

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1303

By: Representatives Ward, Flanagan and Mitchell

"AN ACT TO BE KNOWN AND MAY BE CITED AS THE ARKANSAS
CITIZENS' CHEMICAL RIGHT TO KNOW ACT."

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

SECTION 1. TITLE. The provisions of this Act shall be known and may be cited as the Arkansas Citizens' Chemical Right to Know Act.

SECTION 2. LEGISLATIVE FINDINGS AND PURPOSE. The General Assembly finds that the proliferation and variety of hazardous chemicals present in our society may affect the health, safety and welfare of persons living and working in Arkansas.

The General Assembly also finds that many employers in Arkansas have been industry leaders in training and educating their employees concerning hazardous chemicals and that such programs are required of manufacturing employers pursuant to the federal Occupational Safety and Health Administration's hazard communication standard.

It is the purpose of this Act to provide access to information regarding such chemicals to enhance the ability of manufacturing and nonmanufacturing workers to minimize hazardous exposure to such chemicals; to provide information to emergency personnel to protect the public health, safety, and welfare; and to provide information to citizens to enable them to make informed decisions regarding their safety, health, and welfare.

SECTION 3. DEFINITIONS. As used in this Act, unless the context otherwise requires: (1) "Agriculture employer" means an employer with a workplace classified in Standard Industrial Classification Codes 1, 2, or 8 who engages in production agriculture on that workplace. A person processing agricultural products at a workplace is not an "agriculture employer" with respect to such

workplace.

(2) "Chemical manufacturer" means an employer in Standard Industrial Classification Codes 20 through 39 (Division D, Standard Industrial Classification Manual) with a workplace where chemical(s) are produced for use or distribution.

(3) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(4) "Commission" means the Hazardous Materials Emergency Response Commission established pursuant to Section 301 of the federal Emergency Planning and Community Right-to-Know Act of 1986.

(5) "Common name" means any designation or identification such as code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.

(6) "Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this Act, pipes or piping systems are not considered to be containers.

(7) "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this Act or a parent or legal guardian of a minor employee. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(8) "Director" means the Director of the Department of Labor or his designee.

(9) "Distributor" means any business, other than a chemical manufacturer, which supplies hazardous chemicals to other distributors or to manufacturing or nonmanufacturing purchasers.

(10) "Employee" means any employee who may be exposed to hazardous chemicals in the workplace under normal operating conditions or foreseeable emergencies. Office workers, ground maintenance personnel, security personnel, or nonresident management are not generally included unless their job performance routinely involves potential exposure to hazardous chemicals. For

the purposes of this Act, "employee" includes persons working for the State of Arkansas and its political subdivisions, as well as members of volunteer fire departments.

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

(12) "Extremely hazardous substance" means a substance on the list published by the U.S. Environmental Protection Agency as required under Section 302(a)(2) of the federal Emergency Planning and Community Right-to-Know Act of 1986.

(13) "Facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

(14) "Fire Chief" means the fire chief of the fire department having jurisdiction over or contractual responsibility for the workplace; or if no fire department has such jurisdiction or contractual responsibility, "fire chief" as used in this Act refers to the director of the local or interjurisdictional Office of Emergency Services.

(15) "Hazardous chemical" means any element, chemical compound or mixture of elements and/or compounds which is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c) or a hazardous substance as defined by the OSHA standard in 29 CFR Section 1910.1200(d), and any other substance which the Director designates as a hazardous chemical pursuant to Section 7(b) of this Act.

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

(17) "Manufacturing employer" means an employer with a workplace classified in Standard Industrial Classification Codes 20 through 39 (Division D, Standard Industrial Classification Manual) who manufactures or uses a hazardous chemical.

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

(19) "MSDS" or "material safety data sheet" means a document prepared in

accordance with the requirements of the OSHA standard.

(20) "Nonmanufacturing employer" means an employer in any Standard Industrial Classification Codes other than 20 through 39 (Division D, Standard Industrial Classification Manual), with a workplace where hazardous chemical(s) are used or stored, the State of Arkansas, its political subdivisions, and all volunteer fire departments.

(21) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration in 48 Federal Register 53280 et seq. (November 25, 1983) as amended, codified under Title 29 of the Code of Federal Regulations (CFR) Part 1910.1200.

(22) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(23) "Toxic chemical" means a substance on the list described in Section 313(c) of the federal Emergency Planning and Community Right-to-Know Act of 1986.

(24) "Trade secret" is defined in accordance with Ark. Stat. Ann. Section 70-1001.

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

(26) "Workplace" means an establishment at one geographical location containing one or more work areas.

(27) "Workplace chemical list" means a list of hazardous chemicals developed pursuant to Section 15 of this Act.

SECTION 4. EXEMPTIONS FOR MANUFACTURING EMPLOYERS AND DISTRIBUTORS. The intent of this Act is to impose duties on manufacturing employers and distributors only for the purpose of protection of public health and safety, by providing information and assistance to firefighters, health professionals, the general public, the Commission, and the Director in furtherance of this purpose. Accordingly, manufacturing employers and distributors regulated by the OSHA standard are exempt from all provisions of this Act except Sections 5, 7(a), 8(a), 12, 13, 14, 15(a), 16, 17, 18 and 20.

SECTION 5. INFORMATION MAINTAINED BY THE COMMISSION; PUBLIC ACCESS.

(A) The commission shall perform the duties required by the federal Emergency Planning and Community Right-to-Know Act of 1986 and by this Act. Such duties shall include, inter alia, receiving and maintaining information required by federal law about off-site releases of extremely hazardous substances, followup emergency notices, emergency response plans, MSDSs, lists of hazardous chemicals, emergency and hazardous chemical inventory forms, toxic chemical release forms, and adverse health effects of hazardous chemicals and extremely hazardous substances claimed as trade secrets. The Commission shall make such information available to the public as provided under federal law and in this Act. The Commission may delegate its public information functions to its member agencies as it sees fit.

(B) The Commission shall maintain a list of all hazardous chemicals, and an MSDS for each chemical, regulated pursuant to the provisions of the OSHA standard, the federal Emergency Planning and Community Right-to-Know Act of 1986, or this Act. Such list, and the MSDSs, shall be available for inspection by the public during regular office hours.

(C) No manufacturing employer or nonmanufacturing employer shall be relieved of any duty, responsibility or liability under this Act or federal law relative to any hazardous chemical which is not included on such list.

SECTION 6. NOTICES. Nonmanufacturing employers shall post adequate notice, as provided by the Director, at locations where notices are normally posted, informing employees about their rights under this Act.

SECTION 7. RULEMAKING AUTHORITY; DUTIES OF CONTRACTORS AND SUBCONTRACTORS. (A) The Director may promulgate rules and regulations in accordance with the provisions of Ark. Stat. Ann. Sections 81-109 through 81-112 to implement the provisions of this Act.

(B) The Director, on the Commission's advice, may by regulation designate as a hazardous chemical any chemical not already so designated under Section 3(15) of this Act, but which he reasonably determines has characteristics of volatility, combustibility, reactivity, dispersability, or toxicity such that the release of the chemical is likely to cause an imminent and substantial endangerment to the public health.

(C) It is the legislative intention that a contractor or subcontractor in a nonmanufacturing sector who introduces hazardous chemicals into the workplace shall be construed, solely for the purposes of this Act, to be responsible for his employees in such workplace. The Director shall promulgate regulations as needed to establish the duties and responsibilities of contractors and subcontractors under this Act. Any such contractor or subcontractor who introduces hazardous chemicals into the workplace shall provide MSDSs for such chemicals to all other parties of the contract prior to introducing such hazardous chemicals.

SECTION 8. MATERIAL SAFETY DATA SHEETS (MSDSs). (A) Chemical manufacturers and distributors shall provide nonmanufacturing employers who purchase a hazardous chemical from them with an appropriate MSDS prior to or with their initial shipment of the hazardous chemical and with the first shipment after the MSDS for the hazardous chemical is updated.

(B) Nonmanufacturing employers shall maintain the most current MSDS received from chemical manufacturers or distributors for each hazardous chemical in the workplace. If an MSDS has not been provided by the chemical manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the nonmanufacturing employer shall request one in writing from the chemical manufacturer or distributor within five business days.

(C) Material safety data sheets shall be readily available, upon request, for review by employees or their designated representatives.

(D) (1) If an MSDS for a hazardous chemical is not readily available, upon request, as required in the OSHA standard or Subsection (C) of this section, an employee or his designated representative may submit a written request for the MSDS to a nonmanufacturing employer. Such employer, within three business days, either shall furnish a copy of the requested MSDS to the requester; or if the requested MSDS is not in the employer's possession, shall demonstrate to the requester that the employer has made an effort to obtain the MSDS from the supplier, manufacturer, Department of Labor, or other source.

(2) If after two weeks from receipt of the request the employer has not furnished the requester with the requested MSDS, the employer shall not require the employee to work with the hazardous chemical for which the MSDS

was requested until the MSDS is furnished, unless: (a) the manufacturer of the substance for which the MSDS was requested furnishes a written statement that the substance is not a hazardous chemical as defined in Section 3 of this Act; or (b) the employer can demonstrate to the employee that the MSDS cannot be obtained through no fault of the employer; or (c) the employer can demonstrate to the employee that the MSDS will be furnished by a date specified by the employer with 30 additional days; provided that the employee shall not be required to work with the hazardous chemical if the MSDS is not furnished by the date specified.

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

(E) A copy of an MSDS shall be provided to the Director or the Commission, upon request.

(F) A nonmanufacturing employer, chemical manufacturer, or distributor may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following.

(1) Providing an MSDS for each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one MSDS of the element or compound is necessary.

(2) Providing an MSDS for the mixture itself.

SECTION 9. LABELING. (A) Existing labels on containers of hazardous chemicals shall not be removed or defaced. If a nonmanufacturing employer transfers a hazardous chemical from the original container to another container, he shall reproduce or otherwise place on the container to which such hazardous chemical was transferred the following:

(1) the identity of the hazardous chemical;

(2) appropriate hazard warnings; and

(3) the name and address of the chemical manufacturer, importer, or other responsible party; provided, however, that if such hazardous chemical is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., or the Arkansas Pesticide Control Act, Ark. Stat. Ann. §§ 77-227 et seq., then such employer shall reproduce on the container to which such hazardous chemical was transferred the chemical name or common name

on the original container.

(B) An employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. Employees of nonmanufacturing employers shall not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for immediate use by the employee who placed the hazardous chemical into the portable container. For purposes of this subsection, the term "unlabeled container" means a container which is not labeled in accordance with subsection (A) of this Section or the OSHA standard.

SECTION 10. EDUCATION AND TRAINING. (A) Every nonmanufacturing employer shall provide an education and training program for its employees as defined in § 3(10) of this Act. Additional instruction shall be provided whenever a new hazard is introduced into their work area or whenever new and significant information is received by the nonmanufacturing employer concerning the hazards of a chemical. New or newly assigned employees shall be provided training before working in a work area containing hazardous chemicals.

(B) The education and training program provided pursuant to Subsection (A) shall be developed in accordance with regulations to be promulgated by the Director within six months after the effective date of this Act. The regulations shall include, at a minimum, requirements relative to:

- (1) information on interpreting labels and MSDSs and the relationship between these two methods of hazard communication;
- (2) the location and availability of the workplace chemical list and MSDSs;
- (3) any operation in an employee's work area where hazardous chemicals are present;
- (4) the physical and health hazards of the hazardous chemicals in the work area;
- (5) protective measures that employees may use to protect themselves from these hazards, including appropriate work practices, emergency procedures, and personal protective equipment;
- (6) frequency of training;
- (7) general safety instructions on the handling, cleanup, and disposal

of hazardous chemicals; and

(8) employees' rights under this Act.

(C) Nonmanufacturing employers shall keep a record of the dates of training sessions given to their employees.

(D) The Director, pursuant to Section 11 of this Act, shall develop and maintain a general education and training assistance program to aid non-manufacturing employers. Such a program shall be made available to all non-manufacturing employers on request. The Director shall make available the basic materials for this program within the nine months after the effective date of this Act.

(E) Every nonmanufacturing employer shall conduct the initial education and training program required pursuant to Subsection (A) within one year after the effective date of this Act.

(F) The Director shall have authority to promulgate rules and regulations in accordance with Section 7 of this Act to require nonmanufacturing employers to provide refresher training for employees, in workplaces or in circumstances in which the Director reasonably determines such refresher training to be necessary and appropriate.

SECTION 11. OUTREACH ACTIVITIES OF THE DIRECTOR. (A) The Director shall develop and provide each nonmanufacturing employer with a suitable form of notice providing employees with information regarding their rights under this Act.

(B) As part of the outreach program, the Director shall develop an education and training program to assist nonmanufacturing employers pursuant to Section 10(D).

(C) As part of the outreach program, the Director may develop and distribute a supply of informational leaflets on nonmanufacturing employers' duties, employees rights, the outreach program and/or the effects of hazardous chemicals.

(D) The Director may contract with state universities or other public or private organizations to develop and implement such outreach program.

(E) The Director shall assist the Commission in establishing and publicizing the availability of an information office to provide copies of MSDSs upon request and payment of a reasonable copying fee and/or mailing fee.

SECTION 12. EMPLOYEE RIGHTS. (A) Employees that may be exposed to hazardous chemicals shall be informed of such exposure and shall have access to the workplace chemical list and MSDSs for the hazardous chemicals.

(B) No nonmanufacturing employer, manufacturing employer, or distributor shall discharge, or cause to be discharged, or otherwise discipline or in any manner discriminate against an employee because the employee has filed a complaint, assisted an inspector of the Director who may make or is making an inspection under Section 16(B) of this Act, or has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise of any rights afforded pursuant to the provisions of this Act on behalf of the employee or on behalf of others, nor shall pay, position, seniority or other benefits be lost for exercise of any right provided by this Act.

(C) Any waiver by a person of the benefits or requirements of this Act shall be against public policy and be null and void. Any employer's request or requirement that a person waive any rights under this Act as a condition of employment shall constitute a violation.

SECTION 13. TRADE SECRETS. (A) A nonmanufacturing employer, manufacturing employer, chemical manufacturer or importer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the MSDS provided that:

(1) the claim that the information withheld is a trade secret can be supported;

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

(3) the MSDS indicates that the specific chemical identity is being withheld as a trade secret; and

(4) the specific chemical identity is made available to health professionals, employees, their designated representatives, and fire chiefs under the same conditions as are set out in the OSHA Standard, 29 CFR 1910.1200(i)(2)-(7), provided that information disclosable to OSHA under the OSHA Standard shall also be disclosable to the Director.

(B) The Director, upon his initiative, or upon request by an employee, designated representative, or fire chief, shall request any or all of the data substantiating the trade secret claim to determine whether the claim is valid.

The Director shall protect from disclosure all information coming into his possession that is marked as confidential by the employer, chemical manufacturer or importer, and shall return all information so marked at the conclusion of his determination.

(C) Any information marked confidential pursuant to Subsection (B) shall not be disclosed during any administrative or judicial proceeding held pursuant to this section. Administrative hearings held pursuant to this section shall not be open to the public, but otherwise shall be held in a manner consistent with that provided for in the Administrative Procedure Act, Ark. Stat. Ann. § 5-701 et seq., for hearings in contested cases. The proponent of disclosure shall also have the right to be heard.

(D) No employee of the State of Arkansas shall disclose any information designated as a trade secret other than within the provisions of this Act.

(E) Nothing in this Section shall be construed as requiring the disclosure under any circumstances of process or percentages of mixture information that is trade secret.

SECTION 14. FIREFIGHTER PROTECTION. (A) Nonmanufacturing employers, manufacturing employers, and distributors who normally store a hazardous chemical in excess of fifty-five gallons or five hundred pounds shall provide the fire chief in writing the name(s) and telephone number(s) of knowledgeable representative(s) of the nonmanufacturing employers, manufacturing employer, or distributor who can be contacted for further information or in an emergency.

(B) Each nonmanufacturing employer, manufacturing employer, and distributor shall provide a copy of the workplace chemical list to the fire chief and shall thereafter notify the fire chief of any significant changes that occur in the workplace chemical list.

(C) The fire chief or his qualified representative, upon request, shall be permitted on site inspections of the hazardous chemicals on the workplace chemical list during normal business hours for the sole purpose of planning and coordinating emergency fire department activities.

(D) Nonmanufacturing employers, manufacturing employers, and distributors, upon written request, shall provide the fire chief a copy of the MSDS for any chemical on their workplace chemical list and a map showing the location at the facility of each chemical on the list.

(E) The fire chief shall, upon request, make the workplace chemical list and MSDSs available to members of his fire company having jurisdiction over or contractual responsibility for the workplace, but shall not otherwise distribute the information without written approval of the nonmanufacturing employer, manufacturing employer, or distributor who provided the workplace chemical list or MSDSs; except that such approval shall not be required in an emergency situation in which human life is at stake. In the event such workplace chemical list or MSDSs are released under such an emergency situation, the fire chief shall promptly notify the supplier of the workplace chemical list or MSDSs in writing as to whom the information was released and the circumstances of the emergency. Persons receiving workplace chemical lists or MSDSs from the fire chief shall hold the information contained therein in confidence.

(F) (1) Nonmanufacturing employers, manufacturing employers, and distributors shall place one sign in accordance with the NFPA704M series on the outside of any building that contains a class A explosive, class B explosive, poison gas (poison A), water-reactive flammable solid (flammable solid W), or radioactive material as listed in Table I of Federal Department of Transportation (DOT) regulations at 49 CFR Part 172, and further defined in federal DOT regulations at 49 CFR Part 173, or any other hazardous chemical in excess of the amounts listed in subsection (A) of this section.

(2) The Director shall promulgate rules in accordance with Section 7 of this Act to establish specifications on the size, color, lettering and posting requirements pursuant to each series. Such regulations shall provide that the number used shall be determined by the hazardous chemical that presents the greatest danger.

(G) The Commission and the Department of Labor, with the assistance of the Arkansas Fire Training Academy, shall assist employers and fire personnel to effectuate the purposes of this section.

SECTION 15. WORKPLACE CHEMICAL LIST; PUBLIC RIGHT TO KNOW.

(A) (1) Manufacturing employers shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical known to be present in the workplace: (a) the chemical name or common name used on the MSDS and/or the container label; (b) the chemical abstracts service number for such hazardous chemical if such number is

included on the MSDS; and (c) the work area or workplace in which the hazardous chemical is normally used or stored.

(2) The workplace chemical list shall be maintained by the manufacturing employer for no less than thirty years. Complete records pertinent to the workplace chemical list shall be sent to the Commission if the manufacturing employer generating such list ceases to operate a business within the state.

(3) Manufacturing employers shall file the workplace chemical list with the Commission no later than 90 days after the effective date of this Act, and shall update the list as necessary but in any case by July 1 of each subsequent year.

(B) (1) Nonmanufacturing employers shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used or stored in the workplace in excess of fifty-five gallons or five hundred pounds: (a) the chemical name or common name used on the MSDS and/or the container label; (b) the chemical abstracts service number for such hazardous chemical if such number is included on the MSDS; and (c) the work area or workplace in which the hazardous chemical is normally used or stored.

(2) The workplace chemical list shall be maintained by the nonmanufacturing employer for no less than thirty years. Complete record pertinent to the workplace chemical list shall be sent to the Commission if the nonmanufacturing employer generating such list ceases to operate a business within the state.

(3) Nonmanufacturing employers shall file the workplace chemical list with the Commission no later than 90 days after the effective date of this Act, and shall update the list as necessary but in any case by July 1 of each subsequent year.

(4) Employers qualifying for the exemption in section 19(D) of this Act shall maintain and file with the Commission no later than 90 days after the effective date of this Act a map showing the work area(s) or workplace in which hazardous chemicals are normally stored, and noting information required under section 14(F). Such employers shall keep the map current as necessary.

(C) A manufacturing employer or nonmanufacturing employer may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following: (1) Identifying on the workplace chemical list each element or compound in the mixture which is a hazardous chemi-

cal. If more than one mixture has the same element or compound, only one listing of the element or compound is necessary.

(2) Identifying on the list the mixture itself.

(D) The Commission shall provide the following information and services:

(1) The Commission shall provide the chemical abstracts service number for any hazardous chemical on the workplace chemical list which is not included by the manufacturing or nonmanufacturing employer pursuant to subsection (A) or (B) of this section if such chemical is not a mixture; and a chemical abstracts service number exists for such chemical.

(2) Copies of any workplace chemical list may be obtained from the Commission upon written request and payment of a reasonable administrative, copying and mailing fee. The Commission shall provide such list within ten business days of receipt of the written request.

(E) Within six months after the effective date of this Act, the members of the Commission, together with the Director of the State Plant Board, shall cause their respective agencies to enter into an interagency agreement to inform the public about how to obtain information available to the State about extremely hazardous substances, hazardous chemicals, and toxic chemicals and their health effects.

(F) It is the intention of the General Assembly, pursuant to the provisions of this section, to provide access to information concerning hazardous chemicals used and stored in this state to the citizens of this state who live and work in proximity to such chemicals to enable such citizens to make informed decisions concerning their health, safety and welfare.

SECTION 16. COMPLAINTS AND INVESTIGATIONS. (A) Complaints received in writing from employees, their designated representatives, employers or fire chiefs related to alleged violations of this Act shall be investigated in a timely manner by the Director. Such written complaints from other members of the public may be investigated and shall be responded to in a timely manner by the Director.

(B) Officers or duly designated representatives of the Director, upon presentation of appropriate credentials and written notice or warrant to manufacturing or nonmanufacturing employers, shall have the right of entry into any workplace or work area of such employers at reasonable times to inspect and investigate complaints within reasonable limits and in a reasonable

manner.

(C) The Director shall have the same powers, duties and authority to administer and enforce the provisions of this Act as are contained in Ark. Stat. Ann. sections 81-107 and 81-113 to 116; provided, however, that if there is a conflict between the provisions of this Act and the provisions named above, the provisions of this Act shall prevail.

SECTION 17. NO EFFECT ON OTHER LEGAL DUTIES. The provision of information to an employee pursuant to the provisions of this Act shall not be construed to affect the liability of an employer with regard to the health and safety of an employee or other persons exposed to hazardous chemicals, nor shall it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to an employee shall not affect any other duty or responsibility of a chemical manufacturer or distributor to warn ultimate users of a hazardous chemical under any other provision of law.

SECTION 18. ENFORCEMENT AND PENALTIES. (A) Any person who violates a provision of this Act or a lawful regulation promulgated thereunder, or who violates a lawful order of the Director, shall be liable for a civil penalty not to exceed one thousand dollars for each separate violation. A person charged with such a violation shall have notice and opportunity for an administrative hearing and judicial review in accordance with the Administrative Procedure Act, Ark. Stat. Ann. §§ 5-701 et seq.

(B) Any person who willfully and intentionally violates the provisions of this Act or a lawful regulation promulgated thereunder, or who violates a lawful order of the Director, is guilty of a misdemeanor and upon conviction shall be punished, for a first offense, by a fine not to exceed one thousand dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; and for each subsequent offense, by a fine of not more than five thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.

(C) The Director of Labor, the Attorney General, and the several prosecuting attorneys shall prosecute violations of the law in accordance with Ark. Stat. Ann. § 81-119.

(D) Sums forfeited under this section shall be deposited with the Treasurer of the State of Arkansas in the same manner as provided by law for other monies of the state.

(E) The Circuit Court shall have jurisdiction to restrain violations of this Act and to order all appropriate relief, including but not limited to civil penalties as set forth in this Act; hiring, rehiring, or reinstatement of an employee together with the payment of any compensation otherwise actually lost as a result of such violations; and other compensatory damages resulting from such violations.

(F) In addition to any other remedies provided in this Act, any person who is injured by a violation of this Act may bring suit for relief in any appropriate court.

SECTION 19. EXEMPTIONS. The provisions of this Act shall not apply to:

(A) Any article which is formed to a specific shape or design during manufacture; which has end use function(s) dependent in whole or in part upon its shape or design during end use, and which does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;

(B) Products intended for personal consumption by employees in the workplace, or for domestic use, or as janitorial supplies;

(C) Retail food sale establishments and all other retail trade establishments, exclusive of processing, maintenance, and repair areas;

(D) A workplace where the only hazardous chemicals normally present are received in sealed packages and are subsequently sold or transferred in those packages if the seals remain intact while the hazardous chemicals are in the workplace and if no chemical normally remains in the workplace more than fourteen days, provided that the requirements of sections 10, 14(A), (C), and (F), and 15(B) (4) are met;

(E) Any food, food additive, color additive, drug, medical device, or cosmetic as such terms are defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 321 et seq., or distilled spirits, wines or malt beverages as such terms are defined in the Federal Alcohol Administration Act, 27 U.S.C. §§ 201 et seq.;

(F) A laboratory under the direct supervision or guidelines of a technically qualified individual, provided that: (1) labels on containers of incoming chemicals shall not be removed or defaced except as permitted by

Section 9;

(2) MSDSs received shall be maintained and made accessible to employees and students;

(3) the requirements of Sections 10 and 14 are met;

(4) the laboratory is not used primarily to produce hazardous chemicals for commercial purposes;

(G) The workplace of an agricultural employer or employer group if the Director of the State Plant Board certifies to the Director of Labor that the chemicals used in such workplace are covered by other federal or state laws and regulations;

(H) The workplace of a commercial or non-commercial pesticide applicator licensed by the State Plant Board, provided that: (1) the applicator keeps and maintains for no less than five years routine operational records containing information on the kinds, amounts, uses, dates and places of application of pesticides and accidents involving pesticides, and makes copies of such records available to the State Plant Board forthwith on written request as required by state law, Ark. Stat. Ann. §§ 77-260 and 77-264;

(2) the requirements of Sections 10 and 14 are met;

(3) labels on containers of incoming chemicals shall not be removed or defaced except as permitted under § 9; and

(4) MSDSs received shall be maintained and made accessible to employees; and

(I) A work area in which hazardous wastes are stored, treated, or disposed of, provided that: (1) the facility of which the work area is a part is permitted to do so by the Department of Pollution Control and Ecology; and

(2) the requirements of Section 14(A), (C), and (F) are met.

This subsection does not exempt parts of a facility not used for storage, treatment or disposal of hazardous wastes.

SECTION 20. REPORTING TO THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY.

Reports and notices, required by sections 304 or 313 of the federal Emergency Planning and Community Right-to-Know Act of 1986, of hazardous substance or chemical releases shall be made to the Department of Pollution Control and Ecology.

SECTION 21. STUDY OF THE ACT. The Commission and Director shall conduct

a study of the efficacy of the provisions of this Act and make recommendations to the General Assembly no later than January 1, 1989 concerning any revisions or amendments which may be necessary to effectuate its purposes.

SECTION 22. GOVERNOR'S DESIGNATIONS CONCERNING AVAILABILTY OF INFORMATION. The Governor shall have the authority to designate the locations at which, and the manner in which, information disclosable under this Act or under section 324 of the federal Emergency Planning and Community Right-to-Know Act of 1986 shall be made available. The Governor's designations shall be consistent with this Act.

SECTION 23. SEVERABILITY. 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 than can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 24. GENERAL REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 25. EMERGENCY AND EFFECTIVE DATE. It is hereby found and determined by the General Assembly that it is essential to provide the citizens of the State with critical information about hazardous chemicals to which they may be exposed, to provide firefighters and public safety officers with information necessary for protection in chemical emergencies, and to provide health care personnel with information necessary for the diagnosis and treatment of chemically caused injuries and disease. Therefore an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect on July 1, 1987.

