



# LAWS OF ALASKA

2012

**Source**

SCS CSHB 258(FIN)

**Chapter No.**

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**AN ACT**

Directing the Department of Transportation and Public Facilities to develop and implement standards and operating procedures, to evaluate site-specific use plans, and to designate project areas concerning gravel or other aggregate material containing naturally occurring asbestos; authorizing use on an interim basis of gravel or other aggregate material containing naturally occurring asbestos for certain transportation projects and public facilities; providing immunity for the state and for landowners, extractors, suppliers, transporters, and contractors for certain actions or claims arising in connection with the use of gravel or aggregate material containing naturally occurring asbestos in certain areas; requiring contractors to report certain asbestos-related data to the Department of Transportation and Public Facilities; and providing for an effective date.

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**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1



**AN ACT**

1 Directing the Department of Transportation and Public Facilities to develop and implement  
2 standards and operating procedures, to evaluate site-specific use plans, and to designate  
3 project areas concerning gravel or other aggregate material containing naturally occurring  
4 asbestos; authorizing use on an interim basis of gravel or other aggregate material containing  
5 naturally occurring asbestos for certain transportation projects and public facilities; providing  
6 immunity for the state and for landowners, extractors, suppliers, transporters, and contractors  
7 for certain actions or claims arising in connection with the use of gravel or aggregate material  
8 containing naturally occurring asbestos in certain areas; requiring contractors to report certain  
9 asbestos-related data to the Department of Transportation and Public Facilities; and providing  
10 for an effective date.

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1 \* **Section 1.** AS 09.65 is amended by adding a new section to read:

2           **Sec. 09.65.245. Immunity for certain persons supplying or using gravel or**  
3           **other aggregate material; limitations on asbestos-related actions against**  
4           **defendants.** (a) Notwithstanding AS 09.50.250, a civil action or claim for damages or  
5           costs alleging a death, injury, illness, disability, property damage, or any other  
6           damages resulting from the use of gravel or other aggregate material that contains  
7           naturally occurring asbestos may not be brought against a defendant, including a  
8           contractor meeting the requirements of the program or the state and its agencies,  
9           officers, and employees,

10                   (1) based on the ownership of land within an area designated by the  
11           Department of Transportation and Public Facilities under AS 44.42.400(b) or (c) from  
12           which gravel or other aggregate material is extracted that, when tested using a bulk  
13           method prescribed by the Department of Transportation and Public Facilities by  
14           regulation, is determined to have a content equal to or greater than 0.25 percent  
15           naturally occurring asbestos by mass; or

16                   (2) for an act or omission occurring in the course of extracting,  
17           supplying, transporting, or using gravel or other aggregate material containing  
18           naturally occurring asbestos within an area designated by the Department of  
19           Transportation and Public Facilities under AS 44.42.400(b) or (c) when the act or  
20           omission was in compliance with the requirements of AS 18.31.250 or  
21           AS 44.42.410(b), as applicable, and AS 44.42.410(a) and (e) and applicable  
22           regulations developed under AS 44.42.420.

23                   (b) A civil action or claim based on noncompliance with the requirements of  
24           AS 18.31.250 or AS 44.42.410(b), as applicable, and AS 44.42.410(a) and (e) and  
25           applicable regulations developed under AS 44.42.420 for damages or costs alleging an  
26           asbestos-related death, injury, illness, or disability or alleging asbestos-related  
27           property damage or any other asbestos-related damages may only be brought against a  
28           defendant that has direct control over or responsibility for compliance with the  
29           requirements of AS 18.31.250 or AS 44.42.410(b), as applicable, and AS 44.42.410(a)  
30           and (e) and applicable regulations developed under AS 44.42.420.

31                   (c) Notwithstanding AS 09.50.250, a civil action or claim for damages or costs

1 alleging an asbestos-related death, injury, illness, or disability or alleging asbestos-  
2 related property damage or any other asbestos-related damages may not be brought  
3 against any state agency or officer or employee of the state for an act or omission  
4 occurring in the course of designating a project area under AS 44.42.400(b) or (c),  
5 approving a site-specific use plan, or developing or approving a monitoring plan or a  
6 mitigation plan under AS 44.42.410.

7 (d) In this section, "naturally occurring asbestos" has the meaning given in  
8 AS 44.42.430.

9 \* **Sec. 2.** AS 18.31 is amended by adding new sections to read:

10 **Article 2A. Naturally Occurring Asbestos.**

11 **Sec. 18.31.250. Use of materials containing naturally occurring asbestos.**

12 (a) A principal construction contractor or, in the absence of an identified principal  
13 construction contractor, person having legal authority for the design and construction  
14 of a project may qualify for immunity in a civil action under AS 09.65.245(a)(2) for  
15 the use of gravel or other aggregate material that, when tested using a bulk test method  
16 prescribed by the Department of Transportation and Public Facilities by regulation, is  
17 determined to have a content equal to or greater than 0.25 percent of naturally  
18 occurring asbestos by mass.

19 (b) To qualify for the immunity provided under AS 09.65.245(a)(2), before  
20 initiating a construction project not subject to AS 44.42.410(b) that is within an area  
21 designated by the Department of Transportation and Public Facilities under  
22 AS 44.42.400(b) or (c) and that will use gravel or other aggregate material that  
23 contains naturally occurring asbestos, the principal construction contractor or, in the  
24 absence of an identified principal construction contractor, the person having legal  
25 authority for the design and construction of the project shall prepare and submit to the  
26 Department of Transportation and Public Facilities specific project plans  
27 demonstrating compliance with the standards adopted by the department under  
28 AS 44.42.420 and the requirements of the site-specific use plan under AS 44.42.410.  
29 Before extraction of gravel or other aggregate material may begin, the plan must be  
30 approved and returned to the contractor by the department.

31 (c) To preserve the immunity provided under AS 09.65.245(a)(2), the

1 principal construction contractor or, in the absence of an identified principal  
2 construction contractor, the person having legal authority for the design and  
3 construction of the project shall adhere to the site-specific use plan approved by the  
4 department and the monitoring and mitigation plan created by the department.

5 **Sec. 18.31.260. Presence of naturally occurring asbestos.** The state shall  
6 consider 0.25 percent by mass, the minimum detectable amount of asbestos under the  
7 California Air Resources Board Method 435, as the baseline for the presence of  
8 naturally occurring asbestos in gravel or other aggregate material.

9 \* **Sec. 3.** AS 44.42 is amended by adding new sections to read:

10 **Article 3A. Use of Materials Containing Naturally Occurring Asbestos.**

11 **Sec. 44.42.400. Administration and designated areas.** (a) The department  
12 shall designate a single employee who reports to the commissioner to oversee the  
13 duties assigned to the department in AS 44.42.400 - 44.42.430 and to serve as the  
14 point of contact for inquiries related to projects using gravel or other aggregate  
15 material containing naturally occurring asbestos.

16 (b) An area that includes land within a municipality or community may be  
17 designated by the department as an area in which certain landowners and contractors  
18 are granted immunity under AS 09.65.245(a) for causing asbestos-related injuries only  
19 if the municipality or community requests that designation. A municipality or  
20 community may request to become an area designated by the department under this  
21 subsection by submitting an application to the department. The department may  
22 approve an application received under this subsection only after reviewing tests  
23 documenting the presence of naturally occurring asbestos in that area, analyzing the  
24 effect of the presence of naturally occurring asbestos on construction projects in the  
25 area, considering the availability of gravel or other aggregate material free from  
26 naturally occurring asbestos in the area, and soliciting public input from residents in  
27 the affected municipality or community. The department may require a municipality  
28 or community that applies to become a designated area to provide the department with  
29 tests documenting the presence of naturally occurring asbestos, information related to  
30 the effect of the presence of naturally occurring asbestos on construction projects in  
31 the area, information related to availability of gravel or other aggregate material free

1 from naturally occurring asbestos, and other information relevant to the application.  
2 After designating an area after approval of an application under this subsection, the  
3 department shall notify, including through signage, potentially affected persons that  
4 the area has been designated as an area where immunity may be granted under  
5 AS 09.65.245(a) for certain landowners and contractors causing asbestos-related  
6 injuries.

7 (c) In places that do not include a municipality or community, the department  
8 may designate an area in which certain landowners and contractors are granted  
9 immunity under AS 09.65.245(a) for causing asbestos-related injuries. Before  
10 designating an area under this subsection, the department shall document the presence  
11 of naturally occurring asbestos in that area, analyze the effect of the presence of  
12 naturally occurring asbestos on construction projects in the area, consider the  
13 availability of gravel or other aggregate material free from naturally occurring  
14 asbestos in the area, and solicit public input from potentially affected persons. After  
15 designating an area under this subsection, the department shall notify, including  
16 through signage, potentially affected persons that the area has been designated as an  
17 area where immunity may be granted under AS 09.65.245(a) for certain landowners  
18 and contractors causing asbestos-related injuries.

19 (d) In this section, "community" means a place in the unorganized borough, in  
20 a borough, or in a unified municipality that is not incorporated as a municipality, that  
21 is not a reserve, and in which 25 or more individuals reside as a social unit.

22 **Sec. 44.42.410. Site-specific use plan.** (a) To qualify for the immunity  
23 provided under AS 09.65.245(a)(2), a contractor intending to use, within an area  
24 designated by the department under AS 44.42.400(b) or (c), gravel or other aggregate  
25 material that, when tested using a bulk test method prescribed by the department in  
26 regulation, is determined to have a content equal to or greater than 0.25 percent of  
27 naturally occurring asbestos by mass, shall, after consulting with the owner of the land  
28 on which the gravel or other aggregate material containing naturally occurring  
29 asbestos will be placed, submit a site-specific use plan to the department that

30 (1) describes the manner in which the proposed use of gravel or other  
31 aggregate material that contains naturally occurring asbestos conforms to the standards

1 adopted under AS 44.42.420(b);

2 (2) demonstrates how the proposed construction operation and  
3 maintenance practices comply with those that are required and those that are  
4 minimally acceptable, as described in AS 44.42.420(b)(5), and otherwise meet  
5 requirements of law applicable to the handling of compounds that contain asbestos;

6 (3) outlines the efforts that will be made, as a component of long-term  
7 maintenance on the completed project or facility, to ensure that human health and air  
8 quality are not compromised by the use of the gravel or other aggregate material that  
9 contains naturally occurring asbestos;

10 (4) describes how the gravel or other aggregate material to be used can  
11 be contained underneath the project or buried so that asbestos fibers cannot become  
12 airborne or otherwise transferred outside of the project area, except as provided in (5)  
13 and (6) of this subsection;

14 (5) if the requirements in (4) of this subsection are economically  
15 unreasonable, describes how the gravel or other aggregate material to be used will be  
16 sealed, including chip sealing or mixing with asphalt, in order to prevent asbestos  
17 fibers from becoming airborne or otherwise transferred outside of the project area,  
18 except as provided in (6) of this subsection; and

19 (6) if the requirements under (4) and (5) of this subsection are  
20 economically unreasonable, describes how the gravel or other aggregate material will  
21 be used in order to prevent asbestos from becoming airborne or otherwise transferred  
22 outside of the project area, including how the gravel or other aggregate material will  
23 be used in order to prevent asbestos from becoming airborne because of vehicle  
24 traffic, road maintenance, or grading, if applicable.

25 (b) To qualify for and preserve the immunity provided under  
26 AS 09.65.245(a)(2), the department, in its operating procedures applicable to a project  
27 that is a transportation facility, including a public highway, airport, or pipeline or  
28 railroad track bed, or a public work, as that term is defined in AS 35.95.100, and for  
29 which the contractor intends to use, within an area designated by the department under  
30 AS 44.42.400(b) or (c), gravel or other aggregate material that, when tested using a  
31 bulk testing method prescribed by the department in regulation, is determined to have

1 a content equal to or greater than 0.25 percent of naturally occurring asbestos by mass,  
2 shall require that

3 (1) the contractor submit a plan that details the use of gravel or other  
4 aggregate material in the construction or maintenance of the transportation project or  
5 public facility in accordance with the requirements of (a) of this section and  
6 regulations developed under AS 44.42.420;

7 (2) before the extraction of the gravel or other aggregate material  
8 containing naturally occurring asbestos may begin, the plan be approved and returned  
9 to the contractor by the department;

10 (3) the contractor adhere to the monitoring, mitigation, and site-  
11 specific use plans.

12 (c) The department shall review each submitted site-specific use plan and shall  
13 work toward approving or disapproving the plan, taking into consideration the  
14 construction season in the project location.

15 (d) The department may not approve a plan for construction with gravel or  
16 other aggregate material determined to have a content equal to or greater than 0.25  
17 percent of naturally occurring asbestos by mass unless

18 (1) the department determines that it is economically unreasonable to  
19 undertake the construction project with gravel or other aggregate material free from  
20 naturally occurring asbestos; and

21 (2) the completed project will not use gravel or other aggregate  
22 material containing naturally occurring asbestos for a surface application except if the  
23 material to be used for the surface application is treated or bound with a surface  
24 compound, including chip seal or asphalt, approved by the department.

25 (e) On receiving a plan that meets the requirements of (a) and (d) of this  
26 section and the regulations adopted under AS 44.42.420, the department, in  
27 consultation with the Department of Environmental Conservation, the Department of  
28 Health and Social Services, the Department of Natural Resources, the Department of  
29 Law, and the Department of Labor and Workforce Development, shall develop a  
30 monitoring and mitigation plan for the project. If the site-specific use plan is approved,  
31 the monitoring and mitigation plan developed by the department shall be attached to

1 the site-specific use plan. To qualify for the immunity provided in AS 09.65.245(a)(2),  
2 the party that has direct control over or responsibility for the monitoring or mitigation  
3 shall comply with the monitoring or mitigation plan developed by the department.

4 (f) On approval of a site-specific use plan, the department

5 (1) shall provide to the contractor a copy of the approved site-specific  
6 use plan that includes

7 (A) the monitoring and mitigation plan developed under (e) of  
8 this section;

9 (B) a requirement that all asbestos-related data collected by the  
10 contractor during or after construction be submitted to the department; and

11 (C) recommended methods for reducing exposure to airborne  
12 asbestos fibers;

13 (2) shall provide a copy of the site-specific use plan, including the  
14 monitoring and mitigation plan, to the mayor or manager of a municipality affected by  
15 the use of gravel or other aggregate material containing naturally occurring asbestos;  
16 and

17 (3) may provide to the contractor copies of the United States  
18 Occupational Safety and Health Administration, United States Mine Safety and Health  
19 Administration, and United States Environmental Protection Agency recommended  
20 practices for handling and use of gravel or other aggregate material containing  
21 naturally occurring asbestos.

22 (g) Within 60 days after completing a project in accordance with a site-  
23 specific use plan approved by the department, the contractor shall record in the  
24 recording district where the property is located a document that includes a description  
25 of the affected property, a reference to the most recent recorded conveyance of that  
26 property, and a notice indicating the presence of naturally occurring asbestos, and  
27 stating that subsequent interest holders may have legal obligations with respect to  
28 preventing the naturally occurring asbestos from becoming airborne or otherwise  
29 transferred outside of the project area. The contractor shall provide written notification  
30 to the department and the landowner that the document has been recorded.

31 (h) The contractor shall submit to the department the results of any monitoring

1 or testing performed in accordance with the site-specific use plan and any mitigation  
2 measures undertaken.

3 **Sec. 44.42.420. Regulations.** (a) The department, after consultation with the  
4 Department of Environmental Conservation, the Department of Health and Social  
5 Services, the Department of Natural Resources, the Department of Law, and the  
6 Department of Labor and Workforce Development, shall prescribe in regulation a bulk  
7 testing method for gravel or other aggregate material containing naturally occurring  
8 asbestos.

9 (b) The department, after consultation with the Department of Environmental  
10 Conservation, the Department of Health and Social Services, the Department of  
11 Natural Resources, the Department of Law, and the Department of Labor and  
12 Workforce Development, may adopt regulations under AS 44.62 (Administrative  
13 Procedure Act) to implement AS 44.42.400 - 44.42.430, including regulations revising  
14 statewide standards on the use in the construction and maintenance of transportation  
15 projects and public facilities of gravel or other aggregate material that, when tested  
16 using a bulk test method prescribed by the department by regulation, is determined to  
17 have a content equal to or greater than 0.25 percent of naturally occurring asbestos by  
18 mass. The regulations adopted under this subsection must include

19 (1) procedures for completing site investigations and characterizations  
20 of proposed projects, including the development and description of appropriate  
21 laboratory practices;

22 (2) procedures for reviewing design alternatives and preparing and  
23 evaluating appropriate comparative cost analyses that consider the use of gravel or  
24 other aggregate material that does not contain naturally occurring asbestos;

25 (3) procedures for evaluating human health concerns arising out of  
26 gravel or other aggregate material that contains naturally occurring asbestos and  
27 documentation of methods and means to be used during periods of handling of the  
28 gravel or other aggregate material to ensure compliance with appropriate workplace  
29 safety and air quality standards relating to the project and to ensure the health and  
30 safety of communities affected by construction projects that use gravel or other  
31 aggregate material containing naturally occurring asbestos;

1 (4) procedures for preparing designs and design specifications for  
2 facilities involving use of gravel or other aggregate material that contains naturally  
3 occurring asbestos;

4 (5) procedures for outlining construction operation and maintenance  
5 practices that are required and those that are minimally acceptable to meet  
6 requirements of law applicable to the handling of compounds that contain asbestos;

7 (6) procedures for processing, reviewing, and approving or  
8 disapproving site-specific use plans and area designation requests received under  
9 AS 44.42.400(b) in a uniform manner;

10 (7) guidelines to analyze the cost of a project;

11 (8) guidelines for determining whether the cost associated with the use  
12 of gravel or other aggregate material free from naturally occurring asbestos under  
13 AS 44.42.410(d) is economically unreasonable;

14 (9) guidelines for determining whether the cost associated with  
15 burying or sealing gravel or other aggregate material containing naturally occurring  
16 asbestos under AS 44.42.410(a)(2) and (3) is economically unreasonable;

17 (10) guidelines for establishing areas designated under  
18 AS 44.42.400(b) or (c) that take into account the effect on human health in and around  
19 the designated area and environmental factors affecting the transfer of asbestos fibers  
20 within and outside of a designated area.

21 **Sec. 44.42.430. Definitions.** In AS 44.42.400 - 44.42.430,

22 (1) "contractor" means the principal construction contractor or, in the  
23 absence of an identified principal construction contractor, the person having legal  
24 authority for the design and construction of the project;

25 (2) "naturally occurring asbestos" means chrysotile, amosite,  
26 crocidolite, fibrous tremolite, fibrous anthophyllite, and fibrous actinolite asbestos-  
27 containing material that has not been processed in an asbestos mill and that, when  
28 tested using a bulk method prescribed by the Department of Transportation and Public  
29 Facilities by regulation, is determined to have a content equal to or greater than 0.25  
30 percent naturally occurring asbestos by mass.

31 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 INTERIM PROJECT AUTHORIZATION. (a) Notwithstanding AS 44.42.400(b) and  
3 (c), added by sec. 3 of this Act, the Department of Transportation and Public Facilities may,  
4 on a temporary basis, designate a limited number of areas in the state in which certain  
5 landowners and contractors are granted immunity under AS 09.65.245(a) for causing  
6 asbestos-related injuries where an inability to complete construction projects has been  
7 demonstrated because of lack of gravel or other aggregate material free from naturally  
8 occurring asbestos. After designating an area on a temporary basis, the department shall  
9 notify, including through signage, potentially affected persons that the area has been  
10 designated as an area in which immunity may be granted under AS 09.65.245(a) for certain  
11 landowners and contractors causing asbestos-related injuries. Notwithstanding AS 18.31.250,  
12 added by sec. 2 of this Act, the Department of Transportation and Public Facilities may  
13 approve a limited number of appropriate construction projects until the development and  
14 implementation of initial standards under AS 44.42.420 and the administrative requirements  
15 of AS 44.42.400, added by sec. 3 of this Act, for projects not subject to AS 44.42.410(b), if,  
16 under (b) of this section, the Department of Transportation and Public Facilities prepares and  
17 adopts interim standards and requires its contractors to prepare site-specific plans for the use  
18 of gravel or other aggregate material that, when tested using the bulk method prescribed in  
19 sec. 5 of this Act, is determined to have a content equal to or greater than 0.25 percent  
20 naturally occurring asbestos by mass in transportation projects and public facilities. The  
21 department shall apply the standards developed under (b) of this section to a person described  
22 in AS 18.31.250 for a project that is not subject to AS 44.42.410(b).

23 (b) Notwithstanding AS 44.42.400(b) and (c), added by sec. 3 of this Act, the  
24 Department of Transportation and Public Facilities may, on a temporary basis, designate a  
25 limited number of areas in the state in which certain landowners and contractors are granted  
26 immunity under AS 09.65.245(a) for causing asbestos-related injuries where an inability to  
27 complete construction projects has been demonstrated because of lack of gravel or other  
28 aggregate material free from naturally occurring asbestos. After designating an area on a  
29 temporary basis, the department shall notify, including through signage, potentially affected  
30 persons that the area has been designated as an area where immunity may be granted under  
31 AS 09.65.245(a) for certain landowners and contractors causing asbestos-related injuries.

1 Notwithstanding AS 44.42.410(b), added by sec. 3 of this Act, the Department of  
2 Transportation and Public Facilities may approve a limited number of appropriate  
3 transportation projects and public facilities until the development and implementation of  
4 initial standards under AS 44.42.420 and the administrative requirements of AS 44.42.400,  
5 after consultation with the Department of Environmental Conservation, the Department of  
6 Health and Social Services, the Department of Labor and Workforce Development, and  
7 appropriate federal agencies. The Department of Transportation and Public Facilities may  
8 prepare and adopt interim standards and operating procedures and may require of its  
9 contractors the preparation of site-specific plans for the use of gravel or other aggregate  
10 material that, when tested using the bulk method prescribed in sec. 5 of this Act, is determined  
11 to have a content equal to or greater than 0.25 percent naturally occurring asbestos by mass.

12 (c) The authority granted by (a) and (b) of this section expires December 31, 2013.

13 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 INTERIM STANDARDS FOR APPLICATION OF ASBESTOS BULK TESTING.  
16 Until the Department of Transportation and Public Facilities adopts and prescribes a method  
17 of bulk testing under AS 44.42.420(a), added by sec. 3 of this Act, the department shall use  
18 California Air Resources Board Method 435, Determination of Asbestos Content of  
19 Serpentine Aggregate, adopted on June 6, 1991, as that standard has effect on the effective  
20 date of this Act, as the basis for determining the asbestos content of a bulk sample or for  
21 interim use as authorized by sec. 4 of this Act.

22 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).