



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 730

132nd General Assembly
(As Introduced)

Reps. Ramos, Lepore-Hagan, West, Ashford, Howse, Patterson, K. Smith, Miller

BILL SUMMARY

- Requires all rules governing asbestos under Ohio's Air Pollution Control Law to be consistent with U.S. Environmental Protection Agency regulations governing asbestos as those regulations existed on August 1, 2018.
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CONTENT AND OPERATION

Asbestos regulations

The bill specifies that when the Ohio Director of Environmental Protection adopts rules governing the fabrication, manufacturing, usage, or disposal of asbestos, asbestos-containing materials, or asbestos-containing products under the Ohio's Air Pollution Control Law, the Director must ensure that the rules are consistent with the U.S. EPA regulations governing asbestos in effect on August 1, 2018.¹ Current law authorizes the Director to adopt rules governing asbestos, but does not specifically require the rules to be consistent with U.S. EPA regulations. However, generally, state law cannot conflict with federal law, and therefore current Ohio rules must be at least as stringent as current federal rules (see **COMMENT**).²

COMMENT

The Supremacy Clause of the United States Constitution prohibits a state from establishing laws that are contrary to federal laws. Article VI, Section 2 of the

¹ R.C. 3704.03(E).

² See 40 CFR Part 61, Subpart M, available at: <https://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol8/pdf/CFR-2011-title40-vol8-part61-subpartM.pdf>.

Constitution states that ". . . the Laws of the United States which shall be made in Pursuance [to the Constitution] . . . shall be the supreme Law of the land . . ." Thus, when there is a conflict between a state law and federal law, the federal law, subject to other constitutional law, preempts the state law. As a result, Ohio cannot enact statutes or adopt rules that conflict with federal regulations.

The federal Clean Air Act establishes national emission standards for hazardous air pollutants, including asbestos. It also addresses the state's authority regarding air quality standards.³ In pertinent part, this law states that nothing in the Clean Air Act precludes or denies the right of any state to adopt or enforce: (1) any standard or limitation respecting emissions of air pollutants, or (2) any requirement respecting control or abatement of air pollution, as long as the state standard or limitation is not less stringent than the applicable federal standard regarding hazardous air pollutants, including asbestos.⁴

The bill requires state asbestos rules to be consistent with federal asbestos regulations in effect on a fixed date, August 1, 2018. If new regulations are adopted by the U.S. EPA after that date, the following two possible scenarios could occur:

(1) If U.S. EPA's new regulations are more stringent than Ohio's rules, which must be consistent with U.S. EPA's regulations in effect on August 1, 2018, a court may find Ohio's rules to be in conflict with the federal Clean Air Act and therefore unconstitutional under the Supremacy Clause; or

(2) If U.S. EPA's new regulations are less stringent than Ohio's rules, it is likely that a court would uphold Ohio's rules because the federal Clean Air Act allows state laws and regulations to be more stringent than federal law.⁵

HISTORY

ACTION	DATE
Introduced	09-13-18

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³ 42 U.S.C. § 7416.

⁴ See 42 U.S.C. § 7412(b).

⁵ See *Merrick v. Diageo Americas Supply Inc.*, 805 F.3d. 685, 693 (6th Cir. 2015). ("The Clean Air Act expressly reserves for the states – including state courts – the right to prescribe requirements more stringent than those set under the Clean Air Act).

