

CHAPTER 528

H.B. No. 1431

AN ACT

relating to the Hazard Communication Act, the Manufacturing Facility Community Right-to-Know Act, the Public Employer Community Right-to-Know Act, and the Nonmanufacturing Facilities Community Right-to-Know Act; providing for the collection of fees; providing administrative, civil, and criminal penalties.

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

SECTION 1. Chapter 502, Health and Safety Code, is amended to read as follows:

CHAPTER 502. HAZARD COMMUNICATION ACT

Sec. 502.001. SHORT TITLE. This chapter may be cited as the Hazard Communication Act.

Sec. 502.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons [~~living and~~] working in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during normal employment activities, during emergency situations, or as a result of proximity to the manufacture or use of those chemicals; and

(2) many employers in this state have established suitable information programs for their employees and that access to the information is required of *most* [~~all manufacturing~~] employers under the federal Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard.

(b) It is the intent and purpose of this chapter to assure that *employers provide* [~~if the OSHA standard is not in effect, accessibility to~~] information regarding hazardous chemicals *in the workplace* [~~is provided~~] to:

[~~(1) employees who may be exposed to those chemicals in their workplace [manufacturing or nonmanufacturing employer workplaces;~~

[~~(2) emergency service organizations responsible for dealing with chemical hazards during an emergency; and~~

[~~(3) the commissioner to make the information available to the public through specific procedures~~].

Sec. 502.0021. FEDERAL LAWS AND REGULATIONS. *In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.*

Sec. 502.003. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

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

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

(4) [~~(3)~~] "Chemical name" means:

(A) 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

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

[~~(4) "Commissioner" means the commissioner of health.~~

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

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

(7) "Designated representative" means the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter, except that a recognized or certified collective bargaining agent is a designated representative regardless of written employee authorization.

(8) "Director" means the director of the Texas Department of Health.

(9) "Distributor" means a business in Standard Industrial Classification Major Industry Group 516 or 517, ~~other than a chemical manufacturer or importer,~~ that supplies hazardous chemicals to an employer who must comply with this Act ~~[other distributors or to purchasers].~~

(10) [(9)] "Employee" means a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies, and includes a person working for this state, a person working for a political subdivision of this state, or a member of a volunteer emergency service organization or, if the applicable OSHA standard or MSHA standard is not in effect, a person working for a private employer. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of this chapter ~~[The term does not include an office worker, a ground maintenance worker, security personnel, or nonresident management unless the person's job performance routinely involves potential exposure to hazardous chemicals].~~

(11) "Employer" means a person engaged in private business who is regulated by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164) on the effective date of this Act, or the state or a political subdivision of the state, including a state, county, or municipal agency, a public school, a college or university, a river authority or publicly owned utility, a volunteer emergency service organization, and other similar employers. The term does not include any person to whom the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164) is applicable if that employer is covered by the OSHA standard or the other two federal laws.

(12) [(10)] "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. The term includes potential, possible, or accidental exposure under normal conditions of use or in a reasonably foreseeable emergency.

(13) [(11)] "Fire chief" means the elected or paid administrative head of a fire department.

[(12)] "Hazardous chemical" or "chemical" means an 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), or by OSHA's written interpretations. A hazard determination may be made by employers who choose not to rely on the evaluations made by their suppliers if there are relevant qualitative or quantitative differences. A hazard determination shall involve the best professional judgment.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the workplace chemical list, the label, and the MSDS.

(16) [(13)] "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) [(14)] "Manufacturing employer" means an employer with a workplace classified in Standard Industrial Classification (SIC) Codes 20-39 who manufactures or uses a hazardous chemical.

[(15)] "Material Safety Data Sheet" ("MSDS") means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(18) "MSHA standard" means the Hazard Communication Standard issued by the Mining Safety and Health Administration.

(19) [(16) "Nonmanufacturing employer" or "employer" means an employer with a workplace in Standard Industrial Classification (SIC) Codes 46-49 (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, and botanical and zoological gardens); this state and its political subdivisions; and volunteer emergency service organizations. If the OSHA standard is not in effect, "employer" also includes manufacturing employer.

[(17) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "Temporary workplace" means a stationary workplace that is staffed less than 20 hours a week. A temporary workplace may be considered to be a work area of the headquarters workplace from which employees are routinely dispatched. Temporary workplaces may include pumping stations, emergency response sites, and similar workplaces.

(22) [(18) "Work area" means a room, a [or] defined space, a utility structure, or an emergency response site in a workplace where hazardous chemicals are present, produced, or used and where employees are present.

(23) [(19) "Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas, with or without buildings, that is staffed 20 or more hours a week.

(24) [(20) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a) [or 29 CFR Section 1910.1200(e)(i)].

Sec. 502.004. APPLICABILITY OF CHAPTER. (a) *Except as provided by Subsection (b) [If the OSHA standard is not in effect], this chapter applies only to employers who are not required to comply with the OSHA standard, the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164) [manufacturing employers and distributors].*

(b) *Chemical manufacturers, importers, and distributors shall provide MSDSs as required by Section 502.006. Penalties provided by Sections 502.014, 502.015, and 502.016 may be assessed against chemical manufacturers, importers, and distributors for failure to provide MSDSs [If the OSHA standard is in effect, manufacturing employers and distributors who are regulated by and complying with the OSHA standard are required to comply only with Sections 502.005(d) and (e); 502.006(a) and (d); 502.008; 502.012(d), (e), and (f); and 502.013(b), (e), (d), and (e)].*

(c) *If an employer is covered by both this chapter and Chapter 125, Agriculture Code, the employer is required to comply only with this chapter [Nonmanufacturing employers who adopt and comply with the OSHA standard may be certified by the commissioner as being in compliance with this chapter, except for Sections 502.005(d) and (e); 502.006(a) and (d); 502.008; 502.012(d), (e), and (f); and 502.013(b), (e), (d), and (e). The commissioner shall make the certification annually].*

(d) This chapter, except Section [Sections 502.008(a) and] 502.009, does not apply to a [workplace where a] hazardous chemical in a sealed and labeled package that is received and subsequently sold or transferred in that package if:

(1) the seal and label remain [remains] intact while the chemical is in the workplace; and

(2) the chemical does not remain in the workplace longer than five working days.

(e) This chapter does not require labeling of the following chemicals:

(1) any pesticide, as that term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(2) any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in those products such as flavors and fragrances, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements under that Act by the Food and Drug Administration;

(3) any distilled spirits that are beverage alcohols, wine, or malt beverages intended for nonindustrial use, as those terms are defined in the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and

(4) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts or regulations issued under those Acts by the Consumer Product Safety Commission.

(f) This chapter does not apply to ~~the following~~:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(2) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:

(A) labels on incoming containers of chemicals are not removed or defaced;

(B) the employer complies with Sections 502.006 and 502.009 with respect to laboratory employees; and

(C) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;

(3) tobacco or tobacco products;

(4) wood or wood products;

(5) articles;

(6) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(7) food, drugs, or cosmetics intended for personal consumption by an employee while in the workplace;

(8) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(9) any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) ~~[an article that:~~

~~[(A) is formed to a specific shape or design during manufacture;~~

~~[(B) has an end use function dependent in whole or in part on the article's shape or design during end use; and~~

~~[(C) does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;~~

~~[(2) a product intended for personal consumption by an employee in the workplace;~~

~~(3) a retail food sale establishment or other retail trade establishment, except processing and repair area;~~

~~(4) a food, food additive, color additive, drug, or cosmetic as those terms are defined by the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 201 et seq.) or a distilled spirit, wine, or malt beverage as those terms are defined by the federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);~~

~~(5) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:~~

~~(A) labels on incoming containers of chemicals are not removed or defaced;~~

~~(B) material safety data sheets received are maintained and made accessible to employees and students;~~

~~(C) the laboratory complies with Sections 502.008 and 502.009; and~~

~~(D) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;~~

~~(6) a product labeled in accordance with the federal Insecticide, Fungicide, and Rodenticide Act (42 U.S.C. Section 136 et seq.);~~

~~(7) hazardous waste regulated in accordance with the federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); and~~

~~(10) (8) radioactive waste.~~

Sec. 502.005. WORKPLACE CHEMICAL LIST. (a) *For the purpose of worker right-to-know, an [An] employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally present [used or stored] in the workplace or temporary workplace in excess of 55 gallons or 500 pounds or in excess of an amount that the board determines by rule for certain highly toxic or dangerous hazardous chemicals:*

~~(1) the identity [chemical name and the common name] used on the MSDS and container label; and~~

~~(2) [the nomenclature used in identifying the chemical name;~~

~~(3) the work area in which the hazardous chemical is normally present [stored or used].~~

(b) *The employer shall update the workplace chemical list as necessary but at least by December 31 of each [once a] year. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information.*

(c) *The workplace chemical list may be prepared for the workplace as a whole or for each work area or temporary workplace and must be readily available to employees and their representatives. All [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) [An employer or manufacturing employer shall give the commissioner a workplace chemical list. An employer or manufacturing employer beginning operation shall give the commissioner the workplace chemical list not later than the 60th day after the date on which the employer or manufacturing employer begins operation.~~

~~(e) An [employer or manufacturing] employer shall maintain a workplace chemical list for at least 30 years. The [employer or manufacturing] employer shall send complete records to the director [commissioner] if the employer [business] ceases to operate [in this state].~~

Sec. 502.006. MATERIAL SAFETY DATA SHEET. (a) *A chemical manufacturer or distributor shall provide appropriate material safety data sheets to employers who acquire [purchasers of] hazardous chemicals in this state with each initial shipment and with the first shipment after an MSDS is updated. The MSDSs must conform to the most current requirements of the OSHA standard.*

(b) *An employer shall maintain a legible copy of a [the most] current MSDS [received from a manufacturer or distributor] for each hazardous chemical purchased. If the employer does not have a current [manufacturer or distributor does not provide an] MSDS for a hazardous chemical [on the workplace chemical list] when the chemical is received at the workplace, the*

employer shall request an MSDS in writing from the manufacturer or distributor in a timely manner or shall otherwise obtain a current MSDS. The manufacturer or distributor shall respond with an appropriate MSDS in a timely manner.

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

(d) A copy of an MSDS maintained by an employer under this section shall be provided to the director [commissioner] on request. ~~The commissioner shall request an MSDS from an employer or manufacturing employer when a person requests an MSDS from the commissioner and the person's request is based on that person's review of an employer's or manufacturing employer's workplace chemical list.~~

Sec. 502.007. LABEL. (a) A label on an existing [incoming] container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary containers must be relabeled with at least the identity appearing on the MSDS, the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer's name and address. Except as provided by Subsection (b), secondary containers must be relabeled with at least the identity appearing on the MSDS and appropriate hazard warnings.

(b) An employee 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. 502.008. ~~[EMERGENCY INFORMATION. (a) An employer or manufacturing employer who normally stores a hazardous chemical in an amount in excess of 55 gallons or 500 pounds or in excess of 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, on request, shall provide a copy of the workplace chemical list to the fire chief. The employer shall notify the fire chief of any significant changes to the workplace chemical list.~~

~~(c) The fire chief or the fire chief's representative, on request, may conduct on site inspections of the chemicals on the workplace chemical list for the sole purpose of planning fire department activities in case of an emergency.~~

~~(d) An employer or a manufacturing employer, on request, shall give the fire chief 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 and to other personnel outside the fire department who are responsible for preplanning emergency activities. The fire chief may not otherwise distribute the information without approval of the employer or manufacturing employer.~~

[Sec. 502.009.] OUTREACH PROGRAM. (a) The director [commissioner] shall develop an outreach program that:

(1) consists of an education and training program in the form of instructional materials to assist employers in fulfilling the requirements of Section 502.009 [502.010]; and

(2) includes the development and distribution of a supply of informational leaflets concerning employer's duties, employee rights, ~~[the public's ability to obtain information under this chapter,]~~ the outreach program, and the effects of hazardous chemicals.

(b) The director [commissioner] may contract with a public institution of higher education or other public or private organization to develop and implement the outreach program.

(c) The director [commissioner] shall develop and provide to each employer a suitable form of notice providing employees with information relating to employee rights under this chapter.

(d) The *director* [~~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.

(e) In cooperation with the *director* [~~commissioner~~], an employer may provide an outreach program in the community.

Sec. 502.009 [502.010]. EMPLOYEE EDUCATION PROGRAM. (a) An employer shall provide[, at least once a year,] an education and training program for employees who use or handle hazardous chemicals.

(b) *An employer shall develop, implement, and maintain at the workplace a written hazard communication program for the workplace that describes how the criteria specified in this chapter will be met.*

(c) *An education and training program must include, as appropriate:*

(1) *information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;*

(2) *the location by work area, acute and chronic effects, and safe handling of hazardous chemicals known to be present in the employees' work area and to which the employees may be exposed;*

(3) *the proper use of protective equipment and first aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and*

(4) *general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.*

(d) *Training may be conducted by categories of chemicals. An employer must advise employees that information is available on the specific hazards of individual chemicals through the MSDSs. Protective equipment and first aid treatment may be by categories of hazardous chemicals.*

~~(e) [Not later than the 30th day after an employer provides an education and training program, the employer shall report to the commissioner that the program has been provided to the employees.]~~

[(e)] *An employer shall provide additional instruction to an employee [employees] when the potential for exposure to hazardous chemicals in the employee's work area increases significantly [changes] or when the employer receives new and significant information concerning the hazards of a chemical in the employee's work area. The addition of new chemicals alone does not necessarily require additional training.*

(f) [(d)] *An employer shall provide training to a new or newly assigned employee before the employee works with or in a work area containing a hazardous chemical.*

(g) *An employer shall keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years by the employer. The department shall have access to those records and may interview employees during inspections.*

(h) *Emergency service organizations shall provide, to their members or employees who may encounter hazardous chemicals during an emergency, information on recognizing, evaluating, and controlling exposure to the chemicals.*

~~(i) [(e) An employer shall keep a record of the dates of training sessions given to employees.]~~

~~[(f) An education and training program must include, as appropriate:~~

~~(1) information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;~~

~~(2) the location, acute and chronic effects, and safe handling of hazardous chemicals used by the employees;~~

~~(3) protective equipment and first aid treatment to be used with respect to the hazardous chemicals used by the employees; and~~

~~[(4) general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.~~

~~[(g)]~~ As part of an outreach program created in accordance with Section 502.008 [502.009], the *director* [commissioner] shall develop an education and training assistance program to assist employers who are unable to develop the programs because of size or other practical considerations. The program shall be made available to those employers on request.

Sec. 502.010 [502.011]. LIABILITY UNDER OTHER LAW. Providing information to an employee does not affect:

- (1) the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals;
- (2) the employer's responsibility to take any action to prevent occupational disease as required under other law; or
- (3) any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under other law.

Sec. 502.011 [502.012]. COMPLAINTS AND~~[,]~~ INVESTIGATIONS~~[, AND PENALTIES]~~. (a) The *director* [commissioner] or the *director's* [commissioner's] representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by an [a nonmanufacturing] employer.

(b) A complaint received from a *person* [~~an employee or an employee's designated representative~~] relating to an alleged violation [~~by a manufacturing employer~~] shall be referred [~~by the complainant~~] to the federal Occupational Safety and Health Administration (OSHA) or to the federal Mine Safety and Health Administration (MSHA) if the *complaint is related to an applicable OSHA or MSHA requirement and the applicable OSHA or MSHA standard is in effect*. The *director* [commissioner] or the *director's* [commissioner's] representative shall investigate the complaint if:

- (1) the *applicable OSHA or MSHA standard is not in effect*; or
- (2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, an officer or representative of the *director* [commissioner] may enter a workplace at reasonable times to inspect and investigate complaints.

~~(d) The department may find multiple violations by an employer based on distinct requirements of this chapter [An employer or manufacturing employer found to be in violation of this chapter must comply not later than the 14th day after the date of the finding. An employer or manufacturing employer that does not comply before the 15th day after the date of written notification of a violation is subject to an administrative penalty of not more than \$500 for each violation.~~

~~[(e) An employer or manufacturing employer who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than \$5,000 for each violation.~~

~~[(f) An employer or manufacturing employer who proximately causes an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information as required by this chapter is subject to a criminal fine of not more than \$25,000.~~

~~[(g) This section does not affect any other right of an employee or any other person to receive compensation for damages under other law].~~

Sec. 502.012. REPORTING FATALITIES AND INJURIES. (a) Within 48 hours after the occurrence of an employee accident that directly or indirectly involves chemical exposure or that involves asphyxiation, and that is fatal to one or more employees or results in the hospitalization of five or more employees, the employer of any of the employees so injured or killed shall report the accident either orally or in writing to the department.

(b) The report to the department shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. If it is necessary to complete the investigation of an incident, the department may require additional reports in writing as necessary.

Sec. 502.013. ADVISORY COMMITTEE. The board shall appoint an advisory committee to assist the department in reviewing policies and procedures necessary to implement this chapter. The advisory committee may consist of not more than 10 members representing municipalities, counties, state agencies other than the department, public institutions of higher education, public employee organizations representing employees of those groups, and the public.

Sec. 502.014. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against an employer who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the employer. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of the chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An employer who receives a notice of violation may respond to the department in writing within 15 days after the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the employer disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the employer may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the employer to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The employer may correct the violation and certify to the department that the corrections have been made.

(f) The employer may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the employer, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the employer may respond as provided by either Subsection (h) or (i) within 10 days after the date of receipt of the department's correspondence.

(h) The employer may correct the violation and certify to the department that the corrections have been made.

(i) The employer may request a hearing.

(j) A request for an informal conference or a statement by an employer that the employer is in compliance with the provision of this chapter does not waive the employer's right to a hearing.

(k) The director may not assess an administrative penalty for any violation that has been corrected within 15 days after the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the employer of the department's response to the informal conference provided for in Subsection (c), whichever is later.

(l) In determining the amount of the penalty, the director shall consider:

- (1) the employer's previous violations;*
- (2) the seriousness of the violation;*
- (3) any hazard to the health and safety of the employee;*
- (4) the employer's demonstrated good faith;*
- (5) the duration of the violation; and*
- (6) other matters as justice may require.*

(m) Each day a violation continues may be considered a separate violation.

(n) The penalty may not exceed \$500 for each violation.

Sec. 502.0141. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after an employer charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the employer charged with the violation does not request a hearing in a timely manner, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against an employer, the director shall issue an order requiring that the employer pay the penalty.

(e) The director may consolidate a hearing held under this section with another proceeding.

Sec. 502.0142. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the employer against whom the order is issued of the amount of the penalty for the violation.

(b) Within 30 days after the date the director's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the employer shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, an employer who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the employer stating that the employer is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(d) Subsection (c)(1) does not apply to the state or a political subdivision. The penalty may not be enforced against the state or a political subdivision until all judicial review has been exhausted.

(e) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The employer who files an affidavit has the burden of proving that the employer is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(f) If the employer does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(g) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(h) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the employer to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(i) When the judgment of the court becomes final, the court shall proceed under this subsection. If the employer paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the employer. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the employer gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the employer gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the employer pays the amount.

(j) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 502.015. **CIVIL PENALTY; INJUNCTION.** (a) If it appears that an employer has violated, is violating, or is threatening to violate this chapter or any rule adopted or order issued under this chapter, the director may request the attorney general or the district, county, or city attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) injunctive relief to restrain the employer from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both the injunctive relief and the civil penalty.

(b) The penalty may be in an amount not to exceed \$2,000 a day for each violation, with a total not to exceed \$20,000 for that violation.

(c) In determining the amount of the penalty, the court shall consider the employer's history of previous violations, the seriousness of the violation, any hazard to health and safety of the public, the demonstrated good faith of the employer charged, and other matters as justice may require.

(d) Any civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. Any civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Sec. 502.016. **CRIMINAL PENALTY.** An employer who is required to disclose hazard information under this chapter and who proximately causes an occupational disease or injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information provided on an MSDS commits an offense that is punishable by a fine of not more than \$10,000 for each violation. Each day of violation constitutes a separate offense, except that the fine may not exceed \$100,000 for that violation. This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Sec. 502.017 [502.013]. **EMPLOYEE NOTICE; RIGHTS OF EMPLOYEES.** (a) An employer shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under this chapter. If the director [commissioner] does not prepare the notice under Section 502.008 [502.009], the employer shall prepare the notice.

(b) 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 any trade secret information deleted. In addition, employees shall receive training concerning the hazards of the chemicals and measures they can take to protect themselves from those hazards. Employees shall be provided with appropriate personal protective equipment. These rights are guaranteed.

(c) An employer ~~[or a manufacturing employer]~~ may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has:

- (1) filed a complaint;
- (2) assisted an inspector of the department who may make or is making an inspection under Section 502.011 ~~[502.012]~~;
- (3) instituted or caused to be instituted any proceeding under or related to this chapter;
- (4) testified or is about to testify in a proceeding under this chapter; or
- (5) exercised any rights afforded under this chapter on behalf of the employee or on behalf of others.

(d) Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(e) A waiver by an employee of the benefits or requirements of this chapter is void. An employer's ~~[or a manufacturing employer's]~~ request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

~~[Sec. 502.014. TRADE SECRETS. (a) An employer who believes that all or a part of the information required under Section 502.005 or Section 502.008(b) or (d) is a trade secret may withhold the information if:~~

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

~~[(b) The commissioner, on the commissioner's 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 502.006(d), may request any or all of the data substantiating the trade secret claim to determine whether a claim made under Subsection (a) is valid.~~

~~[(c) When making a determination of a trade secret claim, the commissioner shall conduct a reasonable search of available literature to determine whether the hazard information is accurate.~~

~~[(d) Based on a review of the health and safety information made available by the employer and on other available information, the commissioner shall sign and add an addendum to the MSDS stating:~~

- ~~[(1) the commissioner's opinion that the MSDS reflects a prudent assessment of the scientific evidence regarding hazards; or~~
- ~~[(2) if the commissioner determines that the MSDS does not reflect such a prudent assessment, the commissioner's opinion of a prudent assessment of the scientific evidence.~~

~~[(e) The commissioner shall complete the assessment not later than the 90th day after the date on which the commissioner receives the information substantiating the trade secret claim.~~

~~[(f) If the commissioner receives information marked "confidential" by the employer, the commissioner shall:~~

- ~~[(1) protect the information from disclosure; and~~

~~[(2) return the information to the employer when a final determination is made.~~

~~[(g) An employer whose trade secret claim is determined to be invalid under this section may petition for judicial review not later than the 30th day after the date on which the employer was notified by the commissioner that the trade secret claim is invalid. Judicial review is by trial de novo in a district court in Travis County.]~~

Sec. 502.018 [502.015]. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for physicians treating employees (29 CFR 1910.1200(l)) apply to physicians treating persons.

Sec. 502.019 [502.016]. RULES[; FEES]. [(a)] The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

~~[(b) The board may authorize the collection of fees from manufacturing and nonmanufacturing employers for the filing of workplace chemical lists required by this chapter or for other community right-to-know purposes under the department's jurisdiction. The fees shall be paid annually and may not exceed \$50 for each required submission. To minimize the fees, the department by rule shall provide for consolidated filings for employers with multiple or temporary workplaces if the workplace chemical lists contain fewer than 25 items.]~~

SECTION 2. Subtitle D, Title 6, Health and Safety Code, is amended by adding Chapters 505-507 to read as follows:

CHAPTER 505. MANUFACTURING FACILITY COMMUNITY RIGHT-TO-KNOW ACT

Sec. 505.001. *SHORT TITLE.* This chapter may be cited as the *Manufacturing Facility Community Right-To-Know Act*.

Sec. 505.002. *FINDINGS; PURPOSE.* (a) *The legislature finds that:*

(1) *the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and*

(2) *many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).*

(b) *It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:*

(1) *fire departments responsible for dealing with chemical hazards during an emergency;*

(2) *local emergency planning committees and other emergency planning organizations; and*

(3) *the director to make the information available to the public through specific procedures.*

Sec. 505.003. *FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS.* (a) *In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.*

(b) *In this chapter, a reference to Standard Industrial Classification (SIC), to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.*

Sec. 505.004. *DEFINITIONS.* *In this chapter:*

(1) *"Article" means a manufactured item:*

(A) *that is formed to a specific shape or design during manufacture;*

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

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

(3) "Chemical name" means:

(A) 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

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

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

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

(6) "Director" means the director of the Texas Department of Health.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in Standard Industrial Codes (SIC) 20-39.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the elected or paid administrative head of a fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

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

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the department under Section 505.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(i).

Sec. 505.005. **APPLICABILITY OF CHAPTER.** (a) Facility operators whose facilities are in SIC Codes 20–39 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

- (1) the seal remains intact while the chemical is in the facility;
- (2) the chemical does not remain in the facility longer than five working days; and
- (3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Sec. 505.006. **FACILITY CHEMICAL LIST.** (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA Section 311, but a fee may not be associated with filing the report.

(e) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a material safety data sheet with the department on the department's request.

(g) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 505.015, documents filed under this chapter are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 505.007. **DIRECT CITIZEN ACCESS TO INFORMATION.** (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the

department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Sec. 505.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requester may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the local emergency planning committee a copy of the MSDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

Sec. 505.010. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good faith effort to comply with this chapter, the director may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(n) The penalty may not exceed \$500 a day for each day a violation continues, with a total not to exceed \$5,000 for each violation.

Sec. 505.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this section with another proceeding.

Sec. 505.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by in Section 505.011(e), within 30 days after the date the director's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the facility operator shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility operator to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.

(i) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 505.013. **CIVIL PENALTIES.** (a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than \$5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

Sec. 505.014. **CRIMINAL PENALTIES.** (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than \$25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Sec. 505.015. **TRADE SECRETS.** Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Sec. 505.016. **RULES; FEES.** (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) \$100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) \$200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) \$300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) \$400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) \$500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. The department may use up to 15 percent of the fees collected under this chapter and Chapter 506, or the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, to administer Chapter 502.

CHAPTER 506. PUBLIC EMPLOYER COMMUNITY RIGHT-TO-KNOW ACT

Sec. 506.001. **SHORT TITLE.** This chapter may be cited as the Public Employer Community Right-To-Know Act.

Sec. 506.002. **FINDINGS; PURPOSE.** (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemical is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the director to make the information available to the public through specific procedures.

Sec. 506.003. **FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS.** (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Sec. 506.004. **DEFINITIONS.** In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

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

(3) "Chemical name" means:

(A) 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

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

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

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

(6) "Director" means the director of the Texas Department of Health.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person and that is operated by the state or a political subdivision of the state.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the elected or paid administrative head of a fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

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

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "Public employer" means:

(A) the state and political subdivisions of the state, including state, county, and municipal agencies;

(B) public schools, colleges, and universities;

(C) river authorities and publicly owned utilities;

(D) volunteer emergency service organizations; and

(E) other similar employers who are not covered by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(22) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(23) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.

(24) "Tier two form" means:

(A) a form specified by the department under Section 506.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

(25) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Sec. 506.005. **APPLICABILITY OF CHAPTER.** (a) Public employers shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

- (3) wood or wood products;
- (4) articles;
- (5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;
- (6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;
- (7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;
- (8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;
- (9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and
- (10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Sec. 506.006. **FACILITY CHEMICAL LIST.** (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(d) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance, but a fee may not be associated with filing this report. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(e) A facility operator shall file a material safety data sheet with the department on the department's request.

(f) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(g) Documents filed under this chapter are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 506.007. **DIRECT CITIZEN ACCESS TO INFORMATION.** (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Sec. 506.008. **EMERGENCY PLANNING INFORMATION.** (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the local emergency planning committee a copy of the MSDS for any chemical on the tier two form furnished under Section 506.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

Sec. 506.009. **COMPLAINTS AND INVESTIGATIONS.** On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

Sec. 506.010. **ADMINISTRATIVE PENALTY.** (a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) The director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(m) The penalty may not exceed \$50 a day for each day a violation continues, with a total not to exceed \$1,000 for each violation.

Sec. 506.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this section with another proceeding.

Sec. 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided in Section 506.011(e), not later than the 30th day after the date on which a decision or order charging a facility operator with a penalty is final, the facility operator shall pay the penalty in full, unless the facility operator seeks judicial review of the amount of the penalty, the fact of the violation, or both. The board may by rule provide for appeals by the state and political subdivisions of the state.

Sec. 506.013. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a facility operator should be reduced or not assessed, the director shall remit to the facility operator the appropriate amount of any penalty payment already paid plus accrued interest.

Sec. 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the director may bring a civil action to recover an administrative penalty under this chapter.

Sec. 506.015. CIVIL PENALTIES. (a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than \$5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

Sec. 506.016. CRIMINAL PENALTIES. (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than \$25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Sec. 506.017. RULES; FEES. (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:

(1) \$50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) \$100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 15 percent of the fees collected under Chapter 505 and this chapter, or the amount of fees paid by the state and its political subdivisions under this chapter, whichever is greater, to administer Chapter 502.

CHAPTER 507. NONMANUFACTURING FACILITIES COMMUNITY RIGHT-TO-KNOW ACT

Sec. 507.001. SHORT TITLE. This chapter may be cited as the Nonmanufacturing Facilities Community Right-To-Know Act.

Sec. 507.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the director to make the information available to the public through specific procedures.

Sec. 507.003. FEDERAL LAWS AND REGULATIONS. In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

Sec. 507.004. DEFINITIONS. In this chapter:

- (1) "Article" means a manufactured item:
 - (A) that is formed to a specific shape or design during manufacture;
 - (B) that has end-use functions dependent in whole or in part on its shape or design during end use; and
 - (C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.
- (2) "Board" means the Texas Board of Health.
- (3) "Chemical name" means:
 - (A) 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
 - (B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.
- (4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.
- (5) "Department" means the Texas Department of Health.
- (6) "Director" means the director of the Texas Department of Health.
- (7) "EPA" means the United States Environmental Protection Agency.
- (8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.
- (9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.
- (10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person. The term does not include a facility subject to Chapter 505 or 506.
- (11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.
- (12) "Fire chief" means the elected or paid administrative head of a fire department.
- (13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:
 - (A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
 - (B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
 - (C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
 - (D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and
 - (E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

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

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the department under Section 507.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

Sec. 507.005. **APPLICABILITY OF CHAPTER.** (a) Facility operators who are not subject to Chapter 505 or 506 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Sec. 507.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA, Section 311, but a fee may not be associated with filing the report.

(e) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a material safety data sheet with the department on the department's request.

(g) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 507.012, documents filed under this chapter are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 507.007. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the local emergency planning

committee a copy of the MSDS for any chemical on the tier two form furnished under Section 507.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

Sec. 507.008. **COMPLAINTS AND INVESTIGATIONS.** On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

Sec. 507.009. **ADMINISTRATIVE PENALTY.** (a) The director may assess an administrative penalty against a facility operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good-faith effort to comply with this chapter, the director may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the operator's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(n) The penalty may not exceed \$50 for each day a violation continues, with a total not to exceed \$1,000 for each violation.

Sec. 507.010. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this section with another proceeding.

Sec. 507.011. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by Section 507.010(e), within 30 days after the date the director's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the facility operator shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility

operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility operator to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.

(i) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 507.012. **TRADE SECRETS.** Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Sec. 507.013. **RULES; FEES.** (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee may not exceed:

(1) \$50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) \$100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. 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 May 11, 1993, by a non-record vote; passed by the Senate on May 22, 1993, by a viva-voce vote.

Approved June 8, 1993.

Effective Sept. 1, 1993.