

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

# **A Bill**

**HOUSE BILL 1679**

4 **By: Representatives McCoy, Collier, Tullis and Arnold**

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## **For An Act To Be Entitled**

8 "AN ACT TO ESTABLISH AND MAINTAIN HAZARDOUS AND TOXIC  
9 EMERGENCY RESPONSE TEAMS FOR DISASTERS OR EMERGENCY  
10 SITUATIONS INVOLVING THE RELEASE OF ANY HAZARDOUS AND  
11 TOXIC MATERIALS INTO THE ENVIRONMENT; TO PROVIDE FOR  
12 EFFECTIVE MANAGEMENT AND UTILIZATION OF THOSE EMERGENCY  
13 RESPONSE TEAMS FOR COMPLIANCE WITH STATE AND FEDERAL  
14 REGULATIONS AND LAWS; THE ESTABLISHMENT OF THE ARKANSAS  
15 HAZARDOUS AND TOXIC MATERIALS EMERGENCY RESPONSE FUND; TO  
16 PROVIDE A FEE ON ALL HAZARDOUS AND TOXIC MATERIALS  
17 TRANSPORTED ON THE PUBLIC STREETS AND HIGHWAYS AND  
18 RAILROADS AND ON ALL THE NAVIGABLE STREAMS OF THE STATE OF  
19 ARKANSAS; TO REQUIRE SHIPPERS OF HAZARDOUS AND TOXIC  
20 MATERIALS TO CARRY SHIPPING DOCUMENTS; AND FOR OTHER  
21 PURPOSES. "

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23

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

25

26 SECTION 1. This act may be known and cited as the "Arkansas Hazardous  
27 and Toxic Materials Emergency Response Act".

28

29 SECTION 2. Because of the existing and increasing possibility of a  
30 major disaster or emergency from the release of hazardous and toxic substances  
31 into the environment while in transport, during manufacturing and in storage  
32 and because of the special equipment, resources and unique training required  
33 of emergency response and recovery personnel, and because of the unique  
34 dangers presented by this threat to persons and their property, it is hereby  
35 found and declared to be necessary:

1 (1) to create within the State Office of Emergency Services a hazardous  
2 and toxic materials emergency response section and establish regional  
3 hazardous and toxic materials teams to provide trained personnel, specialized  
4 equipment and resources to support local emergency response personnel of the  
5 political subdivisions of this state;

6 (2) to provide for the rendering of mutual aid between these teams and  
7 local emergency response personnel to include, but not limited to, specialized  
8 planning, training, equipment, facilities and personnel;

9 (3) to provide required emergency response and recovery services to  
10 state and local governments mandated by federal environmental and safety laws  
11 related to hazardous and toxic materials;

12 (4) to provide authorized Worker's Compensation benefits for emergency  
13 response teams and such liability exclusions as offered to other state and  
14 local government employees in lawful performance of duties under this act;

15 (5) to provide a system for coordination of toxic and hazardous  
16 materials disaster and emergency related activities for planning, mitigation,  
17 response and recovery as mandated by the Arkansas Emergency Services Act,  
18 Arkansas Code §§ 12-75-101 et seq., to ensure the most efficient, effective and  
19 economical use of personnel, equipment and resources.

20

21 SECTION 3. As used in this act, unless the context otherwise requires:

22 (1) "Director" means the Director of the State Office of Emergency  
23 Services established under Arkansas Emergency Services Act, Arkansas Code §§  
24 12-75-101 et seq.

25 (2) "Disaster" means any tornado, storm, flood, high water, earthquake,  
26 drought, fire, radiological incident, air or surface-borne toxic or other  
27 hazardous material contamination, or other catastrophe, whether caused by  
28 natural forces, enemy attack, or any other means, occurring anywhere in the  
29 state, which, in the determination of the Governor, is or threatens to be of  
30 sufficient severity and magnitude to warrant state action or to require  
31 assistance by the state to supplement the efforts and available resources of  
32 local governments and relief organizations in alleviating the damage, loss,  
33 hardship, or suffering caused thereby, and with respect to which the chief  
34 executive of any political subdivision in which the disaster occurs or  
35 threatens to occur certifies the need for state assistance and gives assurance  
36 of the local government for alleviating the damage, loss, hardship, or

1 suffering resulting from such disaster.

2 (3) "Emergency" means a condition which requires the activation of  
 3 emergency response at the state or local levels, either in anticipation of a  
 4 severe disaster such as an imminent enemy attack, potential civil disturbance,  
 5 forecast major natural or man-caused disaster, or actual onset of conditions  
 6 requiring the use of such forces which exceed the day-to-day response and  
 7 activities of such forces and requires the coordinating of a complement of  
 8 local, state, federal, or volunteer organizations.

9 (4) "Emergency services" means the preparation for and carrying out of  
 10 all emergency functions by existing state and local governments other than  
 11 functions for which military forces are primarily responsible to prevent,  
 12 minimize, and repair injury and damage resulting from major emergencies or  
 13 from disasters caused by enemy attack, natural causes, man-made catastrophes,  
 14 or civil disturbances. These functions include, without limitation: fire  
 15 fighting; law and order; medical and health; rescue; engineering; warning;  
 16 communications; radiological, chemical, or other special material  
 17 identification, measurement, and decontamination; evacuation or relocation of  
 18 persons from stricken areas; emergency social services such as housing,  
 19 feeding, and locator service; emergency transportation; plant protection;  
 20 damage assessment and evaluation; temporary restoration of public facilities;  
 21 debris clearance; and other functions related to the protection of the people  
 22 and property of the state, together with all other activities necessary or  
 23 incidental to the preparation for and carrying out of all the foregoing  
 24 functions.

25 (5) "Fund" means the "Arkansas Hazardous and Toxic Materials Emergency  
 26 Response Fund" created by this act.

27 (6) "Hazardous and toxic materials" means: (A) extremely hazardous  
 28 substances, except natural gas, published under Section 302, hazardous  
 29 chemicals described under Section 311 and 312, and toxic chemicals published  
 30 under Section 313 of SARA, Title III;

31 (B) any other substance or pollutant designated by regulations by  
 32 the State Emergency Response Commission under this act; and

33 (C) does not include, for fee assessment or regulatory  
 34 authorities, include those radioactive substances and materials regulated  
 35 under Arkansas Code §§ 20-21-401, et seq., or hazardous waste regulated under

1 the Arkansas Hazardous Waste Management Act, Arkansas Code §§ 8-7-201 et seq.

2 (7) "HAZMAT" means the abbreviation of "Hazardous and toxic materials"  
3 as defined in this act.

4 (8) "Incident" or "accident" means the spilling, leaking, pouring,  
5 emitting, emptying, discharging, injecting, escaping, leaching, dumping, or  
6 disposing of hazardous and toxic materials into the environment.

7 (9) "Local organization for emergency services" means an organization  
8 created in accordance with the provisions of the Arkansas Emergency Services  
9 Act, Arkansas Code §§ 12-75-101 et seq., by state and local authority to  
10 perform local emergency service functions within the existing political  
11 subdivisions of the state.

12 (10) "Generator" means any person, firm, association, partnership, or  
13 agent for those entities, responsible for the initial production, refining,  
14 processing or manufacture of hazardous and toxic materials, as defined in this  
15 act, who makes the initial shipment to or through the State of Arkansas of the  
16 finished product to the wholesale or retail marketer by motor vehicle, rail  
17 freight car, freight container, cargo tank, rail tank car, aircraft, vessel,  
18 of other means in interstate or intrastate commerce.

19 (11) "OSHA" means reference to those rules, regulations and guidelines  
20 mandated by the Occupational Safety and Health Administration specifically for  
21 emergency planning, mitigation, response and recovery for incidents or  
22 accidents involving hazardous and toxic materials.

23 (12) "Regional HAZMAT Team" means an organization assigned emergency  
24 response and recovery responsibility for a specific geographical area of the  
25 state, appropriately trained, and equipped, and duly certified to perform  
26 their assigned duties.

27 (13) "SARA, Title III" means reference to Title III of the Superfund  
28 Amendment and Reauthorization Act of 1986, (P.L. 99-499), 42 USCS §§ 11001 et  
29 seq., and relates to those federally mandated functions incumbent upon state  
30 government, through the State Emergency Response Commission and local  
31 political subdivisions, through their respective Local Emergency Planning  
32 Committees related to HAZMAT planning, response, recovery and mitigation.

33 (14) "Shipper" means any person, firm, association, partnership,  
34 corporation, or other legal entity who transports or ships in a motor vehicle,  
35 rail freight car, freight container, cargo tank, rail tank car, aircraft,

1 vessel, or other means of transportation any hazardous and toxic materials as  
2 a common carrier, contract carrier, or carrier for private use.

3 (15) "State Office of Emergency Services" means the Office of Emergency  
4 Services as established under Arkansas Emergency Services Act, Arkansas Code  
5 §§ 12-75-101 et seq.

6 (16) "Transport" means the movement of any hazardous and toxic material  
7 regardless of the mode of transportation from one place to another place and  
8 any loading, unloading, and storage incidental thereto.

9

10 SECTION 4. (a) There shall be established within the State Office of  
11 Emergency Services, a State Hazardous and Toxic Materials Coordinator, also  
12 known as the State HAZMAT Coordinator, who shall:

13 (1) Supervise, administer, and manage Regional HAZMAT personnel  
14 and insure that teams receiving state support and funding meet minimum  
15 standards for certification and compliance in training, equipping, planning  
16 and performance in accordance with state and federal mandates related to  
17 disaster or emergency response and recovery actions.

18 (2) Provide assistance, as required or necessary, to the State  
19 Emergency Response Commission and Local Emergency Planning Committees in the  
20 performance of their mandated duties.

21 (3) Provide such other technical assistance and expertise in the  
22 field of HAZMAT disaster or emergency response, recovery, planning and  
23 mitigation as required by existing federal and state laws, regulations and  
24 directives and as directed by the Director of the State Office of Emergency  
25 Services.

26 (4) Develop and promulgate rules and regulations to receive,  
27 review, and approve applications for grants to state agencies, local  
28 governments, and other political subdivisions of the State to provide local  
29 fire departments, including volunteer fire departments, state and local law  
30 enforcement agencies, or other state and local emergency response or service  
31 agencies funding for equipment, supplies, and training in HAZMAT emergency  
32 response and recovery.

33 (b) The Director and the State Hazardous and Toxic Materials  
34 Coordinator are authorized to adopt rules and regulations in accordance with  
35 the requirements of the Arkansas Administrative Procedure Act, Arkansas Code

1 §§ 25-15-201 et seq., as are necessary to accomplish the purposes of this act.  
2 The Director is also empowered to adopt any rules and regulations as may be  
3 necessary to provide for administration of the fund and the distribution of  
4 the grants from the fund.

5 (c) Grants approved by the Director to a state agency or a local  
6 government or a private non-profit corporation shall be considered on the  
7 basis of need and the priorities of organizing and developing the Regional  
8 HAZMAT response teams. Participation in the grant programs shall be  
9 conditioned on compliance with provisions of this act and any rules or  
10 regulations of the Director.

11

12 SECTION 5. (a) There shall be established within geographic regions of  
13 the state a minimum of five (5) Regional HAZMAT Response Areas which shall  
14 contain one (1) or more regional HAZMAT Response Teams. The Director of the  
15 State Office of Emergency Services and the Chairman of the State Emergency  
16 Response Commission shall determine the location of these teams based on  
17 frequency of occurrence and severity of hazardous and toxic materials  
18 incidents or accidents, the availability of supplementary equipment and  
19 personnel and such other factors as may be germane.

20 (b) The staff of these Areas shall consist of the following:

21 (1) one (1) full-time state employee who shall be responsible for  
22 the supervision, management, and training associated with this program,  
23 training and management of the team; and

24 (2) a sufficient number of trained and qualified personnel  
25 recruited locally to establish and maintain HAZMAT Response Teams within the  
26 Area.

27 (c) Team members shall receive all necessary training and equipping for  
28 certification required by current federal laws, regulations and guidelines  
29 pertaining to HAZMAT response and recovery and shall enter into agreement for  
30 reasonable availability to be called to active service with Regional HAZMAT  
31 Teams. They shall be considered as employees of the State of Arkansas when  
32 called to active service *by the Director* for a major emergency, emergency  
33 services, disaster, or response to a hazardous and toxic substances incidents  
34 or accidents by the Director of the State Office of Emergency Services, or his  
35 designated representatives. They shall be eligible during that service for

1 financial reimbursement, emoluments, and Workman's Compensation coverage  
2 during the lawful performance of their duties.

3 (d) All functions of the regional HAZMAT response teams under this act  
4 are declared to be governmental functions. No regional response team member,  
5 except in cases of willful misconduct, gross negligence, or bad faith, when  
6 complying with or reasonably attempting to comply with this act, or any other  
7 rule or regulation promulgated pursuant to the provisions of this act, shall  
8 be liable for the death of or injury to persons, or for damage to property, as  
9 a result of any activity or service performed under this act. This immunity  
10 shall extend to all regional response team members and supplementary team  
11 members who are full-time or part-time employees or who are volunteers.

12 (e) Regional HAZMAT response teams shall be supplemented by trained and  
13 qualified personnel recruited from local, registered, firefighting services  
14 and other duly qualified emergency response personnel *from the public or*  
15 *private sector*, who shall receive equipment and support under the funding  
16 provisions of this act.

17

18 SECTION 6. (a) There shall hereby be created on the books of the  
19 State Treasurer, Auditor of State, and Chief Fiscal Officer a fund to be  
20 called the "Arkansas Hazardous and Toxic Materials Emergency Response Fund".  
21 The fund shall consist of all fees provided for in this act and any penalties,  
22 or other reimbursement provided to the fund.

23 (b) The Arkansas Hazardous and Toxic Materials Emergency Response Fund  
24 shall be administered by the Director who shall authorize expenditures from  
25 the fund of appropriated monies for the following purposes:

26 (1) to employ those persons to serve as the State Hazardous and  
27 Toxic Materials Coordinator and other necessary personnel, to develop the  
28 HAZMAT incident or accident reporting system, to supervise, train and manage  
29 the regional HAZMAT response teams, and to otherwise carry out the purposes of  
30 this act;

31 (2) to obtain equipment and supplies required by regional HAZMAT  
32 response teams to provide response and recovery actions necessary to contain a  
33 release of hazardous and toxic materials and provide for the safety, health  
34 and welfare of the affected population;

35 (3) to make grants to state agencies, local governments and other

1 political subdivisions of the State to provide local fire departments,  
2 including volunteer fire departments, state and local law enforcement  
3 agencies, or other state and local emergency response or service agencies with  
4 equipment and training related to HAZMAT emergency response and recovery.

5 (c) All taxes, penalties, and other amounts collected under this act  
6 shall be classified as special revenues, and shall be distributed in the  
7 manner and as provided for by this act.

8 (d) The Arkansas Hazardous and Toxic Materials Emergency Response Fund  
9 shall be capped at a balance of three million dollars (\$3,000,000), exclusive  
10 of penalties and other reimbursements to the fund. During the fiscal year in  
11 which the balance of the fund reaches three million dollars (\$3,000,000), the  
12 Director of the Department of Finance and Administration shall be notified to  
13 suspend collection of the registration fee levied on hazardous and toxic  
14 materials.

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16 SECTION 7. (a) Beginning on July 1, 1991, every generator of hazardous  
17 and toxic materials shall be required to manifest every shipment of hazardous  
18 and toxic materials transported on the public streets and highways and along  
19 the railroads and waterways and pipelines of the state of Arkansas. A copy of  
20 the manifest shall be provided to the Director of the State Office of  
21 Emergency Services. There shall be levied on each generator of hazardous and  
22 toxic materials a manifest fee for shipment of hazardous and toxic materials  
23 transported on the public streets and highways and along the railroads and  
24 waterways and pipelines of the state of Arkansas. The manifest fee shall be  
25 paid to the Revenue Division of Department of Finance and Administration. The  
26 amount of the fee shall be based on the manifest weight of the materials being  
27 transported in accordance with the fee schedule in subsection (b) of this  
28 section. The fees shall be collected and deposited into the State Treasury as  
29 special revenues to the credit of the Fund and used for the purposes  
30 prescribed in this act.

31 (b) (1) The manifest fee provided for in subsection (a) of this section  
32 shall be paid annually in accordance with the following schedule:

<u>Amount of HAZMAT</u>	<u>Initial Fee</u>
0 up to 100 tons	No fee
100 tons and over	\$25.00 plus \$1.00 per ton

1 or any fraction of a ton thereof

2 (2) The maximum annual fee per individual generator shall be three  
3 thousand dollars (\$3,000).

4 (c) The registration of shipments and the registration fee shall not be  
5 required on the shipment of the following materials:

6 (1) Gasoline, diesel fuel, fuel oil, kerosene, crude oils, oil  
7 sludge, oil refuse or any other non-edible liquid hydrocarbon regardless of  
8 specific gravity;

9 (2) Liquified petroleum gas, including, but not limited to,  
10 propane, butane, or liquified natural gas;

11 (3) Fly ash produced as a result of electrical power generation;

12 (4) Ethanol or ethyl alcohol.

13 (d) In the event the Director of the Department of Finance and  
14 Administration is notified to suspend collection of the fees levied, he or she  
15 shall notify all generators who have paid the registration fee that the  
16 collection of registration will be suspended beginning July 1 of the next  
17 fiscal year. During the fiscal year in which the balance of the fund drops  
18 below one million dollars (\$1,000,000), the Director of the Department of  
19 Finance and Administration shall notify the manufacturers of and shall resume  
20 the collection of the registration fee levied on hazardous and toxic materials  
21 beginning July 1 of the next fiscal year.

22  
23 SECTION 8. No shipper shall transport any hazardous and toxic material  
24 unless shipping documents describing the shipment are provided to the operator  
25 of the vehicle, train, or vessel prior to the departure and shall be carried  
26 with the vehicle, train, or vessel at all times within the state. The  
27 description of the shipment shall include at least the shipping name, the  
28 classification of the material, and the weight and volume of the material.  
29 The shipper shall make each shipping document available for inspection when  
30 requested by any law enforcement officer of the State of Arkansas or any of  
31 its political subdivisions.

32  
33 SECTION 9. Any person who pleads guilty, nolo contendere, or is found  
34 guilty of violating any provisions of this act or any regulation promulgated  
35 hereunder shall be guilty of a misdemeanor and be fined not more than five

1 hundred dollars (\$500) per day of violation or imprisoned for not more than  
2 one (1) year or both.

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4       SECTION 10. All rules and regulations and fees promulgated pursuant to  
5 this act shall be reviewed by the Joint Interim Committee on Public Health,  
6 Welfare, and Labor or an appropriate subcommittee thereof.

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8       SECTION 11. All provisions of this Act of a general and permanent  
9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
10 Code Revision Commission shall incorporate the same in the Code.

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12       SECTION 12. Severability. In the event any provision of this act is  
13 declared or adjudged to be invalid or unconstitutional, such declaration or  
14 adjudication shall not affect the remaining portions of this act which can be  
15 given effect without the invalid or unconstitutional provision. The remaining  
16 portions of this act shall remain in full force and effect as if the portion  
17 declared or adjudged invalid or unconstitutional was not originally a part of  
18 the act.

19

20       SECTION 13. All laws and parts of laws in conflict with this act are  
21 hereby repealed.

22

23       SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined by  
24 the Seventy-Eighth General Assembly of the State of Arkansas that the danger  
25 of a hazardous and toxic materials accident or incident occurring on the  
26 highways, railroads, or waterways of Arkansas is extremely high and that a  
27 mechanism is needed to have financial resources immediately available for  
28 response and containment of such hazardous and toxic materials accidents.  
29 Therefore, in order to address the need for financial resources and a  
30 mechanism to respond to hazardous and toxic materials accidents, an emergency  
31 is hereby declared to exist and this act being immediately necessary for the  
32 preservation of the public peace, health and safety shall be in full force and  
33 effect from and after July 1, 1991.

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*/s/ J. McCoy et al*

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