

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 95

(Chairman, Judicial Proceedings Committee)  
(By Request – Departmental – Environment)

Judicial Proceedings

Judiciary

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**Asbestos Violations - Criminal Penalties and Standard of Proof**

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This departmental bill repeals the requirement that before criminal sanctions apply for specified asbestos removal violations, a person must previously have been assessed a civil penalty. The bill also provides that to be guilty of a misdemeanor, a person must have knowingly committed a violation.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues due to the bill's penalty provision.

**Local Effect:** Potential minimal increase in revenues due to the bill's penalty provision.

**Small Business Effect:** The Maryland Department of the Environment (MDE) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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**Analysis**

**Current Law:** A person who willfully violates specified asbestos removal provisions is liable for a civil penalty not exceeding \$5,000 to be collected in a civil action. Each day a violation continues is a separate violation. If the Attorney General concurs, the Secretary of Environment may compromise and settle any claim for a civil penalty.

A person who previously has been assessed a civil penalty and who willfully violates those provisions is guilty of a misdemeanor and on conviction is subject: (1) for a first offense, to a fine not exceeding \$20,000; or (2) for a second or subsequent offense, to a fine not exceeding \$25,000, or imprisonment not exceeding two years, or both.

**Background:** The Environmental Crimes Unit (ECU) is a part of the Criminal Investigation Division of the Maryland Attorney General's Office. ECU conducts criminal investigations and prosecutions of Maryland's environmental laws throughout the State. Three assistant attorney generals, two paraprofessionals, and a civilian litigator staff ECU. The Maryland State Police and the Baltimore City Police Department provide sworn law enforcement personnel to ECU.

According to MDE, other State environmental statutes do not require that a civil enforcement action occur before criminal sanctions apply. MDE advises that it has not been able to criminally prosecute a number of asbestos cases due to the absence of a prior civil enforcement action.

Neighboring states, including Delaware, Virginia, and Pennsylvania, have statutory provisions permitting criminal prosecutions without a civil enforcement history in their asbestos penalty provisions.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** Because the total number of new criminal prosecutions is anticipated to be fewer than ten annually, ECU could handle any increase in workload with existing resources.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

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### **Additional Information**

**Prior Introductions:** A similar bill was introduced during the 2002 session as SB 284. The bill was referred to the Senate Rules Committee. No further action was taken.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2003  
mld/cer Revised - Enrolled Bill - April 23, 2003

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