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## Health and Welfare; asbestos control licensing and regulations

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Chapter 200 also specifies how a donor may amend or revoke a gift not made by will,<sup>9</sup> as well as how a person may refuse to make an anatomical gift of any body part.<sup>10</sup>

Chapter 200 also requires specified persons, or a hospital, to make a reasonable search, when a person is believed to be dead or near death, either for a document of gift or evidence of refusal to make an anatomical gift.<sup>11</sup> A person failing to make such a search is not criminally or civilly liable, but subject only to administrative sanctions.<sup>12</sup> Finally, Chapter 200 shall be construed and interpreted to carry out its general purpose to make uniform the law with regard to anatomical gifts among the states enacting the Uniform Anatomical Gift Act.<sup>13</sup>

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9. *Id.* A gift made by will may be amended or revoked as provided in Chapter 133 of Nevada Revised Statutes. *Id.*

10. *Id.*

11. *Id.* sec. 25, at 436 (enacting NEV. REV. STAT. § 451.\_\_\_\_).

12. *Id.*

13. *Id.* sec. 14, at 433 (amending NEV. REV. STAT. § 451.505).

## **Health and Welfare; asbestos control licensing and regulations**

NEV. REV. STAT. §§ 618.\_\_\_\_, 338.\_\_\_\_ (new).

AB 40 (Kerns); 1989 STAT. Ch. 598\*

Under existing law, Nevada adopts all Federal Occupational and Health Administration (OSHA) standards enacted by the Secretary of Labor.<sup>1</sup> These Federal OSHA standards emphasize worker protection<sup>2</sup> by, among other things, requiring employers to maintain training programs for all employees endangered by asbestos.<sup>3</sup>

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\* Nevada Revised Statutes sections 618.\_\_\_\_ (enacted by 1989 Nev. Stat. ch. 598, secs. 1-4, 5, 6-12, 14-20 at \_\_\_\_ ) and section 338.\_\_\_\_ (enacted by Nev. Stat. ch. 598, sec. 22, at \_\_\_\_ ) became effective June 28, 1989, which Nevada Revised Statutes sections 618.\_\_\_\_ (enacted by Nev. Stat. ch. 598, secs. 5, 13, 21 at \_\_\_\_ ) will become effective January 1, 1990. 1989 Nev. Stat. ch. 598, sec. 23 at \_\_\_\_.

1. NEV. REV. STAT. § 618.295 8 (1987).

2. See OSHA Revised Asbestos Construction Standards, 29 C.F.R. § 1926.58 (1988) (measurement and control of asbestos exposure is limited to the workplace).

3. *Id.* § 1926.58(k)(3) (1988) (requiring a training program for construction workers involved in (1) construction or demolition of structures containing asbestos, or (2) removal or

Chapter 598 requires that most persons<sup>4</sup> involved in asbestos control<sup>5</sup> projects be licensed by the Department of Industrial Relations (Department).<sup>6</sup> Under Chapter 598, the Department regulates the licensing of asbestos abatement occupations<sup>7</sup> by establishing standards at least as stringent as the model plan developed by the Administrator of the Environmental Protection Agency (EPA).<sup>8</sup> These licenses for asbestos abatement must be renewed annually and may require continuing education.<sup>9</sup>

Under the Asbestos Hazard Emergency Response Act of 1986 (AHERA), all states must adopt occupational standards for individuals involved in asbestos abatement at an elementary or secondary school.<sup>10</sup> These standards must be at least as stringent as those under

encapsulation of asbestos). A similar training program is required for non-construction employees exposed to asbestos. *Id.* § 1910.1001(j)(5) (1988). Epidemiological studies have demonstrated a convincing correlation between exposure to asbestos and increased occurrence of gastrointestinal and lung cancer, pleural and peritoneal mesothelioma (an always fatal cancer with a 40 year latent period), and asbestosis (a disabling fibrotic lung disease caused by the accumulation of asbestos fibers in the lungs). *Id.* § 1910.1001, app. H (1988). Asbestos has been declared a hazardous air pollutant by the Environmental Protection Agency. 40 C.F.R. § 61.01(a)(1988). Under section 18(b) of the Occupational Safety and Health Act (codified at 29 U.S.C. § 667 (1982)), a state may only develop and enforce an occupational health and safety standard that relates to a Federal OSHA standard if it first submits the plan to OSHA. 29 U.S.C. § 667(b) (1982). The Revised Asbestos Construction Standard of OSHA is intended to protect workers from the hazards of asbestos exposure. 29 C.F.R. § 1926.58 (1988). If Chapter 598 is not submitted to OSHA for approval, any sections that deal primarily or exclusively (depending on test used) with worker safety and not public health and safety may be preempted by the federal standard, which is less stringent. *See* Manufacturers Ass'n of Tri-County v. Knepper, 801 F.2d 130, 137-138 (3d Cir. 1986) (holding that each section of a state act which is in potential conflict with a Federal OSHA standard can only be preempted by the federal standard if the primary purpose of the state section is the same as the purpose of the federal standard, which is worker safety). *But see* Environmental Encapsulating Corp. v. City of New York, 855 F.2d 48, 55-58 (2nd Cir. 1988) (rejecting the more stringent "primary purpose" test of the Third Circuit, and holding that to avoid preemption, for each section in question, there must only be a "legitimate and substantial purpose" apart from protecting asbestos workers). It appears that the primary purpose of each section of Chapter 598 is to ensure the public health and welfare; if so, Chapter 598 should not be subject to preemption under either standard. *See generally* 1989 Nev. Stat. ch. 598, at 1275 (enacting NEV. REV. STAT. § 618.\_\_\_\_\_).

4. *See* 1989 Nev. Stat. ch. 598, sec. 3, at \_\_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_\_ ) (a person working on their own residence or employed by a public utility performing certain emergency procedures is exempt).

5. *See id.* sec. 2, at 1276 (enacting NEV. REV. STAT. § 618.\_\_\_\_\_ ) (control is defined as removal, enclosure, or encapsulation).

6. *Id.* sec. 5, at 1277 (enacting NEV. REV. STAT. § 618.\_\_\_\_\_ ).

7. *See id.* sec. 2, at 1275 (enacting NEV. REV. STAT. § 618.\_\_\_\_\_ ) (occupations covered include inspectors, management planners, consultants, project designers, contractors, supervisors, and workers).

8. Model Contractor Accreditation Plan for States, 40 C.F.R. § 763 E, app. C (1988) (requires initial training, examinations, refresher training courses, qualifications, and decertification; and urges reciprocity between states adopting the plan for asbestos abatement inspectors, management planners, project designers, contractors, supervisors, and workers).

9. 1989 Nev. Stat. ch. 598, sec. 9, at 1278 (enacting NEV. REV. STAT. § 618.\_\_\_\_\_ ).

10. 15 U.S.C. §§ 2641-2654 (Supp. IV 1986).

the EPA model plan.<sup>11</sup> Chapter 598 extends the application of AHERA standards, including mandatory testing and certification,<sup>12</sup> by requiring compliance by everyone involved in asbestos control at all sites.<sup>13</sup>

Under existing law, contractors may be licensed as general contractors by the State Contractors' Board (Board) when a qualified responsible managing employee personally appears before the Board.<sup>14</sup> Chapter 598 prohibits this method of proxy licensure for asbestos control contractors by the Department.<sup>15</sup> In addition, no asbestos control contractor may supply the services of an inspector, management planner, consultant, or project designer on a project unless the Department grants a specific exemption.<sup>16</sup>

Under Chapter 598, the Department must annually inspect at least one asbestos control project performed by each licensed contractor.<sup>17</sup> Chapter 598 imposes fines and penalties if (1) an unlicensed person other than a worker engages in an asbestos control project, (2) a licensed contractor employs a non-licensed person to work on the project, or (3) a licensed person violates any other standard or regulation established by Chapter 598.<sup>18</sup> A fine of up to \$15,000 may be imposed for the first offense, and subsequent offenses are punishable by a fine of up to \$25,000 and license revocation.<sup>19</sup> In addition, applicable criminal penalties may be imposed.<sup>20</sup>

Under Chapter 598, specified agencies<sup>21</sup> must (1) define what constitutes asbestos containing material, (2) develop standards for asbestos control projects and laboratories to analyze building mate-

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12. See 40 C.F.R. § 763 E, app. C 2, 4 (1988) (establishes minimum standards for examinations and qualifications for certification).

13. 1989 Nev. Stat. ch. 598, sec. 4, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_). Compare 40 C.F.R. § 763 E, app. C 2, 4 (1988) (codification of EPA standards mandated under AHERA requiring training, testing, and certification for inspectors, planners, contractors, and employees in asbestos control at school sites) with OSHA Revised Asbestos Construction Standards, 29 C.F.R. § 1926.58(k)(3) (1988) (does not require testing or certification but only training for workers). Inspectors, planners, and contractors are not covered. *Id.* § 1926.58 (1988).

14. NEV. REV. STAT. § 624.260 2(a) (1987) (even if the contractor is not qualified).

15. 1989 Nev. Stat. ch. 598, sec. 10, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_).

16. *Id.* sec. 12, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_). Additionally, a contractor may not own an interest in a laboratory the contractor uses for the analysis of air samples. *Id.*

17. *Id.* sec. 16, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_).

18. *Id.* sec. 14, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_).

19. *Id.*

20. *Id.* sec. 21, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_). Failure to obtain a license from the Department before performing any asbestos control work is a misdemeanor. *Id.*

21. See *id.* sec. 4, at \_\_\_ (enacting NEV. REV. STAT. § 618.\_\_\_\_) (specified agencies include the Department of Industrial Relations, the Health Division of the Department of Human Resources, the Division of Environmental Protection of the State Department of Conservation and Natural Resources, and county air pollution agencies).

rials and air samples, (3) determine acceptable asbestos exposure levels,<sup>22</sup> and (4) determine the method for asbestos exposure measurements for both before and after completion of asbestos abatement projects.<sup>23</sup> The State Environmental Commission is to establish regulations for the disposal of asbestos, and all asbestos removed from a project must be disposed of according to those regulations.<sup>24</sup>

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22. The standards adopted must be as strict as the federal standards, and may be used to find which buildings need asbestos control first. *Id.* These asbestos exposure standards can not be used to refute liability for damages from diseases caused by asbestos exposure. *Id.* sec. 4.5, at 1277 (enacting NEV. REV. STAT. § 618.\_\_\_\_).

23. *Id.* sec. 4, at 1276 (enacting NEV. REV. STAT. § 618.\_\_\_\_). No public structure is to be renovated or demolished until surveyed for the presence of asbestos. *Id.* sec. 22, at \_\_\_\_ (enacting NEV. REV. STAT. § 338.\_\_\_\_).

24. *Id.* secs. 17-18, at 1280 (enacting NEV. REV. STAT. § 618.\_\_\_\_).

## Health and Welfare; beverage containers

NEV. REV. STAT. § 585.\_\_\_\_ (new).

AB 429 (Committee on Judiciary); 1989 STAT. Ch. 121  
(Effective January 1, 1990)

Existing law does not regulate the use of detachable rings or tabs on beverage containers.<sup>1</sup> Chapter 121 prohibits the sale of metal beverage containers designed to be opened with a detachable metal

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1. See NEV. REV. STAT. §§ 585.300-360 (1987) (provisions of the Nevada Food, Drug and Cosmetic Act regulating food). See also *id.* § 585.100 (1987) (definition of food which includes beverages).