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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 9. Contractors [7000 - 7191] (*Chapter 9 added by Stats. 1939, Ch. 37.)*

ARTICLE 11. Asbestos Consultants [7180 - 7189.7] (*Article 11 added by Stats. 1990, Ch. 1255, Sec. 1.)*

7180. (a) No person shall, on or after July 1, 1992, engage in the practice of an asbestos consultant as defined in Section 7181, or as a site surveillance technician as defined in Section 7182, unless he or she is certified by the Division of Occupational Safety and Health pursuant to regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(b) Certification as an asbestos consultant or site surveillance technician shall not be required when a licensed contractor or registered asbestos abatement contractor takes no more than 12 bulk samples of suspected asbestos-containing material that is required to be removed, repaired, or disturbed as part of a construction project in a residential dwelling solely for any of the following purposes: (1) bid preparation for asbestos abatement; (2) evaluating exposure to its own employees during construction or asbestos abatement; or (3) determining for its own purposes or for the purpose of communicating whether or not a contract for asbestos abatement has been satisfactorily completed. Persons taking samples for the purposes described in this section shall be certified building inspectors under the Asbestos Hazard Emergency Response Act, as specified in Section 763 of Title 40 of the Code of Federal Regulations, appendix (c) to subpart (e). No licensed contractor or asbestos abatement contractor may provide professional health and safety services or perform any asbestos risk assessment. A bid for asbestos abatement may communicate the results and location of sampling for the presence of asbestos and how the asbestos will be abated. This section does not affect the requirement that asbestos abatement contractors be registered under Section 6501.5 of the Labor Code, nor does it permit a licensed contractor or asbestos abatement contractor to perform clearance air monitoring following asbestos abatement, unless otherwise permitted by law.

(*Amended by Stats. 1996, Ch. 526, Sec. 1. Effective January 1, 1997.*)

7180.5. When a building owner or operator engages the services of a person to perform asbestos consulting or site surveillance technician activities as defined in Sections 7181 and 7182 after July 1, 1992, the building owner or operator shall contract with a person who is certified by the Division of Occupational Safety and Health pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(*Added by Stats. 1990, Ch. 1255, Sec. 1.*)

7181. An "asbestos consultant," as used in this chapter, means any person who contracts to provide professional health and safety services relating to asbestos-containing material, as defined in subdivision (b) of Section 6501.8 of the Labor Code, including building inspections, abatement project design, contract administration, supervision of site surveillance technicians as defined in Section 7182, sample collections, preparation of asbestos management plans, and clearance air monitoring.

(*Added by Stats. 1990, Ch. 1255, Sec. 1.*)

7182. A "site surveillance technician" means any person who acts as an independent onsite representative of an asbestos consultant who monitors the asbestos abatement activities of others, provides asbestos air monitoring services for area and personnel samples, and performs building surveys and contract administration at the direction of an asbestos consultant.

(*Added by Stats. 1990, Ch. 1255, Sec. 1.*)

7183. (a) Within 15 days of receipt of an application for certification pursuant to this article, the division shall inform the applicant in writing either (1) that the application is complete and accepted, or (2) that it is deficient and that additional information, documentation, or examination, specified in the notification, is required to complete the application. Within 45 days of the date of filing of a completed application, the division shall issue to each person who qualifies for certification pursuant to this article, a

certification card which shall identify the holder thereof and the type of certification for which he or she has qualified. If the division cannot comply with the notification deadlines specified in this section, the division shall issue a provisional certification card until all procedures specified in this section are completed.

(b) The certification required by this article shall satisfy all certification requirements of the division for asbestos consultants and site surveillance technicians.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)

7183.5. The division shall enforce this article. In the event the division determines that a certified asbestos consultant or site surveillance technician obtained certification under false pretenses, or that a certified asbestos consultant or site surveillance technician acted in a grossly negligent or fraudulent manner, or engaged in repeated acts of negligence, the division shall revoke that person's certification. The division shall only revoke a certification after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)

7184. A person shall qualify as a certified asbestos consultant by meeting all of the following requirements:

(a) Having any one of the following:

(1) One year of asbestos-related experience, and a bachelor of science degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(2) Two years of asbestos-related experience, and a bachelor's degree.

(3) Three years of asbestos-related experience, and an associate of arts degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(4) Four years of asbestos-related experience and a high school diploma or its equivalent.

(b) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(c) Demonstration of proficiency by achieving a passing score as determined by the division on an examination approved or administered by the division including, but not limited to, the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, disposal, and general industry safety hazards.

(4) State-of-the-art asbestos abatement and control work procedures. The division shall define and incorporate into the certification standards the term "state-of-the-art" for purposes of this article, in the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(5) Federal Asbestos Hazard Emergency Response Act training information and procedures for inspectors, management planners, and supervisors, as provided for under Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code, or the equivalent, as determined by the division.

(6) Information concerning industrial hygiene sampling methodology, including asbestos sampling and analysis techniques and recordkeeping.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)

7185. A person shall qualify as a certified site surveillance technician by meeting all of the following requirements:

(a) Having six months of asbestos-related experience under the supervision of an asbestos consultant.

(b) Possession of a high school diploma or equivalent.

(c) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(d) Demonstration of proficiency by achieving a passing score, as determined by the division, on an examination approved or administered by the division covering the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, and general industry safety hazards.

(4) State-of-the-art asbestos abatement and control work procedures.

(5) Industrial hygiene sampling methodology, including sampling techniques and recordkeeping.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)

7187. When a building owner or operator contracts with an asbestos consultant or site surveillance technician for performance of the activities described in Sections 7181 and 7182, that asbestos consultant or site surveillance technician shall not have any financial or proprietary interest in an asbestos abatement contractor hired for the same project. However, this section shall not preclude the hiring of a consultant by a contractor for the purpose of providing health and safety services for the personnel of the contractor. This section shall not apply when a licensed contractor or registered asbestos abatement contractor takes no more than 12 bulk samples of suspected asbestos-containing material that is required to be removed, repaired, or disturbed as part of a construction project in a residential dwelling solely for any of the following purposes: (1) bid preparation for asbestos abatement; (2) evaluating exposure to its own employees during construction or asbestos abatement; or (3) determining for its own purposes or for the purpose of communicating whether or not a contract for asbestos abatement has been satisfactorily completed. Persons taking samples for the purposes described in this section shall be certified building inspectors under the Asbestos Hazard Emergency Response Act, as specified in Section 763 of Title 40 of the Code of Federal Regulations, appendix (c) to subpart (e). No licensed contractor or asbestos abatement contractor may provide professional health and safety services or perform any asbestos risk assessment. A licensed contractor or asbestos abatement contractor may seek compensation for bid preparation, including the cost of laboratory analysis of asbestos-containing material.

It is the intent of the Legislature in enacting this section to make certain that the asbestos-related work performed by a consultant, including, but not limited to, clearance air monitoring, project design, and contract administration, is performed in a manner which provides for independent professional judgment undertaken without consideration of the financial or beneficial interest of the contractor.

(Amended by Stats. 1996, Ch. 526, Sec. 2. Effective January 1, 1997.)

7189. Any person who engages in the practices of an asbestos consultant or a site surveillance technician, who is not certified pursuant to this article, or who violates Section 7187, is subject to one of the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000).

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any asbestos consultant's or site surveillance technician's certification, and a fine not not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment.

The division shall only impose these penalties after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)

7189.5. This article shall apply to asbestos abatement projects within the meaning of asbestos-related work as defined in Section 6501.8 of the Labor Code, and which involves 100 square feet or more of surface area of asbestos containing material.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)

7189.7. (a) Nothing in this article shall be construed to require agencies of the state to contract with asbestos consultants or site surveillance technicians who are not employees of the state as long as employees of the state who are assigned to perform the activities described in Sections 7181 and 7182 have been certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code. Where feasible, the state shall assign a state civil service classification of associate

industrial hygienist or senior industrial hygienist to carry out asbestos consultation activities as described in Section 7181 for state-owned and leased buildings. The individuals in the classification assigned shall be certified as required in this article before performing these activities.

(b) Nothing in this article shall be construed to require attorneys who provide legal advice on asbestos-related matters to building owners or operators to be certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(Added by Stats. 1990, Ch. 1255, Sec. 1.)