

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill ACT 556 OF 1991
HOUSE BILL 1722

4 **By: Representatives Flanagin, S. Miller and Landers**

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For An Act To Be Entitled

8 "AN ACT TO BE KNOWN AS THE _PUBLIC EMPLOYEES' CHEMICAL
9 RIGHT TO KNOW ACT_; AND FOR OTHER PURPOSES."

10

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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13 SECTION 1. TITLE. The provisions of this act shall be known and may be
14 cited as the Public Employees' Chemical Right to Know Act.

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16 SECTION 2. LEGISLATIVE FINDINGS AND PURPOSE. (a) The General Assembly
17 finds that the proliferation and variety of hazardous chemicals present in
18 government employment may affect the health, safety and welfare of public
19 employees of the State of Arkansas.

20 (b) The General Assembly also finds that most private employers, in
21 compliance with U. S. Occupational Safety and Health Administration (OSHA)
22 regulations, provide their employees with training, information, and other
23 protections concerning chemical hazards; but that public employees of the
24 State of Arkansas and its political subdivisions are not subject to OSHA
25 regulations and do not receive the benefits of these protections.

26 (c) It is the purpose of this act to provide public employees access to
27 training and information concerning hazardous chemicals to enable them to
28 minimize their exposure to such chemicals and protect their health, safety and
29 welfare.

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31 SECTION 3. DEFINITIONS.

32 (1) "Chemical manufacturer" means an employer with a workplace where
33 chemical(s) are produced for use or distribution.

34 (2) "Director" means the Director of the Department of Labor or his
35 designee.

36 (3) "Distributor" means a business, other than a chemical manufacturer

1 or importer, which supplies hazardous chemicals to other distributors or to
2 employers.

3 (4) "Exposure" or "exposed" means that an employee is subjected to a
4 hazardous chemical in the course of employment through any route of entry
5 (inhalation, ingestion, skin contact or absorption, etc.), and includes
6 potential (e.g. accidental or possible) exposure.

7 (5) "Hazard Communication Standard" means the Hazard Communication
8 Standard adopted by the U. S. Occupational Safety and Health Administration
9 and codified in the Code of Federal Regulations at 29 C.F.R. § 1910.1200, as
10 of the date of enactment of this act.

11 (6) "Hazardous chemical" means any element, chemical compound or
12 mixture of elements or compounds which is a physical hazard or a health hazard
13 as defined by the Hazard Communication Standard.

14 (7) "Label" or "labeling" means any written, printed, or graphic
15 material, displayed on or affixed to containers of hazardous chemicals.

16 (8) "Material safety data sheet" or "MSDS" means written or printed
17 material concerning a hazardous chemical which is prepared in accordance with
18 the Hazard Communication Standard.

19 (9) "Public Employee" means any employee of a public employer, who may
20 be exposed to hazardous chemicals in the workplace under normal operating
21 conditions or foreseeable emergencies. Office workers and nonresident
22 management are not generally included unless their job performance routinely
23 involves potential exposure to hazardous chemicals.

24 (10) "Public employer" means the State of Arkansas and each political
25 subdivision thereof, as defined in Arkansas Code §21-5-603(b).

26 (11) "Trade secret" is defined in accordance with Arkansas Code §4-75-
27 601(4).

28 (12) "Work area" means a room or defined space in a workplace where
29 hazardous chemicals are produced or used, and where employees are present.

30 (13) "Workplace" means an establishment, job site, or project, at one
31 geographical location containing one or more work areas under a public
32 employer's control or direction.

33 (14) "Workplace chemical list" means a list of hazardous chemicals in a
34 workplace developed pursuant to Section 7 of this act.

35 (15) All other definitions of the Hazard Communication Standard as they

1 exist on the date of enactment of this act are hereby adopted and incorporated
2 by reference.

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4 SECTION 4. DUTIES OF PUBLIC EMPLOYERS. RS. Each public employer shall
5 do the following: (a) post adequate notice, as provided by the Director, at
6 locations where notices are normally posted, informing employees about their
7 rights under this act;

8 (b) ensure proper chemical labeling in accordance with Section 5;

9 (c) maintain and make available material safety data sheets in
10 accordance with Section 6;

11 (d) compile and maintain a workplace chemical list in accordance with
12 Section 7;

13 (e) provide employee information and training in accordance with Section
14 8; and

15 (f) handle trade secrets in accordance with Section 12.

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17 SECTION 5. LABELING. (a) Existing labels on containers of hazardous
18 chemicals shall not be removed or defaced.

19 (b) If a public employer transfers a hazardous chemical from the
20 original container to another container, the employer shall reproduce or
21 otherwise place on the container to which the hazardous chemical was
22 transferred the identity of the hazardous chemical and appropriate hazard
23 warnings. However, if such hazardous chemical is regulated under the Federal
24 Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §§ 136 et
25 seq., or the Arkansas Pesticide Control Act, Arkansas Code §§ 2-16-401 et
26 seq., then such employer shall reproduce on the container to which such
27 hazardous chemical was transferred the chemical name or common name on the
28 original container.

29 (c) A public employer is not required to label portable containers into
30 which hazardous chemicals are transferred from labeled containers, and which
31 are intended only for the immediate use of the employee who performs the
32 transfer. Public employees shall not be required to work with a hazardous
33 chemical from an unlabeled container except for a portable container intended
34 for immediate use by the employee who placed the hazardous chemical into the
35 portable container. For purposes of this subsection, the term "unlabeled

1 container" means a container which is not labeled in accordance with this
2 section or the Hazard Communication Standard.

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4 SECTION 6. MATERIAL SAFETY DATA SHEETS. (a) Chemical manufacturers
5 and distributors shall provide public employers which purchase a hazardous
6 chemical from them with an appropriate MSDS prior to or with their initial
7 shipment of the hazardous chemical and with the first shipment after the MSDS
8 for the hazardous chemical is updated.

9 (b) Public employers shall maintain the most current MSDS received from
10 chemical manufacturers or distributors for each hazardous chemical in the
11 workplace. If an MSDS has not been provided by the chemical manufacturer or
12 distributor at the time the chemicals are received at the workplace, the
13 public employer shall request one in writing from the chemical manufacturer or
14 distributor within five (5) business days.

15 (c) Material safety data sheets shall be readily available, upon
16 request, to employees and their designated representatives.

17 (d) (1) If an MSDS for a hazardous chemical is not readily available
18 upon request, an employee or his designated representative may submit a
19 written request for the MSDS to the public employer. The employer, within
20 three (3) business days, either shall furnish a copy of the requested MSDS to
21 the requester; or if the requested MSDS is not in the employer's possession,
22 shall demonstrate to the requester that the employer has made an effort to
23 obtain the MSDS from the distributor, manufacturer, or other source.

24 (2) If after two (2) weeks from receipt of the request the public
25 employer has not furnished the requester with the requested MSDS, the employer
26 shall not require the employee to work with the hazardous chemical for which
27 the MSDS was requested until the MSDS is furnished, unless: (A) the
28 manufacturer of the substance for which the MSDS was requested furnishes a
29 written statement that the substance is not a hazardous chemical as defined in
30 Section 3 of this act; or (B) the employer can demonstrate to the employee
31 that the MSDS cannot be obtained through no fault of the employer; or (C) the
32 employer can demonstrate to the employee that the MSDS will be furnished by a
33 date specified by the employer within one (1) additional week, provided that
34 the employee shall not be required to work with the hazardous chemical if the
35 MSDS is not furnished by the date specified.

1 (3) If an employee declines to work with a hazardous chemical as
2 authorized by this subsection, he shall not be penalized. Reassignment of an
3 employee to other work, at equal pay and benefits, shall not be considered a
4 penalty under this subsection.

5 (e) A public employer, chemical manufacturer, or distributor shall
6 provide a copy of an MSDS to the Director upon request.

7 (f) A public employer, chemical manufacturer, or distributor may meet
8 the requirements of this section with respect to a hazardous chemical which is
9 a mixture either by providing an MSDS for each element or compound in the
10 mixture which is a hazardous chemical, or by providing an MSDS for the mixture
11 itself. If more than one mixture has the same element or compound, only one
12 MSDS for that element or compound is necessary.

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14 SECTION 7. WORKPLACE CHEMICAL LISTS. (a) Each public employer shall
15 compile and maintain a workplace chemical list which shall contain the
16 following information for each hazardous chemical normally used, generated or
17 stored in the workplace in an amount equal to or greater than fifty-five (55)
18 gallons or five hundred (500) pounds: (1) the chemical name or common name
19 used on the MSDS and/or the container label; (2) the Chemical Abstracts
20 Service number for such hazardous chemical if such number is included on the
21 MSDS; and (3) the work area or workplace in which the hazardous chemical is
22 normally used, generated or stored.

23 (b) Each public employer shall file the workplace chemical list with
24 the Director no later than ninety (90) days after the effective date of this
25 act, and shall update the list as necessary but in any case by July 1 of each
26 subsequent year.

27 (c) A public employer may meet the requirements of this section with
28 respect to a hazardous chemical which is a mixture either by identifying on
29 the workplace chemical list each element or compound in the mixture which is a
30 hazardous chemical, or by identifying on the list the mixture itself. If more
31 than one mixture has the same element or compound, only one listing of the
32 element or compound is necessary.

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34 SECTION 8. EMPLOYEE INFORMATION AND TRAINING. (a) Each public
35 employer shall provide an information and training program for its employees

1 as defined in § 3(9) of this act. Additional instruction shall be provided
2 whenever a new hazard is introduced into their work area or whenever new and
3 significant information is received by the employer concerning the hazards of
4 a chemical. New or newly assigned employees shall be provided training before
5 working in a work area containing hazardous chemicals.

6 (b) The information and training program provided pursuant to this
7 section shall be developed in accordance with regulations to be promulgated by
8 the Director pursuant to Section 11 within six (6) months after the effective
9 date of this act. The regulations shall include, at a minimum, requirements
10 concerning:

11 (1) information on interpreting labels and MSDSs and the
12 relationship between these two methods of hazard communication;

13 (2) the location and availability of the workplace chemical list
14 and MSDSs;

15 (3) any operations in an employee's work area where hazardous
16 chemicals are present;

17 (4) the physical and health hazards of the hazardous chemicals in
18 the work area;

19 (5) methods and observations that may be used to detect the
20 presence or release of a hazardous chemical in the work area (such as
21 monitoring conducted by the employer, continuous monitoring devices, visual
22 appearance or odor of hazardous chemicals when being released, etc.);

23 (6) the measures employees can take to protect themselves from
24 these hazards, including specific procedures the employer has implemented to
25 protect employees from exposure to hazardous chemicals, such as appropriate
26 work practices, emergency procedures, and personal protective equipment to be
27 used;

28 (7) frequency of training;

29 (8) general safety instructions on the handling, cleanup, and
30 disposal of hazardous chemicals; and

31 (9) employees' rights under this act.

32 (c) Training programs addressing each of the requirements of subsection
33 (b) of this section and conducted in full compliance with Title III of the
34 federal Emergency Planning and Community Right to Know Act of 1986, 42 United
35 States Code §§ 11001 et seq., shall be deemed to meet the requirements of this

1 section.

2 (d) Public employers shall keep a record of the dates of training
3 sessions given to their employees.

4 (e) Each public employer shall conduct the initial information and
5 training program required pursuant to this section within one (1) year after
6 the effective date of this act. This program may be conducted with the
7 assistance of the Director pursuant to Section 9 of this act.

8 (f) The Director shall have authority to promulgate rules and
9 regulations in accordance with Section 11 of this act:

10 (1) to exempt public employers from providing the information and
11 training otherwise required by this section to employees with special skills
12 and knowledge concerning hazardous chemicals, if such special skills and
13 knowledge would make the information and training unnecessary; and

14 (2) to require public employers to provide refresher training for
15 employees, in workplaces or in circumstances in which the Director reasonably
16 determines such refresher training to be necessary and appropriate.

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18 SECTION 9. OUTREACH ACTIVITIES OF THE DIRECTOR OF LABOR. (a) The
19 Director shall develop and give each public employer a suitable form of notice
20 providing employees with information regarding their rights under this act.

21 (b) The Director shall develop and maintain a general information and
22 training assistance program to aid public employers. Such information and
23 assistance shall be made available to all public employers. As part of the
24 program, the Director may develop and distribute a supply of informational
25 leaflets on public employers' duties, employees' rights, and the effects of
26 hazardous chemicals. The Director shall make available the basic materials
27 for this program within nine (9) months after the effective date of this act.

28 (c) The Director may contract with state universities or other public
29 or private organizations to develop and implement the outreach program.

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31 SECTION 10. RIGHTS OF PUBLIC EMPLOYEES. (a) Public employees who may
32 be exposed to hazardous chemicals shall be informed of such exposure and shall
33 have access to the workplace chemical list, MSDSs for the chemicals on the
34 list, and information and training as provided in this act.

35 (b) No public employer shall discharge, or cause to be discharged, or

1 otherwise discipline or discriminate against a public employee because the
2 employee has requested information, filed a complaint, assisted an inspector
3 of the Director, or instituted or caused to be instituted any complaint or
4 proceeding under or related to this act or has testified or is about to
5 testify in any such proceeding, or has exercised any rights afforded by this
6 act on behalf of the employee or other employees; nor shall any pay, position,
7 seniority or other benefits to which the employee may be entitled be lost
8 because the employee exercised rights afforded by this act.

9 (c) Any waiver of the benefits or requirements of this act shall be
10 against public policy and shall be null and void. Any public employer's
11 request or requirement that a person waive any rights under this act as a
12 condition of or in connection with employment shall constitute a violation.
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14 SECTION 11. RULEMAKING. (a) The Director may promulgate rules and
15 regulations in accordance with the provisions of Arkansas Code §§11-2-110,
16 112 and 113 to implement the provisions of this act. This authority shall
17 include but not be limited to the authority to implement changes corresponding
18 to future amendments to the Hazard Communication Standard, to maintain
19 consistency between this act and the Hazard Communication Standard.

20 (b) The Director shall promulgate regulations within six (6) months
21 after the effective date of this act requiring public employers to carry out
22 information and training programs for their employees, and specifying the
23 minimum content of education and training programs as provided in Section 8 of
24 this act.

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26 SECTION 12. TRADE SECRETS. (a) A public employer may withhold the
27 specific chemical identify, including the chemical name and other specific
28 identification of a hazardous chemical, from an MSDS or workplace chemical
29 list only if all the following conditions are met:

30 (1) the claim that the information indicates that the specific
31 chemical identify is being withheld as a trade secret;

32 (2) the MSDS for the chemical indicates that the specific chemical
33 identify is being withheld as a trade secret;

34 (3) all information contained in the MSDS concerning the
35 properties and effects of the hazardous chemical is disclosed; and

1 (4) the specific chemical identify is made available to health
2 professionals, employees, their designated representatives under the same
3 conditions as are set out in the Hazard Communication Standard, 29 C.F.R. §
4 1910.1200(i)(2)-(7), provided that information disclosable to OSHA under the
5 Hazard Communication Standard shall also be disclosable to the Directors.

6 (b) The Director, upon his initiative, or upon request by an employee,
7 designated representative, or public employer, shall request any or all of the
8 data substantiating the trade secret claim to determine whether the claim is
9 valid. The Director shall protect from disclosure all information coming into
10 his possession that is marked as confidential, and shall return all
11 information so marked at the conclusion of his determination.

12 (c) Any information marked confidential pursuant to subsection (b)
13 shall not be disclosed during any administrative or judicial proceeding held
14 pursuant to this section. Administrative hearings held pursuant to this
15 section shall not be open to the public, but otherwise shall be held in a
16 manner consistent with that provided for in the Administrative Procedure Act,
17 Arkansas Code §§15-15-201 et seq., for hearings in contested cases. The
18 proponent of disclosure shall also have the right to be heard.

19 (d) No employee of the State of Arkansas shall disclose any information
20 designated as a trade secret other than within the provisions of this act.

21 (e) Nothing in this section shall be construed as requiring the
22 disclosure under any circumstances of process or percentages of mixture
23 information that is trade secret.

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25 SECTION 13. COMPLAINTS AND INVESTIGATIONS. (a) Complaints received
26 orally or in writing from public employees, their designated representatives,
27 or public employers related to alleged violations of this act shall be
28 investigated in a timely manner by the Director.

29 (b) Officers or duly designated representatives of the Director shall
30 have the right of entry into any workplace or work area of a public employer
31 during normal business hours to inspect and investigate complaints within
32 reasonable limits and in a reasonable manner.

33 (c) The Director shall have the same powers, duties and authority to
34 administer and enforce the provisions of this act as are contained in Arkansas
35 Code §§11-2-108, 115, 116 and 118, provided however, that if there is a

1 conflict between the provisions of this act and the provisions named above,
2 the provisions of this act shall prevail.

3

4 SECTION 14. ENFORCEMENT. (a) If the Director determines that a public
5 employer has violated a provision of this act, the Director shall issue an
6 order to the official responsible for performing the duties required by this
7 act, directing that official to cease and desist the act or omission
8 constituting the violation. Such an order shall constitute prima facie
9 evidence of a violation in any enforcement action filed pursuant to Section 15
10 of this act.

11 (b) If the Director determines that a public employer has violated
12 Section 8 of this act relating to employee information and training, and
13 within sixty (60) days of issuance of a cease and desist order the public
14 employer has not remedied the violation, the Director may conduct a program or
15 programs to remedy the violation and require such public employer to reimburse
16 the Director for the cost of doing so.

17 (c) Violation of this act by a public employer shall be cause for
18 adverse personnel action against the supervisor or supervisors responsible for
19 the violation, including but not limited to suspension, demotion, withholding
20 of annual career service recognition payments, or in the case of serious and
21 repeated violations, termination. Issuance of a cease and desist order by the
22 Director shall not be a prerequisite for such adverse personnel action, but
23 such action shall only be taken in accordance with the civil service laws and
24 regulations.

25

26 SECTION 15. CAUSE OF ACTION -- ATTORNEY FEES. (a) Any citizen denied
27 the rights granted to him by this act may commence a civil action against a
28 public employer or responsible official of a public employer in the Pulaski
29 County Circuit Court or the circuit court of the residence of the aggrieved
30 party, if an agency of the state is involved, or any of the circuit courts of
31 the appropriate judicial districts when any other public employer is involved.
32 Issuance of a cease and desist order by the Director shall not be a
33 prerequisite to the commencement of such an action.

34 (b) Upon written application of the person denied the rights provided
35 for in this act, or any interested party, the court having jurisdiction shall

1 fix a day the petition is to be heard within seven (7) days of the date of the
2 application of the petitioner, and shall hear and determine the case.

3 (c) The circuit courts shall have jurisdiction to restrain violations
4 of this act and to order all appropriate relief, including but not limited to
5 the disclosure of chemical information, the rehiring or reinstatement of
6 employees discriminated against because of their exercise of their rights
7 under this act, and the payment of any compensation such employees actually
8 lost as a result of such violations.

9 (d) Those who refuse to comply with the orders of the court shall be
10 found guilty of contempt of court.

11 (e) In any action to enforce the rights granted by this act, or in any
12 appeal therefrom, the court shall assess against the defendant reasonable
13 attorney fees and other litigation expenses reasonably incurred by a plaintiff
14 who has substantially prevailed unless the court finds that the position of
15 the defendant was substantially justified or that other circumstances make an
16 award of these expenses unjust. However, no expenses shall be assessed
17 against the State of Arkansas or any of its agencies or departments. If the
18 defendant has substantially prevailed in the action, the court may assess
19 expenses against the plaintiff only upon a finding that the action was
20 initiated primarily for frivolous or dilatory purposes.

21

22 SECTION 16. NO EFFECT ON OTHER LEGAL DUTIES. The provision of
23 information to a public employee pursuant to the provisions of this act shall
24 not be construed to affect the liability of a public employer with regard to
25 the health and safety of an employee or other persons exposed to hazardous
26 chemicals, nor shall it affect the employer's responsibility to take any
27 action to prevent the occurrence of occupational disease as required under any
28 other provision of law. The provision of information to an employee shall not
29 affect any other duty or responsibility of a chemical manufacturer or
30 distributor to warn ultimate users of a hazardous chemical under any other
31 provision of law.

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33 SECTION 17. All provisions of this act of a general and permanent
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
35 Code Revision Commission shall incorporate the same in the Code.

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SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 19. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 20. EMERGENCY. It is hereby found and determined by the General Assembly that it is essential to provide the public employees of the state with critical information about hazardous chemicals to which they may be exposed. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect on July 1, 1991.

APPROVED: 3-14-91

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