

CHAPTER 1085**HAZARDOUS CHEMICALS RISK RIGHT TO KNOW ACT***S.F. 2248*

AN ACT relating to the collection and dissemination of information regarding hazardous chemicals and providing penalties and authorizing the department of water, air and waste management to adopt hazardous waste rules in respect to hazardous chemicals which are more restrictive than, but consistent with, federal requirements.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I**GENERAL PROVISIONS**

Section 1. **NEW SECTION. 455D.1 SHORT TITLE.** This chapter may be cited as the "Hazardous Chemicals Risks Right to Know Act".

Sec. 2. **NEW SECTION. 455D.2 LEGISLATIVE FINDINGS.**

1. The general assembly finds as follows:

a. The proliferation of hazardous chemicals in the environment poses a growing threat to the public health, safety, and welfare.

b. The constantly increasing number and variety of hazardous chemicals and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to the hazardous chemicals.

c. Individuals are often able to detect and thus minimize effects of exposure to hazardous chemicals if they are aware of the identity of the chemicals and the early symptoms of unsafe exposure.

d. Individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

e. Local fire and other government emergency response departments require detailed information about the identity, characteristics, and quantities of hazardous chemicals used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies, and enforce compliance with applicable laws and regulations concerning these chemicals.

f. The extent of the toxic contamination of the air, water, and land has caused a high degree of concern and much of this concern is needlessly aggravated by the unfamiliarity of the chemicals.

g. There is a need to coordinate the existing regulatory and reporting responsibilities on hazardous chemical users and producers and to provide uniform access to information.

Sec. 3. **NEW SECTION. 455D.3 DEFINITIONS.** As used in this chapter, unless the context otherwise requires:

1. "Bureau" means the state bureau of labor.

2. "Emergency response department" means any governmental department which might be reasonably expected to be required to respond to an emergency involving a hazardous chemical, including, but not limited to, local fire, police, medical rescue, disaster, and public health departments.

3. "Interagency council" means the hazardous chemicals information interagency coordinating council in section 455D.16.

Sec. 4. NEW SECTION. 455D.4 APPLICABILITY TO AGRICULTURAL ACTIVITIES.

1. Except for 455D.9, this chapter does not apply to a person engaged in farming, a commercial applicator as defined in section 206.2, subsection 12, a certified applicator as defined in section 206.2, subsection 17, a certified private applicator as defined in section 206.2, subsection 18, a certified commercial applicator as defined in section 206.2, subsection 19, a pesticide dealer as defined in section 206.2, subsection 24, or to activities which are covered under the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. sec. 135 et seq.; provided, however, that such persons shall comply with the requirements of the federal Insecticide, Fungicide, and Rodenticide Act, 40 C.F.R. sec. 170, and chapter 206 where applicable to such persons. As used in this section, "farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock, spraying, or harvesting. The department of agriculture shall cooperate with the bureau in an investigation of an agricultural employee's complaint filed pursuant to section 455D.9.

2. Notwithstanding subsection 1 a pesticide dealer, a commercial applicator, or a certified applicator who retails or stores a pesticide as defined in section 206.2, subsection 1, shall comply with sections 455D.14 and 455D.15 for those hazardous chemicals stored or available for sale.

Sec. 5. NEW SECTION. 455D.5 TRANSPORTATION OF HAZARDOUS CHEMICALS. Except for section 455D.9, this chapter does not apply to the transportation of hazardous chemicals if the transportation is regulated by federal law or regulation.

Sec. 6. NEW SECTION. 455D.6 LIABILITY OF STATE OR POLITICAL SUBDIVISION. The state or any of its political subdivisions is not liable for damages in any claim pursuant to chapter 25A or chapter 613A based upon an act or omission of an employee of the state or political subdivision when the employee exercised due care in the execution of this chapter or a rule adopted under this chapter. Any duty created in this chapter is a duty to the public generally and not to any person or group of persons.

Sec. 7. NEW SECTION. 455D.7 IMPLEMENTATION. The requirements imposed by this chapter that are based upon the federal occupational safety and health administration's hazard communication regulation 29 C.F.R. sec. 1910.1200 et seq. as promulgated on November 25, 1983 shall be implemented according to the provisions of the regulation. However, if information is available to an employer at any time prior to the dates required in the regulation, then the employer shall comply as of the date the information becomes available.

DIVISION II WORKER RIGHT TO KNOW

Sec. 8. NEW SECTION. 455D.8 INFORMATION REQUIRED.

1. An employee in this state has the right to be informed about the hazardous chemicals to which the employee may be exposed in the workplace, the potential health hazards of the hazardous chemicals, and the proper handling techniques for the hazardous chemicals. An employer shall provide or make available to an employee information as required by this chapter. Except as explicitly exempted, this chapter applies to all employers in the state.

2. The bureau shall administer this division. The bureau may exercise the enforcement powers set out in chapter 88 and the rules adopted pursuant to chapter 88 to enforce this division.

3. The federal occupational safety and health administration's hazard communication regulation 29 C.F.R. sec. 1910.1200 et seq. as promulgated on November 25, 1983 is adopted as

the basis for the bureau's regulatory responsibility under this division. Except as specifically modified by this division, all employers in this state shall comply with the regulation including but not limited to the requirements on labeling, training, hazardous chemical list, trade secrets, and material safety data sheets without regard to whether an employer is covered by the federal regulation.

4. In addition to the chemical information required to be reported under federal hazard communication standard 29 C.F.R. sec. 1910.1200(d), the bureau may adopt by rule additional hazardous chemical information to be regulated, if the interagency council recommends such action pursuant to section 455D.17.

Sec. 9. NEW SECTION. 455D.9 EMPLOYEE RIGHTS. An employer shall not discharge or in any other manner discriminate against an employee because the employee has filed a complaint or brought an action under this section or has cooperated in bringing an action against an employer. An employee may file a complaint with the commissioner of labor alleging discharge or discrimination within thirty days after an alleged violation occurs. Upon receipt of the complaint, the commissioner shall cause an investigation to be made to the extent the commissioner deems appropriate. If the commissioner determines from the investigation that this subsection has been violated, the commissioner shall bring an action in the appropriate district court against the person. The district court has jurisdiction, for cause shown, to restrain violations of this subsection and order appropriate relief including rehiring or reinstatement of the employee to the former position with back pay. Notwithstanding section 455D.4, this section applies to an employee of a person otherwise exempt from this chapter.

Sec. 10. NEW SECTION. 455D.10 SPECIAL TRAINING. An employer shall provide special training when the employer either assigns an employee to a special assignment or task which increases the employee's potential exposure to a hazardous chemical or the employer contracts with a person outside the employ of the employer if the person is under the supervision of the employer and may be exposed to hazardous chemicals. The training shall be available for review and approval upon inspection by the bureau and shall be designed to inform the employee or the outside contractor of the presence of the hazardous chemical, the nature of the chemical and the health hazards it presents, and the proper handling procedures for the hazardous chemical.

Sec. 11. NEW SECTION. 455D.11 EDUCATIONAL RESEARCH LABORATORY.

1. Except for section 455D.9, this division does not apply to a research laboratory at a public or private educational institution if the research laboratory complies with subsection 2.

2. A research laboratory shall submit a plan for the supervision and handling of hazardous chemicals and the development of training programs for employees who work with or clean up hazardous chemicals. The plan shall be consistent with this division and is subject to the approval of the bureau.

3. As used in this division, a research laboratory means a specially designated area used primarily for research in which hazardous chemicals are used by or under the direct supervision of a technically qualified person.

DIVISION III

COMMUNITY RIGHT TO KNOW

Sec. 12. NEW SECTION. 455D.12 COMMUNITY INFORMATION ON HAZARDOUS CHEMICALS.

1. The public has a right to be informed about the presence of hazardous chemicals in the community and the potential health and environmental hazards that the chemicals pose.

2. The bureau shall receive and handle requests for information and complaints under this division which involve employer information covered under division II. The bureau shall adopt rules pursuant to chapter 17A regarding requests for information and the investigation and adjudication of complaints.

3. Requests for information under this division are confidential.

Sec. 13. NEW SECTION. 455D.13 ACCESSIBILITY OF RECORDS.

1. Except as provided in subsection 2, records that are required to be kept by employers under this chapter shall be accessible to the public. As used in this section "accessible to the public" means either of the following:

a. The records are filed with the bureau.

b. The records are available for inspection at the principal place of employment of the employer during normal working hours.

2. Records do not need to be accessible to the public if any of the following apply:

a. The information is trade secret information under this chapter and any rules regarding the release of the information.

b. Under recommendation from the interagency council, the bureau has adopted rules specifying that certain classes or categories of records required to be kept by employers are confidential information.

c. The employer has notified the bureau in writing that certain information should not be accessible to the public for the reasons that the information is not relevant to public health and safety or that release of the information is proven to cause damage to the employer. After giving the employer notice and an opportunity to be heard, the bureau may release the information if it determines that the impact on public health and safety outweighs the damage that release of the information would cause the employer. The bureau may limit its release of information to areas relevant to public health and safety and may restrict the release of information which will cause damage to the employer.

DIVISION IV

PUBLIC SAFETY – EMERGENCY RESPONSE RIGHT TO KNOW

Sec. 14. NEW SECTION. 455D.14 SIGNS IDENTIFYING HAZARDOUS CHEMICALS. If a building or structure has a floor space of five thousand square feet or less, an employer shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than five thousand square feet, the employer shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical or a portion of the hazardous chemical is moved within the building, the employer shall also move the sign or post an additional sign at the location where the hazardous chemical is moved. All letters and figures on signs required by this section shall be at least three inches in height. However, upon the written application of an employer, the bureau may permit less stringent sign posting requirements. The signs shall comply with the national fire protection association's standard system for the identification of fire hazards of materials, based upon NFPA 704-1980. The bureau shall adopt rules exempting employers from the requirements of this section when a building or structure or a portion of a building or structure does not contain significant amounts of a hazardous chemical.

Sec. 15. NEW SECTION. 455D.15 INFORMATION FOR EMERGENCY RESPONSE DEPARTMENTS.

1. At the same time that an employer provides the information to employees required under division II, the employer shall submit to the local fire department a list of hazardous chemicals which are consistently generated by, used by, stored at, or transported from the employer's facility. The information shall be provided in sufficient specificity that the local fire department is informed of the nature of the hazardous chemicals, the hazards presented by the chemicals, and the appropriate response in dealing with an emergency involving the hazardous chemicals. The information shall conform to guidelines adopted by the bureau from recommendations of the interagency council under section 455D.19. The employer shall send the information by certified mail. The bureau shall adopt rules exempting employers from this requirement when buildings or structures do not contain significant amounts of a hazardous chemical.

2. A local fire department receiving information pursuant to subsection 1 shall make the information available only to other emergency response departments.

DIVISION V

HAZARDOUS CHEMICALS INFORMATION INTERAGENCY COUNCIL

Sec. 16. NEW SECTION. 455D.16 INTERAGENCY COUNCIL.

1. A hazardous chemicals information interagency coordinating council is created. The council shall be organized under chapter 28E. The council is composed of three voting members consisting of the designee of the commissioner of public health, the designee of the labor commissioner, and the designee of the executive director of the department of water, air and waste management. There are five nonvoting advisory members consisting of the designee of the director of the office of disaster services, the designee of the chief officer of the division of fire protection of the department of public safety, the designee of the head of the state hygienic laboratory, a person representing business and industry, and a person representing labor. The business and labor representatives shall be appointed by the governor.

2. The interagency council has as its primary purpose to establish and facilitate interagency communication to accomplish the purposes of this chapter. The council shall place special emphasis upon avoiding duplication in regulation and reporting responsibilities of the agencies. The council shall review the implementation of this chapter. At least annually the council shall hold a public hearing regarding the provision of information under this chapter and consider public concerns regarding hazardous chemical reporting and regulation. The council shall report annually to the governor and the general assembly. The report shall contain information regarding the activities of the council, recommendations for modifications of this chapter that would further its purposes, and a summary of the information presented at any public hearing held by the council.

Sec. 17. NEW SECTION. 455D.17 RECOMMENDATIONS OF INTERAGENCY COUNCIL. The interagency council may recommend by the unanimous vote of the three voting members any of the following actions:

1. Expansion of the federal occupational safety and health administration's list of hazardous chemicals or reporting required under this chapter. The bureau shall adopt rules pursuant to chapter 17A to expand the list of information required if the bureau decides to follow the recommendation.

2. Expansion of the list of hazardous wastes reported to the department of water, air and waste management under 42 U.S.C. secs. 6921-6934 as amended to January 1, 1981, or information required concerning the wastes. The department shall adopt rules pursuant to chapter

17A to expand the list or information if the department decides to follow the recommendation.

However, the interagency council shall make such recommendations only upon scientific evidence that there may be a significant threat to public health and safety without such action.

Sec. 18. NEW SECTION. 455D.18 ROLE OF DEPARTMENT OF HEALTH. Through the interagency council the department of health may:

1. Review and make recommendations for modifications in the material safety data sheets required under section 455D.8, subsection 3, relating to the health hazards of hazardous chemicals.

2. Provide technical assistance to employers and the bureau on establishing safety procedures to minimize the public environmental and occupational health hazards from the use of hazardous chemicals and provide aid and assistance to small employers, vendors, sellers or dispensers in the preparation of material safety data sheets as required by this chapter.

3. Upon request of the bureau examine information claimed to be a trade secret under the federal occupational safety and health administration's hazard communication regulation.

Sec. 19. NEW SECTION. 455D.19 RECOMMENDATIONS ON THE FORM OF REPORTING. The interagency council shall make recommendations to the bureau for the reporting of information required under division IV by July 1, 1985. The interagency council's recommendations shall consider the information required to be developed by the employer under other provisions of this chapter, and shall establish a form for the reporting of this information that corresponds to other reporting requirements under this chapter.

Sec. 20. Section 25A.14, Code Supplement 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 10. Any claim based upon the enforcement of chapter 455D.

Sec. 21. Section 455B.420, Code 1983, is amended to read as follows:

455B.420 RULES. ~~Rules~~ Except as provided in chapter 455D, rules adopted by the commission under sections 455B.411 to 455B.421 shall be consistent with and shall not exceed the requirements of 42 U.S.C. secs. 6921-6934 as amended to January 1, 1981, and rules and regulations adopted pursuant to those sections.

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