

CHAPTER 194

H.B. No. 1112

An Act relating to providing employees with access to information relating to hazardous chemicals to which they may be exposed during their employment, to providing hazard information to emergency service personnel and the commissioner of health, and to providing persons with a mechanism to gain access to information relating to hazardous chemicals; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 83, Revised Statutes, is amended by adding Article 5182b to read as follows:

Art. 5182b. HAZARD COMMUNICATION ACT

Sec. 1. SHORT TITLE. This article may be cited as the "Hazard Communication Act."

Sec. 2. DECLARATION OF PURPOSE. The legislature finds that the health and safety of persons living and working in the State of Texas may be improved by providing access to information regarding hazardous chemicals to which they may be exposed either during their normal employment activities, during emergency situations, or as a result of proximity to the manufacture or use of those chemicals. The legislature also finds that many employers in the State of Texas have already established suitable information programs for their employees and that access to that information is scheduled to be required of all manufacturing employers by November 1985 under the federal Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard. It is the intent and purpose of this Act to assure that, in the event that the OSHA standard does not take effect or remain in effect, accessibility to information regarding hazardous chemicals be provided to employees who may be exposed to those chemicals in manufacturing employer workplaces. It is also the intent and purpose of this Act that the information be provided to employees who may be exposed to hazardous chemicals in nonmanufacturing employer workplaces, to emergency service organizations responsible for dealing with chemical hazards during emergency situations, and to the commissioner of health to make the information available to the general public through specific procedures.

Sec. 3. DEFINITIONS. In this Act:

(1) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(2) "Common name" means any designation of identification such as code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.

(3) "Chemical manufacturer" means an employer in Standard Industrial Classification (SIC) Codes 20 through 39 with a workplace where chemicals are produced for use or distribution.

(4) "Designated representative" means the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this Act. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(5) "Distributor" means any business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to purchasers.

(6) "Employee" means any person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies. Office workers, ground maintenance workers, security personnel, or nonresident management are not included unless their job performance routinely involves potential exposure to hazardous chemicals. The term "employee" includes persons working for the State of Texas and its political subdivisions, as well as members of volunteer emergency service organizations.

(7) "Expose" or "exposure" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption, and includes potential, possible, or accidental exposure.

(8) "Fire chief" means the elected or paid administrative head of a fire department as defined in Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).

(9) "Hazardous chemical" means any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c), or a hazardous substance as defined by the OSHA standard in 29 CFR Section 1910.1200(d)(3).

(10) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(11) "Manufacturing employer" means an employer with a workplace classified in Standard Industrial Classification (SIC) Codes 20 through 39 who manufactures or uses a hazardous chemical.

(12) "Material safety data sheet" ("MSDS") means a document containing chemical hazard and safe handling information, provided that after November 25, 1985, "MSDS" means a document prepared in accordance with the requirements of the OSHA standard for that document.

(13) "Nonmanufacturing employer" or "employer" means an employer with a workplace in Standard Industrial Classification (SIC) Codes 46 through 49 (pipelines, transportation services, communications and electric, gas, and sanitary services), 51 (wholesale trade, nondurable goods), 75 (automotive repair, services, and garages), 76 (miscellaneous repair services), 80 (health services), 82 (educational services), and 84 (museums, art galleries, botanical, and zoological gardens); the State of Texas and its political subdivisions; and all volunteer emergency service organizations. If the OSHA standard does not take effect or remain in effect, "employer" also includes manufacturing employer.

(14) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration in 48 Federal Register 53280 et seq. (November 25, 1983), to be codified under Title 29 of the Code of Federal Regulations (CFR) Section 1910.1200.

(15) "Commissioner" means the commissioner of health.

(16) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used or where employees are present.

(17) "Workplace" means an establishment at one geographical location containing one or more work areas.

(18) "Workplace chemical list" means the list of hazardous chemicals developed under Section 6 of this Act or Section 1910.1200(e)(i) of the OSHA standard.

(19) "Board" means the Texas Board of Health.

(20) "Department" means the Texas Department of Health.

Sec. 4. RELATIONSHIP TO OSHA STANDARD. (a) Manufacturing employers and distributors that are regulated by and complying with the provisions of the OSHA standard are exempt from this Act except for Sections 6(d), 6(e), 7(a), 7(d), 9, 13(c), 13(d), 13(e), and 15 of this Act. Manufacturing employers and distributors are subject to this Act if the OSHA standard does not take effect or remain in effect.

(b) Nonmanufacturing employers that adopt and comply with the provisions of the OSHA standard may be certified by the commissioner as being in compliance with this Act except for Sections 6(d), 6(e), 7(a), 7(d), 9, 13(c), 13(d), 13(e), and 15 of this Act. This certification shall be done annually.

Sec. 5. NOTICE TO EMPLOYEES. Employers shall post adequate notice, at locations where notices are normally posted, informing employees about their rights under this Act. In the absence of a notice prepared by the commissioner under Section 14 of this Act, an employer notice shall be posted.

Sec. 6. WORKPLACE CHEMICAL LIST. (a) Employers shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used or stored in the workplace in excess of 55 gallons or 500 pounds or an amount that the board determines by rule for certain highly toxic or dangerous hazardous chemicals:

- (1) the chemical name and the common name used on the MSDS and container label;
- (2) the nomenclature used in identifying the chemical name; and
- (3) the work area in which the hazardous chemical is normally stored or used.

(b) The workplace chemical list shall be updated as necessary but not less frequently than annually.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided that the list is readily available to employees and their representatives. New or newly assigned employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) The workplace chemical list shall be provided to the commissioner on the effective date of this Act or, for an employer or manufacturing employer that begins operation after the effective date of this Act, within 60 days after the date on which it begins operation.

(e) The workplace chemical list shall be maintained by the employer or manufacturing employer for 30 years. Complete records shall be sent to the commissioner if the business ceases to operate within the state.

Sec. 7. MATERIAL SAFETY DATA SHEETS. (a) Chemical manufacturers and distributors shall provide manufacturing and nonmanufacturing purchasers of hazardous chemicals in this state appropriate MSDSs for the hazardous chemicals purchased.

(b) Employers shall maintain the most current MSDS received from manufacturers or distributors for each hazardous chemical purchased. If an MSDS has not been provided by the manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the employer shall request one in writing from the manufacturer or distributor in a timely manner.

(c) Material safety data sheets shall be readily available, on request, for review by employees or designated representatives.

(d) A copy of an MSDS shall be provided to the commissioner on request. The commissioner shall request an MSDS from an employer or manufacturing employer when an MSDS is requested by a person if that request is based on a review of the employer's or manufacturing employer's workplace chemical list by the person requesting the MSDS.

Sec. 8. LABELS. (a) Existing labels on incoming containers of hazardous chemicals may not be removed or defaced.

(b) Employees may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer.

Sec. 9. EMERGENCY INFORMATION. (a) Employers or manufacturing employers who normally store a hazardous chemical in an amount in excess of 55 gallons or 500 pounds or in an amount the board determines by rule for certain highly toxic or dangerous hazardous chemicals shall provide to the fire chief of the fire department having jurisdiction over the workplace, in writing, the names and telephone numbers of knowledgeable representatives of the employer or manufacturing employer who can be contacted for further information or contacted in case of an emergency.

(b) Each employer or manufacturing employer shall provide a copy of the workplace chemical list to the fire chief on request. The employer shall notify the fire chief of any significant changes that occur in the workplace chemical list.

(c) The fire chief or his representative, on request, shall be permitted to conduct on-site inspections of the chemicals on the workplace chemical list for the sole purpose of preparing fire department activities in case of an emergency.

(d) Employers or manufacturing employers shall provide to the fire chief, on request, a copy of the MSDS for any chemical on the workplace chemical list.

(e) The fire chief shall make the workplace chemical list and MSDSs available to members of the fire department having jurisdiction over the workplace and to other personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the employer or manufacturing employer.

Sec. 10. EMPLOYEE EDUCATION PROGRAM. (a) Every employer shall provide, at least annually, an education and training program for employees using or handling hazardous chemicals. Within 30 days of providing the education and training program, an employer shall report to the commissioner that the program has been provided to the employees. Additional instruction shall be provided when the potential for exposure to hazardous chemicals is altered or when new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees shall be provided training before working with or in a work area containing hazardous chemicals.

(b) The program must include, as appropriate, information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication; the location, acute and chronic effects, and safe handling of hazardous chemicals used by the employees; protective equipment and first aid treatment to be used with respect to the hazardous chemicals used by the employees; and general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals. Employers shall keep a record of the dates of training sessions given to employees.

(c) The commissioner, under Section 14 of this Act, shall develop an education and training assistance program to aid those employers who, because of size or other practical considerations, are unable to develop the programs by themselves. The program shall be made available to such an employer on request.

Sec. 11. CONSTRUCTION OF ACT. The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take

any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to an employee does not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

Sec. 12. **POWERS AND DUTIES OF BOARD.** The board may, in the manner provided by law, adopt rules and administrative procedures reasonably necessary to carry out the purposes of this Act.

Sec. 13. **COMPLAINTS, INVESTIGATIONS, PENALTIES.** (a) Complaints received in writing from employees or their designated representatives relating to alleged violations of this Act by nonmanufacturing employers shall be investigated in a timely manner by the commissioner or his designated representative. Complaints from employees or their designated representatives relating to alleged violations by manufacturing employers shall be referred to the federal Occupational Safety and Health Administration by the complainant. However, complaints shall be investigated by the commissioner or his designated representative if the OSHA standard does not take effect or does not remain in effect or if the complaint is based on a requirement under this Act.

(b) Officers or duly designated representatives of the commissioner, on presentation of appropriate credentials, have the right of entry into any workplace at reasonable times to inspect and investigate complaints.

(c) Employers and manufacturing employers found to be in violation of this Act have 14 days to comply. Employers and manufacturing employers not complying within 14 days following written notification of a violation are subject to an administrative penalty of not more than \$500 per violation.

(d) If required under this Act, employers and manufacturing employers who knowingly disclose false information or negligently fail to disclose a hazard are subject to a civil fine of not more than \$5,000 per violation. This section does not affect any other right of an employee or any other person to receive compensation for damages under other law.

(e) If required under this Act, employers and manufacturing employers who proximately cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than \$25,000. This section does not affect any other right of an employee or any other person to receive compensation for damages under other law.

Sec. 14. **OUTREACH PROGRAMS.** (a) The commissioner shall develop and provide to each employer a suitable form of notice providing employees with information regarding their rights under this Act.

(b) As part of the outreach program, the commissioner shall develop an education and training program consisting of instructional materials to assist employers under Section 10 of this Act.

(c) As part of the outreach program, the commissioner shall develop and distribute a supply of informational leaflets on employers' duties, employee rights, the public's ability to obtain information under this Act, the outreach program, and the effects of hazardous chemicals.

(d) The commissioner may contract with a public institution of higher education or other public or private organizations to develop and implement the outreach program.

(e) The commissioner shall publicize the availability of information to answer inquiries from employees, employers, or the public in this state concerning the effects of hazardous chemicals.

(f) In cooperation with the commissioner, an employer may provide an outreach program in the community.

Sec. 15. **EMPLOYEE RIGHTS.** (a) Employees who may be exposed to hazardous chemicals shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for the hazardous chemicals. Employees, on request, shall be provided a copy of a specific MSDS with trade secret information, if any, deleted. In addition, employees shall receive training on the hazards of the chemicals and on measures they can take to protect themselves from those hazards and shall be provided with appropriate personal protective equipment. These rights are guaranteed on the effective date of this Act.

(b) An employer or manufacturing employer may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has filed a complaint, assisted an inspector of the department who may make or is making an inspection under Section 13 of this Act, instituted or caused to be instituted any proceeding under or related to this Act, testified or is about to testify in such a proceeding, or exercised any rights afforded under this Act on behalf of the employee or on behalf of others. Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this Act.

(c) Any waiver by an employee of the benefits or requirements of this Act is against public policy and is null and void. Any employer's or manufacturing employer's request or requirement that an employee waive any rights under this Act as a condition of employment is a violation of this Act.

Sec. 16. PROTECTION OF TRADE SECRETS. (a) *An employer who believes that all or any part of the information required under Section 6, 9(b), or 9(d) is a trade secret may withhold the information, provided that:*

- (1) *material safety data sheets are available to employees in the area where they work;*
- (2) *hazard information on the trade secret chemicals, or an MSDS with trade secret information deleted, is provided to the fire chief and the commissioner, on request;*
- (3) *all relevant information is provided to a physician diagnosing and treating a person exposed to the chemical, under requirements stated in the OSHA standard in 29 CFR Section 1910.1200(i)(2); and*
- (4) *the employer can substantiate the trade secret claim. For purposes of this Act, the requirements in the OSHA standard for physicians treating employees shall apply to physicians treating persons.*

(b) *The commissioner, on his own initiative or on the request of an employee, the employee's designated representative, a fire chief, or a person who made a request under Section 7(d) of this Act, may request any or all of the data substantiating the trade secret claim to determine whether the claim made under Subsection (a) of this section is valid. When making a determination of a trade secret claim under this subsection, the commissioner shall conduct a reasonable search of available literature to determine if the hazard information is accurate. If the commissioner, based on his review of the health and safety information made available by the employer and other available information, has determined that the MSDS reflects a prudent assessment of the scientific evidence regarding hazards, then the commissioner shall add an addendum to the MSDS over his signature stating his opinion. If the commissioner, based on his review of the health and safety information made available by the employer and other available information, has determined that the MSDS does not reflect a prudent assessment of the scientific evidence regarding hazards, then the commissioner shall add an addendum to the MSDS over his signature reflecting his opinion of a prudent assessment of the scientific evidence. The assessment shall be completed within 90 days of the commissioner's receipt of the information or data substantiating the trade secret claim. The commissioner shall protect from disclosure any or all information coming into his possession when the information is marked by the employer as confidential, and shall return all information so marked to the employer at the conclusion of a final determination.*

(c) *The employer has 30 days after notification by the commissioner that a trade secret claim is not valid to petition for judicial review. Judicial review shall be by trial de novo in a district court of Travis County.*

Sec. 17. EXEMPTIONS. (a) *Notwithstanding any language to the contrary, the provisions of this Act do not apply to chemicals in the following categories:*

- (1) *any article that is formed to a specific shape or design during manufacture, that has end-use functions dependent in whole or in part on its shape or design during end use, and that does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;*
- (2) *products intended for personal consumption by employees in the workplace;*
- (3) *retail food sale establishments and all other retail trade establishments, exclusive of processing and repair areas;*
- (4) *any food, food additive, color additive, drug, or cosmetic as those terms are defined in the Food and Drug Act (21 U.S.C. 201 et seq.), or distilled spirits, wines, or malt beverages as those terms are defined in the federal Alcohol Administration Act (27 U.S.C. 201 et seq.);*
- (5) *a laboratory under the direct supervision or guidance of a technically qualified individual, provided that:*
 - (A) *labels on containers of incoming chemicals shall not be removed or defaced;*
 - (B) *material safety data sheets received shall be maintained and made accessible to employees and students;*
 - (C) *the provisions of Sections 9 and 10 of this Act are met; and*
 - (D) *the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;*
- (6) *products labeled pursuant to the federal Insecticide, Fungicide, and Rodenticide Act;*
- (7) *hazardous waste regulated pursuant to the federal Resource Conservation and Recovery Act; and*
- (8) *radioactive waste.*

(b) *No provision of this Act, except Sections 9(a) and 10, applies to a workplace where a hazardous chemical is received in a sealed package and is subsequently sold or transferred in that package if the seal remains intact while the chemical is in the workplace and if the chemical does not remain in the workplace more than five working days.*

Sec. 18. SEVERABILITY. *The provisions of this Act are severable, and if any phrase, clause, sentence, or provision of this Act, or the application of any phrase, clause, sentence, or provision to*

any person, business entity, or circumstances, shall be held invalid, the remainder of this Act, and the application of such provision or provisions to any person, business entity, or circumstances, other than those to which it was held invalid, shall not be affected thereby.

SECTION 2. This Act takes effect January 1, 1986.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 30, 1985, by a non-record vote; passed by the Senate on May 17, 1985, by a viva-voce vote.

Approved: May 24, 1985

Effective: January 1, 1986