

HEALTH AND SAFETY CODE CHAPTER 502. HAZARD COMMUNICATION ACT

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE D. HAZARDOUS SUBSTANCES

CHAPTER 502. HAZARD COMMUNICATION ACT

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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

(1) the health and safety of persons 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 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 information regarding hazardous chemicals in the workplace to employees who may be exposed to those chemicals in their workplace.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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) "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) "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.
- (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 that supplies hazardous chemicals to an employer who must comply with this Act.
- (10) "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.

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

(17) "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) "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) "Work area" means a room, a 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) "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) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a). Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.004. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), 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).

(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.

(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.

(d) This chapter, except Section 502.009, does not apply to 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 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:

(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.); and

(10) radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.005. WORKPLACE CHEMICAL LIST. (a) For the purpose of worker right-to-know, an employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally present 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 used on the MSDS and container label; and

(2) the work area in which the hazardous chemical is normally present.

(b) The employer shall update the workplace chemical list as necessary but at least by December 31 of each 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 employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) An employer shall maintain a workplace chemical list for at least 30 years. The employer shall send complete records to the director if the employer ceases to operate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.006. MATERIAL SAFETY DATA SHEET. (a) A chemical manufacturer or distributor shall provide appropriate material safety data sheets to employers who acquire 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 current MSDS for each hazardous chemical purchased. If the employer does not have a current MSDS for a hazardous chemical 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 on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.007. LABEL. (a) A label on an existing 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.008. OUTREACH PROGRAM. (a) The director 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; and

(2) includes the development and distribution of a supply of informational leaflets concerning employer's duties, employee rights, the outreach program, and the effects of hazardous chemicals.

(b) The director 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 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 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, an employer may provide an outreach program in the community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.009 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.009. EMPLOYEE EDUCATION PROGRAM. (a) An

employer shall provide 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) An employer shall provide additional instruction to an employee when the potential for exposure to hazardous chemicals in the employee's work area increases significantly 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) 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) As part of an outreach program created in accordance with Section 502.008, the director 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 502.010 and amended by  
Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.010. 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Health & Safety Code Sec. 502.011 and amended by  
Acts 1993, 73rd Leg., ch. 528, eff. Sept. 1, 1993.

Sec. 502.011. COMPLAINTS AND INVESTIGATIONS. (a) The director or the director'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 employer.

(b) A complaint received from a person relating to an alleged violation shall be referred 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 or the director'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 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 Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.012 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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.

(1) 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.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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 Subchapter F, Chapter 2001, Government Code, 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 Subchapter G, Chapter 2001, Government Code; 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 Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

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.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

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.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.017. 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 does not prepare the notice under Section 502.008, 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 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;
- (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 request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.013 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for physicians treating employees (29 CFR 1910.1200(1)) apply to physicians treating persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.015 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.019. RULES. The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.016 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.020. WORKPLACE SAFETY FOR INMATES. A person imprisoned in a facility operated by or for the Texas Department of Criminal Justice is not an employee for the purposes of this chapter. The Texas Department of Criminal Justice shall provide a person imprisoned in a facility operated by or for the Texas Department of Criminal Justice the protections from exposure to hazardous chemicals in the workplace as provided for in this

chapter.

Added by Acts 1999, 76th Leg., ch. 1332, Sec. 1, eff. June 19, 1999;  
Acts 1999, 76th Leg., ch. 1501, Sec. 1, eff. June 19, 1999. Amended  
by Acts 2001, 77th Leg., ch. 1420, Sec. 10.004, eff. Sept. 1, 2001.