCW 49.26.120 which shall be available upon request by the department. Employees and employee representatives shall be notified as required under section 7(2) of this act.

(2) Projects which are defined as emergencies by the rules of the department. Emergency projects which disturb or release any material containing asbestos into the air shall be reported to the department within three working days after the commencement of the project in the manner otherwise required under this chapter. The person's employees and the employees' collective bargaining representatives, or employee representatives, if any, shall be notified of the emergency as soon as possible by the person undertaking the emergency project.

****NEW SECTION. Sec. 14. A new section is added to chapter 49.26 RCW to read as follows:***

All owners shall make a good faith effort, using practices approved by the department, to identify all materials which contain asbestos in their facilities and maintain records which catalog the location of the identified materials containing asbestos. Copies of these records shall be made available on request to the department, the employees' collective bargaining representative, or employee representative, the employees, and any contractor preparing bids for work to be performed on the owner's facilities.

****Sec. 14 was vetoed, see message at end of chapter.***

Sec. 15. Section 3, chapter 387, Laws of 1985 as amended by section 1, chapter 219, Laws of 1987 and RCW 49.26.130 are each amended to read as follows:

(1) The department shall administer (~~RCW 49.26.110 through 49.26.140~~) this chapter.

(2) The director of the department shall adopt, in accordance with chapters 34.04 and 49.17 RCW, rules necessary to carry out (~~RCW 49.26.110 through 49.26.140~~) this chapter.

(3) The department (~~may~~) shall prescribe fees for the issuance and renewal of certificates, including recertification, and the administration of examinations, and for the review of training courses.

(4) The asbestos account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in the account. Moneys in the account shall be spent after appropriation only for costs incurred by

the department in the administration and enforcement of this chapter. Disbursements from the account shall be on authorization of the director or the director's designee.

NEW SECTION. Sec. 16. A new section is added to chapter 49.26 RCW to read as follows:

Any employee who notifies the department of any activity the employee reasonably believes to be a violation of this chapter or any rule adopted under this chapter or who participates in any proceeding related thereto shall have the same rights and protections against discharge or discrimination as employees are afforded under chapter 49.17 RCW.

***NEW SECTION.** Sec. 17. A new section is added to chapter 49.26 RCW to read as follows:

Workers previously certified by the department to work on asbestos projects whose certification is valid on the effective date of this act shall be required to attend annual refresher courses to be recertified under this chapter. The department may require all persons who apply for recertification as required under this chapter to successfully complete educational requirements as required by the department by rule and to pass an examination.

*Sec. 17 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 18. There is appropriated from the accident fund to the department of labor and industries for the biennium ending June 30, 1989, the sum of five hundred thousand dollars, or so much thereof as may be necessary, to carry out the purposes of this act. Repayment shall be made from the asbestos account to the accident fund of any moneys appropriated by law in order to implement this act.

NEW SECTION. Sec. 19. Sections 15 and 18 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 6 through 14, 16, and 17 of this act shall take effect January 1, 1989. The department of labor and industries may immediately take such steps as are necessary to ensure that sections 6 through 18 of this act are implemented on those dates.

Passed the House March 7, 1988.

Passed the Senate March 4, 1988.

Approved by the Governor March 24, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 24, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 3, 9, 14, and 17, Substitute House Bill No. 1592 entitled:

"AN ACT Relating to industrial insurance benefits for occupational diseases."

Section 3 of this bill is similar to, and serves the same purpose as, section 5 of Engrossed House Bill No. 1396, which I have signed into law. To avoid confusion, I have vetoed section 3.

Section 9 would mandate weekly safety meetings for asbestos projects. There is no flexibility for projects that might deserve more frequent or less frequent meetings. Requirements established by rule can better address the variety of different situations that would necessitate meetings. I am directing the Department of Labor and Industries to establish appropriate requirements through its rule-making authority. For this reason, I have vetoed section 9.

Section 14 would require the owners of all buildings and facilities public or private to inventory their property to identify all materials containing asbestos. Records of this inventory would have to be maintained and made available for inspection by the Department of Labor and Industries and other parties.

These inventories may be of value to companies. I would encourage the state's employers to undertake such surveys. The section is so broadly worded, however, that it is unworkable. The bill would technically require every citizen of the state who owns a building to conduct an inventory. It is not reasonable to expect homeowners to conduct an inventory in order that it be available whenever they plan remodeling or other work on their house. I feel that section 14 would create difficulties for individuals that it was not intended to affect.

I am asking the Department of Labor and Industries to review the issue and to suggest appropriate requirements for asbestos inventories. For these reasons, I have vetoed section 14.

Section 17 would require workers who are currently certified for a two-year period to be recertified after only one year. I do not feel that this is necessary, since these individuals will begin annual recertification when their current certification expires. Therefore, I have vetoed section 17.

With the exception of sections 3, 9, 14, and 17, Substitute House Bill No. 1592 is approved."

CHAPTER 272

[Substitute Senate Bill No. 6024]

HYDRAULIC PROJECTS—STREAMBANK STABILIZATION TO PROTECT FARM AND AGRICULTURAL LAND

AN ACT Relating to rivers and streams in agricultural areas; amending RCW 75.20.100, 75.20.103, and 75.20.130; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 75.20.100, chapter 12, Laws of 1955 as last amended by section 1, chapter 173, Laws of 1986 and RCW 75.20.100 are each amended to read as follows:

In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the written approval of the department of fisheries or the department of ((game)) wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. The department of fisheries or the department of ((game)) wildlife shall grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of