

House Bill 278

By: Representatives Clark of the 98th, Pruett of the 149th, Barr of the 103rd, Jones of the 167th, Cantrell of the 22nd, 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.