

House Bill 278 (COMMITTEE SUBSTITUTE)

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 an effective date; to provide for related matters; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

13 "45-22-2.

14 As used in this chapter, the term:

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

18 ~~(1)~~(2) 'Article' means a finished product or manufactured item:

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

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

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

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

28 ~~(3) 'Commissioner' means the Commissioner of Labor or his designee.~~

29 (4) 'Common name' means any designation or identification such as a code name, code
30 number, trade name, or brand name used to identify a chemical other than by its chemical
31 name.

32 (5) 'Contractor,' 'independent contractor,' or 'public contractor' means any person under
33 a contract or agreement to provide labor or services to a public employer.

34 (6) 'Department' means the ~~Department of Labor~~ office of the Safety Fire Commissioner.

35 (7) 'Distributor' means an individual or employer, other than the manufacturer or
36 importer, who supplies hazardous chemicals directly to users or to other distributors.

37 (8) 'Employee' or 'public employee' means any person who is employed by any branch,
38 department, board, bureau, commission, authority, or other agency of the state and any
39 inmate under the jurisdiction of the Department of Corrections performing a work
40 assignment which requires the handling of any hazardous chemicals. Such term shall not
41 include those employees of the Environmental Protection Division of the Department of
42 Natural Resources who are responsible for on-site response and assistance in the case of
43 environmental emergencies while such employees are engaged in responding to such
44 emergencies.

45 (9) 'Employer' or 'public employer' means any branch, department, board, bureau,
46 commission, authority, or other agency of the state which employs or appoints an
47 employee or employees. An independent contractor or subcontractor shall be deemed the
48 sole employer of its employees, even when such employees are performing work at the
49 workplace of another employer.

50 (10) 'Exposed' or 'exposure' means that an employee is required by a public employer to
51 be subjected to a hazardous chemical in the course of employment through any route of
52 entry, including but not limited to, inhalation, ingestion, skin contact, or absorption and
53 includes potential or accidental exposure.

54 (11) 'Hazardous chemical' means any chemical which is a physical hazard or a health
55 hazard.

56 ~~(11.1)~~(12) 'Health hazard' means a chemical for which there is statistically significant
57 evidence based on at least one study conducted in accordance with established scientific
58 principles that acute or chronic health effects may occur in exposed employees and shall
59 include all examples of hazardous chemicals to which reference is made in the definition
60 of 'health hazard' under the Occupational Safety and Health Administration standard, 29
61 CFR Section 1910.1200 (1987).

62 ~~(12)~~(13) 'Importer' means the first individual or employer within the Customs Territory
63 of the United States who receives hazardous chemicals produced in other countries for
64 the purpose of supplying them to distributors or users within the United States.

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

67 ~~(14) Reserved.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

95 ~~(19)~~(17) 'Occupational Safety and Health Administration standard' means the Hazard
96 Communication Standard issued by the Occupational Safety and Health Administration,
97 29 CFR Sections 1910.0000 through 1910.1500 (1987).

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

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

104 ~~(21)~~(20) 'Produce' means to manufacture, process, formulate, or repackage.

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

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

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

116 SECTION 2.

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

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

124 SECTION 3.

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

128 "45-22-6.

129 (a) ~~The Governor's Employment and Training Council shall assist the department in~~
 130 ~~reviewing and preparing~~ department shall promulgate such rules and regulations as may
 131 be necessary to administer this chapter. ~~For the purposes of this chapter, the council shall~~
 132 ~~meet at the call of the Commissioner. When the council is meeting for the purposes of this~~

133 ~~chapter, it shall make a report of each meeting, which shall include a record of its~~
 134 ~~discussions and recommendations. The department shall make such reports available to~~
 135 ~~any interested person or group.~~

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

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

145 SECTION 4.

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

148 "45-22-7.

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

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

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

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

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

170 (3) The hazardous chemicals in the mixture are identified on the material safety data
171 sheet unless it is unfeasible to describe all the ingredients in the mixture, provided that
172 the reason why the hazardous chemicals in the mixture are not identified shall be stated
173 on the material safety data sheet; and

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

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

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

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

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

191 (A) The federal Atomic Energy Act; or

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

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

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

205 contractor or subcontractor shall be responsible for obtaining the material safety data sheet
206 for his employees in the workplace of another.

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

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

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

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

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

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

240 (3) An independent contractor or subcontractor working in the workplace of another
241 employer may request in writing and shall have the right to examine the material safety

242 data sheets for the hazardous chemicals to which he or his employees are, have been, or
 243 may be exposed. The employer shall provide any material safety data sheet within its
 244 possession within five of the requesting independent contractor's or subcontractor's
 245 working days, subject to the provisions of subsection (g) of this Code section. The
 246 employer may adopt reasonable procedures for acting upon such requests to avoid
 247 interruption of normal work operations.

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

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

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

273 **SECTION 5.**

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

276 "(c) The department shall by rule ~~and~~ or regulation establish minimum information and
 277 training standards for compliance with this Code section. ~~The Governor's Employment and~~

278 ~~Training Council shall be authorized to make recommendations to the department~~
 279 ~~regarding the development and implementation of such standards."~~

280 **SECTION 6.**

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

285 "45-22-11.

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

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

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

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

302 **SECTION 7.**

303 This Act shall become effective on January 1, 2016.

304 **SECTION 8.**

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