

House Bill 278

By: Representatives Clark of the 98<sup>th</sup>, Pruett of the 149<sup>th</sup>, Barr of the 103<sup>rd</sup>, Jones of the 167<sup>th</sup>, Cantrell of the 22<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 22 of Title 45 of the Official Code of Georgia Annotated, the "Public  
2 Employee Hazardous Chemical Protection and Right to Know Act of 1988," so as to transfer  
3 responsibility under such chapter to the Safety Fire Commissioner; to define certain terms;  
4 to provide for rules and regulations; to provide for the provision of certain information  
5 relative to hazardous materials to the commissioner; to provide for grievances and judicial  
6 review; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 22 of Title 45 of the Official Code of Georgia Annotated, the "Public Employee  
10 Hazardous Chemical Protection and Right to Know Act of 1988," is amended by revising  
11 Code Section 45-22-2, relating to definitions, as follows:

12 "45-22-2.

13 As used in this chapter, the term:

14 (1) 'Appointing authority' means a person or group of persons authorized by law or  
15 delegated authority to make appointments to fill employee positions in the legislative,  
16 judicial, or executive branch of state government.

17 ~~(1)~~(2) 'Article' means a finished product or manufactured item:

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

19 (B) Which has end use functions dependent in whole or in part upon its shape or design  
20 during end use; and

21 (C) Which has either no change of chemical composition during end use or only those  
22 changes of composition which have no commercial purpose separate from that of the  
23 article.

24 ~~(2)~~(3) 'Chemical name' means the scientific designation of a chemical in accordance with  
25 the nomenclature system developed by the International Union of Pure and Applied  
26 Chemistry or the system developed by the Chemical Abstracts Service.

- 27 ~~(3) 'Commissioner' means the Commissioner of Labor or his designee.~~
- 28 (4) 'Common name' means any designation or identification such as a code name, code  
29 number, trade name, or brand name used to identify a chemical other than by its chemical  
30 name.
- 31 (5) 'Contractor,' 'independent contractor,' or 'public contractor' means any person under  
32 a contract or agreement to provide labor or services to a public employer.
- 33 (6) 'Department' means the ~~Department of Labor~~ office of the Safety Fire Commissioner.
- 34 (7) 'Distributor' means an individual or employer, other than the manufacturer or  
35 importer, who supplies hazardous chemicals directly to users or to other distributors.
- 36 (8) 'Employee' or 'public employee' means any person who is employed by any branch,  
37 department, board, bureau, commission, authority, or other agency of the state and any  
38 inmate under the jurisdiction of the Department of Corrections performing a work  
39 assignment which requires the handling of any hazardous chemicals. Such term shall not  
40 include those employees of the Environmental Protection Division of the Department of  
41 Natural Resources who are responsible for on-site response and assistance in the case of  
42 environmental emergencies while such employees are engaged in responding to such  
43 emergencies.
- 44 (9) 'Employer' or 'public employer' means any branch, department, board, bureau,  
45 commission, authority, or other agency of the state which employs or appoints an  
46 employee or employees. An independent contractor or subcontractor shall be deemed the  
47 sole employer of its employees, even when such employees are performing work at the  
48 workplace of another employer.
- 49 (10) 'Exposed' or 'exposure' means that an employee is required by a public employer to  
50 be subjected to a hazardous chemical in the course of employment through any route of  
51 entry, including but not limited to, inhalation, ingestion, skin contact, or absorption and  
52 includes potential or accidental exposure.
- 53 (11) 'Hazardous chemical' means any chemical which is a physical hazard or a health  
54 hazard.
- 55 ~~(11.1)~~(12) 'Health hazard' means a chemical for which there is statistically significant  
56 evidence based on at least one study conducted in accordance with established scientific  
57 principles that acute or chronic health effects may occur in exposed employees and shall  
58 include all examples of hazardous chemicals to which reference is made in the definition  
59 of 'health hazard' under the Occupational Safety and Health Administration standard, 29  
60 CFR Section 1910.1200 (1987).
- 61 ~~(12)~~(13) 'Importer' means the first individual or employer within the Customs Territory  
62 of the United States who receives hazardous chemicals produced in other countries for  
63 the purpose of supplying them to distributors or users within the United States.

64 ~~(13) 'Impurity' means a hazardous chemical which is unintentionally present with another~~  
65 ~~chemical or mixture.~~

66 ~~(14) Reserved.~~

67 ~~(15)~~(14) 'Manufacturer' means a person who produces, synthesizes, extracts, or otherwise  
68 makes hazardous chemicals.

69 ~~(16)~~(15) 'Material safety data sheet' means the document prepared by manufacturers in  
70 accordance with the requirements of the Occupational Safety and Health Administration  
71 standard, 29 CFR Sections 1910.0000 through 1910.1500 (1987) and containing the  
72 following information:

73 (A) The chemical name and the common name of the hazardous chemical;

74 (B) The hazards or other risks in the use of the hazardous chemical, including:

75 (i) The potential for fire, explosion, corrosivity, and reactivity;

76 (ii) The known acute and chronic health effects of risks from exposure, including the  
77 medical conditions which are generally recognized as being aggravated by exposure  
78 to the hazardous chemical; and

79 (iii) The primary routes of entry and the symptoms of overexposure;

80 (C) The proper precautions, handling practices, necessary personal protective  
81 equipment, and other safety precautions in the use of or exposure to the hazardous  
82 chemicals, including appropriate emergency treatment in case of overexposure;

83 (D) The emergency procedures for spills, fire, disposal, and first aid;

84 (E) A description in lay terms of the known specific potential health risks posed by the  
85 hazardous chemical intended to alert any person reading this information; and

86 (F) The year and month, if available, that the information was compiled and the name,  
87 address, and emergency telephone number of the manufacturer responsible for  
88 preparing the information.

89 ~~(17) 'Medical emergency' means a medical condition which poses an imminent threat to~~  
90 ~~a person's health, caused or suspected to have been caused by exposure to a hazardous~~  
91 ~~chemical, and which requires immediate treatment by a physician.~~

92 ~~(18)~~(16) 'Mixture' means any combination of two or more chemicals, if the combination  
93 is not, in whole or in part, the result of a chemical reaction.

94 ~~(19)~~(17) 'Occupational Safety and Health Administration standard' means the Hazard  
95 Communication Standard issued by the Occupational Safety and Health Administration,  
96 29 CFR Sections 1910.0000 through 1910.1500 (1987).

97 ~~(20)~~(18) 'Person' means any individual, natural person, public or private corporation,  
98 incorporated association, government, government agency, partnership, or unincorporated  
99 association.

100 ~~(20.1)~~(19) 'Physical hazard' means a chemical for which there is scientifically valid  
 101 evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an  
 102 organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water reactive.

103 ~~(21)~~(20) 'Produce' means to manufacture, process, formulate, or repackage.

104 ~~(22)~~ 'Specific chemical identity' means the chemical name, the Chemical Abstracts  
 105 Service Registry Number, or any other specific information which reveals the precise  
 106 chemical designation.

107 ~~(23)~~(21) 'Work area' means a room inside a building or structure, an outside area, or  
 108 other defined space in a workplace where hazardous chemicals are produced, stored, or  
 109 used and where employees are present in the course of their employment.

110 ~~(24)~~(22) 'Workplace' means an establishment or business at one geographic location at  
 111 which work is performed by a state employee and which contains one or more work  
 112 areas. In the case of an independent contractor or subcontractor, the workplace shall be  
 113 defined as all work areas wholly owned or controlled by such independent contractor or  
 114 subcontractor."

## 115 SECTION 2.

116 Said chapter is further amended in Code Section 45-22-5, relating to exclusions from chapter,  
 117 exclusions from labeling requirements, and dissemination of information, by revising  
 118 subsection (c) as follows:

119 "~~(c) The department shall be responsible for the dissemination of appropriate information~~  
 120 ~~available on the nature and hazards of hazardous chemicals. The department shall~~  
 121 ~~promptly assist employers and employees with inquiries concerning the hazardous nature~~  
 122 ~~of such chemicals."~~

## 123 SECTION 3.

124 Said chapter is further amended by revising Code Section 45-22-6, relating to assistance of  
 125 the Governor's Employment and Training Council in reviewing and preparing rules and  
 126 regulations, as follows:

127 "45-22-6.

128 ~~(a) The Governor's Employment and Training Council shall assist the department in~~  
 129 ~~reviewing and preparing~~ department shall promulgate such rules and regulations as may  
 130 be necessary to administer this chapter. For the purposes of this chapter, the council shall  
 131 meet at the call of the Commissioner. ~~When the council is meeting for the purposes of this~~  
 132 ~~chapter, it shall make a report of each meeting, which shall include a record of its~~  
 133 ~~discussions and recommendations. The department shall make such reports available to~~  
 134 ~~any interested person or group.~~

135 (b) ~~The Governor's Employment and Training Council or the Commissioner~~ department  
 136 shall ~~be authorized to~~ consult with persons knowledgeable in the field of hazardous  
 137 chemicals ~~and to create committees composed of such consultants and members of the~~  
 138 ~~council~~ to assist the ~~council and Commissioner~~ department in carrying out ~~their~~ its duties  
 139 under this chapter.

140 (c) ~~The department shall consider the advice and recommendations of the council in~~  
 141 ~~promulgating rules and regulations and their amendments. If the department rejects the~~  
 142 ~~advice and recommendations of the council, the department must provide written reasons~~  
 143 ~~for such rejection."~~

#### 144 SECTION 4.

145 Said chapter is further amended by revising Code Section 45-22-7, relating to material safety  
 146 data sheets, notice to employees, and rights of employees, as follows:

147 "45-22-7.

148 (a) The manufacturer, importer, or distributor of any hazardous chemical shall prepare ~~and~~  
 149 ~~provide the direct purchasers of such hazardous chemicals and, upon request, the~~  
 150 ~~department, with~~ a material safety data sheet which, to the best knowledge of the  
 151 manufacturer, importer, or distributor, is current, accurate, and complete, based on  
 152 information then reasonably available to the manufacturer, importer, or distributor, and  
 153 provide a copy of the material safety data sheet to employers who purchase such hazardous  
 154 chemicals and an electronic copy to the department annually.

155 (b) Any person who produces a mixture may, for the purposes of this Code section,  
 156 prepare and use a mixture material safety data sheet, subject to the provisions of  
 157 subsection (j) of this Code section.

158 (c) A manufacturer, importer, distributor, or employer may provide the information  
 159 required by this Code section on an entire mixture, instead of on each hazardous chemical  
 160 in it, when all of the following conditions exist:

161 (1) Toxicity test information exists on the mixture itself or adequate information exists  
 162 to form a valid judgment of the hazardous properties of the mixture itself and the material  
 163 safety data sheet indicates that the information presented and the conclusions drawn are  
 164 from some source other than direct test data on the mixture itself, and that a material  
 165 safety data sheet on each constituent hazardous chemical identified on the material safety  
 166 data sheet is available upon request;

167 (2) Provision of information on the mixture will be as effective in protecting employee  
 168 health as information on the ingredients;

169 (3) The hazardous chemicals in the mixture are identified on the material safety data  
 170 sheet unless it is unfeasible to describe all the ingredients in the mixture, provided that

171 the reason why the hazardous chemicals in the mixture are not identified shall be stated  
172 on the material safety data sheet; and

173 (4) A single mixture material safety data sheet may be provided for more than one  
174 formulation of a product mixture if the information provided does not vary for the  
175 formulation.

176 (d) A manufacturer, importer, or distributor who is responsible for preparing and  
177 transmitting a material safety data sheet under the provisions of this Code section shall  
178 revise such material safety data sheet on a timely basis, as appropriate to the importance  
179 of any new information which would affect the contents of the existing material safety data  
180 sheet, and in any event within three months of such information becoming available to the  
181 manufacturer, importer, or distributor. Each such manufacturer, importer, or distributor  
182 shall provide a copy of the material safety data sheet to employers who have purchased  
183 such hazardous chemicals and an electronic copy to the department.

184 (e) Any person subject to the provisions of this Code section shall be relieved of the  
185 obligation to provide a direct purchaser of a hazardous chemical with a material safety data  
186 sheet if:

187 (1) ~~If he~~ He or she has a record of having provided the direct purchaser with the most  
188 recent version of the material safety data sheet;

189 (2) ~~If the~~ The chemical is labeled pursuant to:

190 (A) The federal Atomic Energy Act; or

191 (B) The federal Resource Conservation Recovery Act; or

192 (3) ~~If the~~ The article is one sold at retail and is incidentally sold to an employer or the  
193 employer's employees in the same form, approximate amount, concentration, and manner  
194 as it is sold to consumers, and, to the seller's knowledge, employee exposure to the article  
195 is not significantly greater than the consumer exposure occurring during the principal  
196 consumer use of the article.

197 (f) If an employer is not supplied with a material safety data sheet by a manufacturer,  
198 importer, or distributor for a hazardous chemical subject to this Code section, such  
199 employer shall, within a reasonable amount of time after discovering that a material safety  
200 data sheet has not been supplied, use diligent efforts to obtain such material safety data  
201 sheet from the manufacturer, importer, or distributor. For purposes of this subsection,  
202 'diligent efforts' shall mean a prompt inquiry by the employer to the manufacturer,  
203 importer, or distributor of the hazardous chemicals; provided, however, that an independent  
204 contractor or subcontractor shall be responsible for obtaining the material safety data sheet  
205 for his employees in the workplace of another.

206 (g) If after having used diligent efforts, an employer still fails to obtain a material safety  
207 data sheet, ~~he~~ such employer shall ~~request~~ notify the department of the employer's inability  
208 to obtain such material safety data sheet ~~on his behalf~~.

209 (h) An employer who has used diligent efforts and who has made a documented ~~request~~  
210 notification to the department pursuant to this Code section shall not be found in violation  
211 of this Code section with respect to the material safety data sheet which was not supplied  
212 by the manufacturer, importer, or distributor as required by this Code section.

213 (i) Every employer who manufactures, produces, uses, applies, or stores hazardous  
214 chemicals in the workplace shall post a notice as prescribed by rule or regulation  
215 promulgated by the department in a place where notices are normally posted, informing  
216 employees of their rights under this chapter.

217 (j) Every employer who manufactures, produces, uses, applies, or stores hazardous  
218 chemicals in the workplace shall maintain a material safety data sheet for each hazardous  
219 chemical which is present in such workplace. All material safety data sheets shall be  
220 readily available in the workplace; provided, however, that employers who maintain one  
221 or more work areas which are not fixed at specific geographic locations shall be authorized  
222 to maintain material safety data sheets for each hazardous chemical used in such work area  
223 at a central location.

224 (k)(1) A material safety data sheet may be kept in any form, including operations  
225 procedures, and may be designed to cover groups of hazardous chemicals in a work area  
226 where it may be appropriate to address the hazards of a process rather than individual  
227 hazardous chemicals. The employer shall ensure that in all cases the required information  
228 is provided for each hazardous chemical, and is readily accessible during each workshift  
229 to employees when they are in their work area; provided, however, that employers who  
230 maintain one or more work areas which are not fixed at specific geographic locations  
231 shall be authorized to maintain material safety data sheets for each hazardous chemical  
232 used in such work area at a central location.

233 (2) Any employee may request in writing and shall have the right to examine and obtain  
234 the material safety data sheets for the hazardous chemicals to which he is, has been, or  
235 may be exposed. The employer shall provide any material safety data sheet within its  
236 possession within five of the requesting employee's working days, subject to the  
237 provisions of subsection (g) of this Code section. The employer may adopt reasonable  
238 procedures for acting upon such requests to avoid interruption of normal work operations.

239 (3) An independent contractor or subcontractor working in the workplace of another  
240 employer may request in writing and shall have the right to examine the material safety  
241 data sheets for the hazardous chemicals to which he or his employees are, have been, or  
242 may be exposed. The employer shall provide any material safety data sheet within its

243 possession within five of the requesting independent contractor's or subcontractor's  
 244 working days, subject to the provisions of subsection (g) of this Code section. The  
 245 employer may adopt reasonable procedures for acting upon such requests to avoid  
 246 interruption of normal work operations.

247 (4) If an employee who has requested a material safety data sheet pursuant to this chapter  
 248 has not received such material safety data sheet within five of the requesting employee's  
 249 working days, subject to the provisions of subsection (g) of this Code section, that  
 250 employee may refuse to work with the chemical for which he has requested the material  
 251 safety data sheet until such material safety data sheet is provided by the employer;  
 252 provided, however, that nothing contained in this paragraph shall be construed to permit  
 253 any employee to refuse to perform essential services, as such term is defined by rule or  
 254 regulation; provided, further, that nothing in this paragraph shall be construed to interfere  
 255 with the right of the employer to transfer an employee who so refuses to work to other  
 256 duties until such material safety data sheet is provided, such a transfer not to be  
 257 considered as a discriminatory act under Code Section 45-22-10. No pay, position,  
 258 seniority, or other benefits shall be lost for exercise of any right provided by this chapter  
 259 as a result of such a transfer.

260 (l) No employer shall discharge or otherwise discriminate against an employee for the  
 261 employee's assertion of the employee's rights under this chapter.

262 (m) For the purposes of this Code section, an employer, independent contractor, or  
 263 subcontractor shall maintain material safety data sheets for their own workplaces only;  
 264 provided, however, that employees of such independent contractor or subcontractor, insofar  
 265 as they are exposed in the course of their employment to hazardous chemicals in other  
 266 workplaces, shall have the right to examine material safety data sheets for those chemicals  
 267 to which they are exposed from the workplace employer through a written request to their  
 268 own employer as provided in paragraph (2) of subsection (k) of this Code section.  
 269 ~~Employers must advise employees that they can obtain further information from the~~  
 270 ~~department.~~ Nothing contained in this chapter shall be construed to require an employer  
 271 to conduct studies to develop new information."

## 272 SECTION 5.

273 Said chapter is further amended in Code Section 45-22-8, relating to information and training  
 274 standards, by revising subsection (c) as follows:

275 "(c) The department shall by rule ~~and~~ or regulation establish minimum information and  
 276 training standards for compliance with this Code section. ~~The Governor's Employment and~~  
 277 ~~Training Council shall be authorized to make recommendations to the department~~  
 278 ~~regarding the development and implementation of such standards."~~

279

**SECTION 6.**

280 Said chapter is further amended by revising Code Section 45-22-11, relating to filing of  
 281 employee grievances, termination of contract by employer for violation of Code Section  
 282 45-22-4, ability of employers to dismiss or discipline employees, and judicial review of  
 283 grievances, as follows:

284 "45-22-11.

285 (a) In order to enforce the provisions of this chapter, any employee adversely affected by  
 286 a violation of this chapter by that employee's employer may file a grievance in accordance  
 287 with the employer's established grievance procedures. Appointing authorities shall pursue  
 288 all complaints concerning occupational exposure to hazardous chemicals. ~~Employees~~  
 289 ~~dissatisfied with a final decision of an appointing authority may file a grievance with the~~  
 290 ~~Commissioner.~~

291 (b) Upon any violation of Code Section 45-22-4 by a contractor, the employer under  
 292 agreement with such contractor shall have the right to terminate the contract without  
 293 liability.

294 (c) Nothing in this chapter shall change or modify the right or ability of employers to  
 295 dismiss or discipline employees in accordance with the laws of this state.

296 (d) Any employee ~~adversely affected by~~ dissatisfied with a final decision of ~~the~~  
 297 ~~Commissioner~~ an appointing authority with regard to a grievance filed pursuant to  
 298 subsection (a) of this Code section shall be entitled to judicial review in the same manner  
 299 as provided for judicial review of contested cases in Chapter 13 of Title 50, the 'Georgia  
 300 Administrative Procedure Act.'"

301

**SECTION 7.**

302 All laws and parts of laws in conflict with this Act are repealed.