SENATE, No. 2659

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 2, 2020

Sponsored by:
Senator NICHOLAS P. SCUTARI
District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:
Senator Gill

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.

(Sponsorship Updated As Of: 7/16/2020)

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

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

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

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

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

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

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

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

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.

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

c. Either commissioner may assess a civil administrative penalty for any violation of **[**this act**]** P.L.1984, c.173 (C.34:5A-32 et seq.) for which that commissioner has the responsibility of enforcement not to exceed **[**$25,000**]** $100,000 for each violation. Each day during which the violation continues shall constitute an additional, separate and distinct offense. No assessment shall be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of civil administrative penalties to be imposed, and a statement of the violator's right to a hearing. The violator shall have 10 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing, and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 10-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq. 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.

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

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

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

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

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)

3. This act shall take effect immediately.

STATEMENT

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