

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 29, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on March 29, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

ACTION ON SENATE BILL 323: Representative Kitselman moved DO PASS on Senate Bill 323 and moved the amendments attached hereto as Exhibit 1 and 2. The amendments did pass by unanimous vote. Senate Bill 323 will BE CONCURRED IN AS AMENDED by unanimous vote.

ACTION ON SENATE BILL 250: Representative Brandewie moved to reconsider action on Senate Bill 250, a unanimous vote was received. Representative Brandewie stated the Board of Realty Regulation presently has over \$100,000 in their account for dues, etc. and wish to use this as their base. Representative Kadas did agree. Representative Brandewie moved to strip the Kadas amendment, which passed by unanimous vote. Senate Bill 250 will BE CONCURRED IN AS AMENDED by unanimous vote.

ACTION ON SENATE BILL 356: Representative Brown moved DO PASS on Senate Bill 356 and distributed a copy of the contract signed by Independent Record carriers which states they are independent contractors. Representative Driscoll stated the law doesn't say they are in the contract and kids are being taken out from underneath workers compensation laws. Representative Brown called on Gary Blewett, Administrator, Workers' Compensation Division, Department of Labor and Industry for clarification. Mr. Blewett explained that the division has not received any applications for new carriers for exclusions. If the newspapers are not required, the so called independent contracts must purchase workers comp. insurance or apply for an exemption. This is done on a case by case basis as all are managed differently. Representative Schultz asked Gary Blewett how many carriers have registered for workers comp. insurance, which was answered none. Representative Brown asked Mike Malloy the reason for requesting this bill. Mr. Malloy stated the bill does not change the law, carriers will remain the same, this relieves the division from the paperwork involved of filing forms. Representative Driscoll asked Gary Blewett

what the rate is for newspaper carriers. Mr. Blewett suspects it is very low. Representative Thomas asked Mr. Blewett what the definition of independent contractor is. Mr. Blewett explained they look at specific control circumstances, the method of pay, required equipment supplied by the employer, etc. The weight of evidence tips toward newspaper carriers being employees, but is difficult to determine. Control is an important part, but is not the only factor. Representative Bachini asked Gary Blewett for his opinion regarding the status of a newspaper carrier. Mr. Blewett explained his daughter is a newspaper carrier and he feels she is an employee. She signed a contract with the paper at the age of 12 years which probably is not binding. Representative Ellerd stated these kids and their parents or guardians should be told whether they are or are not covered. Representative Hansen asked Mike Malloy why newspapers don't cover their carriers with workers comp insurance. Mr. Malloy stated it is because they are independent contractors and it is unfair to make them responsible when they don't have control. Representative Driscoll asked Mike Malloy if the newspaper set the price that a carrier may charge. He explained they suggest a price. Representative Driscoll offered a substitute motion that Senate Bill 356 be TABLED. A roll call vote resulted in 12 members voting yes and 8 members voting no. Senate Bill 356 is TABLED.


ACTION ON SENATE BILL 343: Representative Hansen moved DO PASS on Senate Bill 343. Representative Schultz stated this does not affect House Bill 901. Second was received, Senate Bill 343 will BE CONCURRED IN by unanimous vote.

ACTION ON SENATE BILL 452: Representative Kadas moved DO PASS on Senate Bill 452 and moved all of the amendments as shown on the grey bill attached hereto as Exhibit 3, except for the amendment on page 14, line 21 and on page 11, line 4. Representative Kitselman stated the issue of the clerk and recorder only being open between 7:30 a.m. and 4:30 p.m. is still not addressed in the bill. The amendments moved by Representative Kadas received a unanimous vote. Representative Kitselman moved the chamber of commerce amendment and expressed his concern with trade secrets. Representative Simon explained the chamber amendments wouldn't affect that. Representative Kitselman stated a person requiring information may have suffered an injury as a result of exposure and this is public record. Representative Simon

Business and Labor
March 29, 1985
Page 3

stated they are placing limitations on this. Representative Wallin explained this is a complicated and unnecessary bill and the committee was told not to tamper with it and offered a substitute motion that Senate Bill 452 be TABLED. A roll call vote resulted in 11 members voting yes and 9 members voting no. Senate Bill 452 is TABLED.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 9:40 a.m.


Rep. Bob Pavlovich,
Chairman

DAILY ROLL CALL
BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date March 29, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormick	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

March 29

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 343

third reading copy (blue)
color

STATUTE OF LIMITATIONS FOR CONTRACTORS GROSS RECEIPTS TAX

Respectfully report as follows: That SENATE Bill No. 343

~~DO PASS~~
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 29

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 250

third reading copy (blue)
color

REAL ESTATE RECOVERY ACCOUNT FOR UNSATISFIED JUDGMENTS

Respectfully report as follows: That SENATE Bill No. 250

BE AMENDED AS FOLLOWS:

1. Page 4, line 18
Following: "fees."
Strike: the remainder of line 18 and lines 19, 20, 21, and
22 in their entirety

~~DO PASS~~
BE CONCURRED IN AS AMENDED

STANDING COMMITTEE REPORT

March 29 19 85

page 1 of 2

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 323

third reading copy (blue)
color

GENERAL REVISION OF LAWS REGULATING ENGINEERS AND LAND SURVEYORS

Respectfully report as follows: That SENATE Bill No. 323

BE AMENDED AS FOLLOWS:

1. Page 1, line 21
Following: "and"
Insert: "professional"
2. Page 6, line 5
Following: "or"
Insert: "professional"
3. Page 16, line 15
Following: "education"
Insert: "only"

~~DO PASS~~

4. Page 16, line 25
Following: "in"
Insert: "civil engineering from a school approved
by the accreditation board for engineering
and technology or a bachelor science degree
in"
5. Page 17, line 4
Strike: "satisfactory to the board"
6. Page 17, line 5
Strike: "progressive"
7. Page 18, line 9
Following: "have"
Insert: "a bachelor of science degree in civil
engineering from a school approved by the
accreditation board for engineering and
technology or"
8. Page 29, line 23
Following: "and"
Insert: "professional"

BE CONCURRED IN
AS AMENDED

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE March 29, 1985 BILL NO. 452 TIME _____

NAME	AYE	NAY
Bob Pavlovich		✓
Les Kitselman	✓	
Bob Bachini		✓
Ray Brandewie	✓	
Jan Brown		✓
Jerry Driscoll		✓
Robert Ellerd	✓	
William Glaser	✓	
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe	✓	
Tom Jones	✓	
Mike Kadas		✓
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet		✓
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas	✓	
Norm Wallin	✓	

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: Table 11-9

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE March 29, 1985 BILL NO. 129 TIME _____

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitseiman		✓
Bob Bachini	✓	
Ray Brandewie		✓
Jan Brown		✓
Jerry Driscoll	✓	
Robert Ellerd	✓	
William Glaser		✓
Stella Jean Hansen	✓	
Marjorie Hart		✓
Ramona Howe	✓	
Tom Jones		✓
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon		✓
Fred Thomas		✓
Norm Wallin	✓	

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: Reconsider 129

10-10

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE March 29, 1985 BILL NO. 356 TIME _____

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitzelman	✓	
Bob Bachini	✓	
Ray Brandewie	✓	
Jan Brown		✓
Jerry Driscoll	✓	
Robert Ellerd		✓
William Glaser		✓
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones		✓
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon	✓	
Fred Thomas		✓
Norm Wallin		✓

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: Table 12-8

MEMO

To: Senator Hager
From: Kathy Bramer, Senate Amendments
Re: SB 323

In preparing the Committee of the Whole Amendment to SB 323 on Feb. 20, we missed a couple of needed changes. The word "professional" should be inserted in three places in addition to those listed in the amendment.

Amending the Third Reading Copy, (BLUE):

1. Page 1, line 21.
Following: "and"
Insert: "professional"
2. Page 6, line 5.
Following: "or"
Insert: "professional"
3. Page 29, line 23.
Following: "and"
Insert: "professional"

The next opportunity to propose these amendments will be in the House committee to which the bill is referred. I can help by alerting the committee secretary when the bill is assigned. You will probably need to propose the amendments as the bill sponsor.
My apologies for any inconvenience this might cause.

Amendments to SB323 - Third Reading Bill

1. Page 16, line 15
Following: "education"
Insert: "only"
2. Page 16, line 25
Following: "in"
Insert: "civil engineering from a school approved
by the accreditation board for engineering
and technology or a bachelor science degree
in"
3. Page 17, line 4
Strike: "satisfactory to the board"
4. Page 17, line 5
Strike: "progressive"
5. Page 18, line 9
Following: "have"
Insert: "a bachelor of science degree in civil
engineering from a school approved by
the accreditation board for engineering
and technology or"

1 SENATE BILL NO. 452

2 INTRODUCED BY BARDANOUE, ECK, COHEN, RANEY, LORY,
3 NORMAN, VAN VALKENBURG, HANSEN, DRISCOLL, VINCENT,
4 BLAYLOCK, HARBIN, D. BROWN, HARPER, BRADLEY
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "EMPLOYEE
7 AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT"; REQUIRING
8 EMPLOYERS TO PROVIDE EMPLOYEES WITH INFORMATION CONCERNING
9 HAZARDOUS CHEMICALS IN THE WORKPLACE; REQUIRING COUNTY CLERK
10 AND RECORDERS TO MAINTAIN AND PROVIDE PUBLIC ACCESS TO THIS
11 INFORMATION; PROVIDING FOR INSPECTIONS BY LOCAL FIRE CHIEFS;
12 SPECIFYING RIGHTS OF EMPLOYEES; PROVIDING TRADE SECRET
13 CONFIDENTIALITY IN CERTAIN CIRCUMSTANCES; AND PROVIDING A
14 DELAYED EFFECTIVE DATE."
15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Short title. [This act] may be known and
18 cited as the "Employee and Community Hazardous Chemical
19 Information Act".

20 Section 2. Definitions. As used in [this act], the
21 following definitions apply:

22 (1) "Chemical manufacturer" means an employer in
23 standard industrial classification codes 20 through 39, as
24 defined in the federal Standard Industrial Classification
25 Manual, with a workplace where chemicals are produced for

1 use or distribution.

2 (2) "Chemical name" means the scientific designation
3 of a chemical in accordance with the nomenclature system
4 developed by the international union of pure and applied
5 chemistry or the chemical abstracts service rules of
6 nomenclature OR A NAME THAT WILL CLEARLY IDENTIFY THE
7 CHEMICAL FOR THE PURPOSE OF CONDUCTING A HAZARD EVALUATION.

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

12 (4) "Department" means the department of health and
13 environmental sciences provided for in Title 2, chapter 15,
14 part 21.

15 (5) "Designated representative" means:

16 (a) the individual or organization to whom an employee
17 gives written authorization to exercise the employee's
18 rights under [this act]; or

19 (b) a recognized or certified collective bargaining
20 agent who is automatically a designated representative
21 without regard to written employee authorization.

22 (6) "Distributor" means a business, other than a
23 chemical manufacturer, that supplies hazardous chemicals to
24 other distributors or to employers.

25 (7) "Employee" means a person who may be exposed to

hazardous chemicals in his workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in [section 3]:

(a) any element, chemical compound, or mixture of elements or compounds which is a physical hazard or health hazard as defined by subsection (c) of the OSHA standard AND WHICH HAS BEEN IDENTIFIED AS SUCH BY THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION OR THE MANUFACTURER AND HAS BEEN SO FILED WITH THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION;

(b) any hazardous chemical as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

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

1 (12) "Local fire chief" means:

2 (a) the chief of the municipal fire department or his
3 agent, for any workplace located within a city or town; or

4 (b) the county rural fire chief or the district rural
5 fire chief or his agent, for any workplace not located
6 within a city or town.

7 (13) "Manufacturing employer" means an employer with a
8 workplace classified in any standard industrial
9 classification code 20 through 39 who manufactures, uses, or
10 stores a hazardous chemical.

11 (14) "Material safety data sheet" means a document
12 prepared in accordance with the requirements of the OSHA
13 standard and containing chemical hazard and safe handling
14 information.

15 (15) "Nonmanufacturing employer" means an employer with
16 a workplace in any standard industrial classification code
17 other than 20 through 39.

18 (16) "OSHA standard" means the hazard communication
19 standard issued by the federal occupational safety and
20 health administration, codified under 29 C.F.R. 1910.1200,
21 as that statute reads on January 1, 1985.

22 (17) "Trade secret" means a confidential formula,
23 pattern, process, device, or information, including chemical
24 name or other unique chemical identifier, which is used in
25 an employer's business and which gives the employer an

1 opportunity to obtain an advantage over competitors.

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

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

7 (20) "Workplace chemical list" means the list of
8 hazardous chemicals developed under [this act] or under
9 subsection (e)(1)(i) of the OSHA standard.

10 Section 3. Applicability. (1) The provisions of [this
11 act] do not apply to:

12 (a) any consumer product intended for personal
13 consumption or use by an employee;

14 (b) any retail food sale establishment or other retail
15 trade establishment, exclusive of processing and repair
16 areas;

17 (c) a food, drug, or cosmetic as defined in the
18 Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;
19 or

20 (d) a source of ionizing radiation that is an exempt
21 or generally licensed material or device, as defined and
22 described in rules adopted under 75-3-202 and implementing
23 75-3-104 and 75-3-202; OR

24 (E) THE RADIOLOGICAL PROPERTIES OF ANY SOURCE,
25 BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL AS DEFINED IN

1 SECTIONS 11(Z), 11(AA), AND 11(E)(1) OF THE FEDERAL ATOMIC
 2 ENERGY ACT OF 1954; OR

3 (E)(F) SEALED CONTAINERS OF HAZARDOUS CHEMICALS DURING
 4 TRANSPORTATION OR WHILE IN STORAGE AT TRANSPORTATION
 5 TERMINALS, SO LONG AS EXISTING LABELS ARE NOT REMOVED OR
 6 DEFACED AND THE EMPLOYER COMPLIES WITH STATE AND FEDERAL
 7 REGULATIONS RELATING TO THE TRANSPORTATION OF HAZARDOUS
 8 CHEMICALS.

9 (2) Employers operating the following workplaces are
 10 in compliance with [this act] if they retain and make
 11 accessible to employees and, when applicable, to students,
 12 all material safety data sheets received or, if no material
 13 safety data sheet is received for a hazardous chemical, any
 14 other information received on its hazards and safe handling
 15 and if the provisions of [sections 8, 9(5) through (7), and
 16 12] are met:

17 (i)(A) a teaching, research, or testing laboratory,
 18 including any associated storeroom;

19 (ii)(B) a clinical laboratory or health care facility
 20 as defined in 50-5-101;

21 (iii)(C) a pharmacy as defined in 37-7-101; or

22 (iv)(D) an office of a physician, dentist, osteopath,
 23 podiatrist, optometrist, or veterinarian licensed under
 24 Title 37.

25 (3) The provisions of [this act] do not apply to any

1 hazardous chemical subject to the packaging and labeling
2 requirements imposed under the Federal Insecticide,
3 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
4 except that:

5 (a) a person storing such hazardous chemicals for the
6 purpose of resale must comply with the provisions of
7 [section 9]; and

8 (b) a chemical manufacturer producing such hazardous
9 chemicals must comply with all provisions of [this act].

10 Section 4. Relationship to OSHA standard. (1)
11 Manufacturing employers and distributors that are regulated
12 by and complying with the provisions of the OSHA standard
13 are exempt from the provisions of [this act], except for
14 [sections 6, 7, 9, and 10].

15 (2) Nonmanufacturing employers that adopt and comply
16 with the provisions of the OSHA standard are exempt from the
17 provisions of [this act], except for [sections 6, 7, 9, and
18 10].

19 Section 5. Notice to employees. Employers shall post
20 adequate notice at locations where notices are normally
21 posted informing employees about their rights under [this
22 act].

23 Section 6. Workplace chemical list. (1) Each employer
24 shall compile and maintain a workplace chemical list that
25 must contain the following information for each hazardous

1 chemical present in the workplace:

2 (a) except as provided in [section 11], all generally
3 used common names of any hazardous chemical present in the
4 workplace, cross-referenced to the chemical name; and

5 (b) the work area in which the hazardous chemical is
6 normally stored or used.

7 (2) The workplace chemical list may be prepared for
8 the workplace as a whole or for each work area, provided the
9 list is readily available to employees and their designated
10 representatives.

11 (3) New or newly assigned employees must be made aware
12 of the workplace chemical list before working with or in a
13 work area containing hazardous chemicals.

14 (4) The workplace chemical list must be updated as
15 necessary but not less than annually.

16 Section 7. Material safety data sheets. (1) Each
17 chemical manufacturer or distributor shall provide a
18 manufacturing or nonmanufacturing employer with the
19 appropriate material safety data sheet upon delivery of a
20 hazardous chemical.

21 (2) Each employer shall maintain the most current
22 material safety data sheet for each hazardous chemical in
23 the workplace. If a material safety data sheet has not been
24 provided by the chemical manufacturer or distributor at the
25 time a hazardous chemical is delivered to the employer, the

1 employer shall request one in writing within 5 working days.
2 ~~The--employer--shall--send--a--copy--of--the--letter--requesting--the~~
3 ~~material--safety--data--sheet--to--the--clerk--and--recorder--of--the~~
4 ~~county--in--which--the--workplace--is--located.~~ EACH EMPLOYER
5 SHALL MAINTAIN A COPY OF ANY CORRESPONDENCE SENT OR RECEIVED
6 BY THE EMPLOYER IN AN EFFORT TO OBTAIN A MATERIAL SAFETY
7 DATA SHEET FOR A HAZARDOUS CHEMICAL WHEN NONE WAS PROVIDED
8 BY THE CHEMICAL MANUFACTURER OR DISTRIBUTOR.

9 (3) Material safety data sheets must be provided by
10 the employer to any employee or designated representative
11 upon request for review or copying.

12 Section 8. Labels. (1) An employer or distributor may
13 not remove or deface any existing label on a container of a
14 hazardous chemical, except that the chemical name may be
15 concealed under trade secret protection as provided in
16 [section 11].

17 (2) Any portable container intended for an immediate
18 transfer of a hazardous chemical is not required to be
19 labeled.

20 Section 9. Emergency and community information. (1) An
21 employer normally having hazardous chemicals in the
22 workplace of his employees shall submit the following
23 information to the clerk and recorder of the county in which
24 the workplace is located:

25 (a) a copy of the most current material safety data

1 sheet CERTIFIED BY THE EMPLOYER for each hazardous chemical
2 in the workplace;

3 ~~(b)--a-copy-of-any-correspondence-sent-or--received--by~~
4 ~~the--employer--in-an-effort-to-obtain-a-material-safety-data~~
5 ~~sheet-for-a-hazardous-chemical-when-none-was-provided-by-the~~
6 ~~chemical-manufacturer-or-distributor;~~

7 ~~(c)~~(B) a AN ACKNOWLEDGED copy of each new annual
8 workplace chemical list; and

9 ~~(d)~~(C) A LIST ACKNOWLEDGED BY THE EMPLOYER OF the
10 names OR TITLES and telephone numbers of knowledgeable
11 representatives of the employer or the chemical manufacturer
12 who can be contacted for further information or in case of
13 an emergency.

14 (2) The county clerk and recorder shall record~~7--file7~~
15 ~~or---otherwise---maintain~~ the information provided under
16 subsection (1). ~~The-county-clerk-and-recorder-shall-maintain~~
17 ~~a-copy-of-each-current--material--safety--data--sheet--until~~
18 ~~informed--by--the-employer~~ RECORDS-NOTICE ~~that-the-hazardous~~
19 ~~chemical-is-no-longer-used-or-present-in-the-workplace.~~ The
20 ~~county--clerk--and--recorder--shall--maintain-a-copy-of-each~~
21 ~~annual--workplace--chemical--list---for---30---years.---All~~
22 ~~information-for-any-given-workplace-must-be-filed7-recorded7~~
23 ~~or--maintained--in--a--manner--that--allows-it-to-be-readily~~
24 ~~retrievable-as-a-whole.~~ THE COUNTY CLERK AND RECORDER SHALL
25 INDEX THE INFORMATION PROVIDED UNDER SUBSECTION (1) BY

1 WORKPLACE NAME AND ALL ENTRIES FOR A WORKPLACE MUST BE
2 GROUPED TOGETHER IN THE INDEX. THE INDEX MUST NOT BE
3 COMBINED WITH ANY OTHER TYPE OF INDEX.

4 ~~(3) All information submitted under subsection (1) is~~
5 ~~public information and must be available at the office of~~
6 ~~the county clerk and recorder during normal working hours to~~
7 ~~any person for inspection and copying at the expense of the~~
8 ~~person requesting copies.~~ THE COUNTY CLERK AND RECORDER MAY
9 DISCLOSE TO INDIVIDUAL PRIVATE CITIZENS, OR TO THE GENERAL
10 PUBLIC IF APPROPRIATE, PERTINENT INFORMATION, AS REQUIRED
11 UNDER SUBSECTION (1), RELATING TO HAZARDOUS PROPERTIES AND
12 HEALTH HAZARDS OF HAZARDOUS CHEMICALS AT A WORKPLACE IF A
13 PERSON OR PERSONS REQUESTING THE INFORMATION MAY HAVE
14 SUFFERED OR IS LIKELY TO SUFFER ILLNESS OR INJURY AS A
15 RESULT OF EXPOSURE TO ONE OR MORE OF THE HAZARDOUS CHEMICALS
16 OR HAS ANY OTHER DEMONSTRABLE REASON TO RECEIVE THE
17 INFORMATION. THE IDENTITY OF A PERSON REQUESTING THE
18 INFORMATION MUST BE OBTAINED AND KEPT ON FILE BY THE CLERK
19 AND RECORDER. THE CLERK AND RECORDER SHALL NOTIFY THE
20 EMPLOYER OF REQUESTS FOR INFORMATION PROVIDED UNDER
21 SUBSECTION (1).

22 (4) The local fire chief shall inspect all information
23 maintained by the county clerk and recorder on workplace
24 hazardous chemicals ~~and upon request must be provided with a~~
25 ~~copy of any document.~~

1 (5) The local fire chief must be permitted onsite
2 inspection of hazardous chemicals in any workplace,
3 including workplaces under the control of a state agency,
4 for the purposes of planning fire department activities in
5 case of an emergency and reviewing compliance with [this
6 act]. FOR A WORKPLACE THAT EMPLOYS FIRE SAFETY PERSONNEL,
7 THE LOCAL FIRE CHIEF SHALL CONSULT WITH THE RESPONSIBLE FIRE
8 SAFETY OFFICIAL TO CLARIFY RESPECTIVE ROLES AND RESPONSE
9 PROCEDURES IN THE EVENT OF AN EMERGENCY.

10 (6) As a result of an inspection, the local fire chief
11 may note and report for possible action by the county
12 attorney or other appropriate law enforcement official any
13 violation by an employer of a provision of [this act] or any
14 other law pertaining to hazardous chemicals or fire safety.

15 (7) The local fire chief shall consult at least
16 annually on safety and emergency considerations with each
17 person responsible for the operation of any research,
18 educational, or testing laboratory workplace. The
19 consultation may result in recommendations or, under the
20 provisions of 50-62-108, orders by the fire chief to be
21 implemented by the laboratory operator to enhance public
22 safety, to reduce the likelihood of emergency incidents, or
23 to improve emergency response in the event of an accident.
24 The person responsible for the operation of the laboratory
25 shall contact the local fire chief at any time there is a

1 significant change in the location or nature of the
2 hazardous chemicals in the workplace, initiation of any new
3 and potentially dangerous method of processing or reacting
4 hazardous chemicals, or any other operational change
5 affecting emergency response considerations.

6 Section 10. Employee rights. (1) An employee who may
7 be exposed to hazardous chemicals must be informed of the
8 potential or actual exposure and must be provided access to
9 the workplace chemical list and to the material safety data
10 sheet for each hazardous chemical. An employer who does not
11 provide an employee with information on a hazardous chemical
12 WITHIN 5 WORKING DAYS OF THE REQUEST FOR INFORMATION, as
13 required by [this act], may not require the employee to work
14 with the hazardous chemical until the information is made
15 available.

16 (2) Each employee must receive training from his
17 employer, as provided in [section 12] or in the OSHA
18 standard, on the hazards of workplace chemicals and on
19 protective measures for handling those chemicals.

20 (3) Each employee required to work with a hazardous
21 chemical must be provided with appropriate personal
22 protective equipment.

23 (4) No employer shall discharge, cause to be
24 discharged, discipline, discriminate against, or initiate
25 any adverse personnel action against any employee who

1 exercises his rights, testifies, or assists others in
2 exercising their rights or duties under [this act].

3 (5) A waiver by an employee of the benefits, rights,
4 or requirements of [this act] is against public policy and
5 is void. An employer's request or requirement that an
6 employee waive any rights under [this act] as a condition of
7 employment is a violation of [this act].

8 (6) A designated representative may act on behalf of
9 an employee in pursuing any right or enforcement remedy
10 under [this act].

11 Section 11. Trade secret confidentiality. (1) An
12 employer who believes that the name of a hazardous chemical
13 is a trade secret may withhold the chemical name from the
14 material safety data sheet and workplace chemical list only
15 if:

16 (a) a material safety data sheet, coded to an
17 identifying notation on each container of the hazardous
18 chemical, is available in the work area where the hazardous
19 chemical is present;

20 (b) the material safety data sheet discloses the
21 properties and effects of EXPOSURE TO the hazardous
22 chemical;

23 (c) the specific chemical identity is provided to a
24 treating physician or nurse in the event of a medical
25 emergency, as provided for in subsection (i)(2) of the OSHA

1 standard;

2 (d) the specific chemical identity is provided in
3 nonemergency situations to a health professional providing
4 medical or other occupational health services to an exposed
5 employee, as provided for in subsections (i)(3) through (5)
6 of the OSHA standard; and

7 (e) ~~the employer obtains a declaratory judgment or an~~
8 ~~action is pending therefor, as provided in subsection (2)~~
9 THE EMPLOYER CLAIMS THAT THE INFORMATION IS A TRADE SECRET
10 AND THAT CLAIM CAN BE SUPPORTED.

11 (2) ~~In order to obtain confidentiality protection for~~
12 ~~a trade secret, an employer shall obtain a declaratory~~
13 ~~judgment in an action filed in the district court for Lewis~~
14 ~~and Clark County. Before entering judgment conferring~~
15 ~~confidentiality protection, the court must find, based on~~
16 ~~supporting documentation, that a need for trade secret~~
17 ~~classification has been established. The department must be~~
18 ~~served and may intervene as a party in the action. During~~
19 ~~the pendency of any such declaratory judgment action, the~~
20 ~~department must maintain the information as confidential. IF~~
21 A PERSON BELIEVES THAT DISCLOSING CERTAIN TRADE INFORMATION
22 ON A MATERIAL SAFETY DATA SHEET WILL REVEAL A TRADE SECRET,
23 A TRADE SECRET CLAIM MAY BE FILED WITH THE DEPARTMENT, WHICH
24 SHALL USE THIS PROCEDURE TO DETERMINE THE VALIDITY OF THE
25 TRADE SECRET CLAIM:

1 (A) THE DEPARTMENT SHALL GIVE NOTICE BY CERTIFIED MAIL
2 TO THE PERSON MAKING THE CLAIM TO SUBMIT TRADE SECRET
3 SUBSTANTIATION INFORMATION WITHIN 30 DAYS AFTER RECEIPT OF
4 SUCH NOTICE. FAILURE TO SUPPLY THE SUBSTANTIATION
5 INFORMATION CONSTITUTES A WAIVER OF THE TRADE SECRET CLAIM.

6 (B) THE DEPARTMENT HAS THE RESPONSIBILITY TO DETERMINE
7 THE VALIDITY OF THE TRADE SECRET CLAIM AND SHALL CONSIDER
8 THE TRADE SECRET SUBSTANTIATION INFORMATION AS CONFIDENTIAL.

9 (C) IF THE DEPARTMENT DETERMINES THE TRADE SECRET
10 CLAIM IS NOT VALID, THE DEPARTMENT SHALL SO NOTIFY BY
11 CERTIFIED MAIL THE PERSON MAKING THE CLAIM FOR TRADE SECRET
12 PROTECTION, STATING THE BASIS FOR THE DECISION. THE PERSON
13 MAKING THE CLAIM HAS 30 DAYS AFTER NOTIFICATION BY THE
14 DEPARTMENT TO INITIATE JUDICIAL REVIEW IN THE DISTRICT COURT
15 OF LEWIS AND CLARK COUNTY AND OBTAIN A PRELIMINARY
16 INJUNCTION OR OTHER COURT ORDER TO PREVENT DISCLOSURE OF THE
17 TRADE SECRET.

18 (D) THE UNAUTHORIZED USE OR DISCLOSURE OF TRADE SECRET
19 INFORMATION SUBMITTED UNDER THIS SECTION IS A MISDEMEANOR.

20 Section 12. Employee education program. (1) Each
21 employer shall provide, at least annually, an education and
22 training program for all his employees using or handling
23 hazardous chemicals. Additional instruction must be provided
24 whenever the potential for exposure to hazardous chemicals
25 is altered or whenever new and significant information is

1 received by the employer concerning the hazards of a
2 chemical. New or newly assigned employees must be provided
3 training before working with or in a work area containing a
4 hazardous chemical.

5 (2) The programs must provide instruction in:

6 (a) interpreting labels and material safety data
7 sheets and the relationship between these two methods of
8 hazard communication;

9 (b) the location and acute and chronic effects of
10 hazardous chemicals used by the employees; and

11 (c) the safe handling, protective equipment, first-aid
12 treatment, and cleanup and disposal procedures for hazardous
13 chemicals.

14 (3) The employer shall keep a record of the dates of
15 training sessions given to employees and the names of the
16 employees attending.

17 Section 13. Departmental information program. (1) The
18 department may develop and provide to any employer a
19 suitable form of notice to inform employees of their rights
20 under [this act].

21 (2) The department may develop an education and
22 training program to assist employers in complying with the
23 provisions of [section 10].

24 (3) The department may develop and distribute a supply
25 of informational leaflets on employer duties, employee

1 rights, the effects of hazardous chemicals, and any other
2 topic related to hazardous chemicals in the workplace.

3 (4) The department may contract with the Montana
4 university system or any other public or private
5 organization to develop and implement an information program
6 on hazardous chemicals in the workplace.

7 Section 14. Construction of act. The provision of
8 information to an employee does not in any way affect the
9 liability of an employer with regard to the health and
10 safety of an employee or other person exposed to hazardous
11 chemicals, nor does it affect the employer's responsibility
12 to take any action to prevent the occurrence of occupational
13 disease or accident as required under any other provision of
14 law. The provision of information to an employee does not
15 affect any other duty of a manufacturer, producer, or
16 formulator to warn ultimate users of a hazardous chemical
17 under any other provision of law.

18 Section 15. Complaints, investigation, and penalties.

19 (1) An employee in a workplace covered by the OSHA standard
20 who believes his employer is not complying with the
21 provisions of the OSHA standard may report the alleged
22 violation to the federal occupational safety and health
23 administration.

24 (2) A person who believes an employer is not complying
25 with the provisions of [this act] may submit a written

complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, he shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the person requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated ~~and--will--continue--to--violate~~ the provisions of [this act] AND THE HEALTH OFFICER DOES NOT RECEIVE A CORRECTIVE RESPONSE WITHIN 10 DAYS OF NOTIFYING THE EMPLOYER OF THE VIOLATION, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) A person may submit a written complaint to the county attorney:

(a) without first submitting it to the local health officer; or

(b) if the local health officer chooses not to act on

1 the complaint, does not follow the provisions of subsection
2 (3), or does not achieve compliance with the law.

3 (5) The county attorney shall investigate any
4 complaint received and, if a violation appears to have
5 occurred AND THE COUNTY ATTORNEY DOES NOT RECEIVE A
6 CORRECTIVE RESPONSE WITHIN 10 DAYS OF NOTIFYING THE EMPLOYER
7 OF THE VIOLATION, initiate appropriate court proceedings to
8 prosecute the violation.

9 (6) If the county attorney fails to achieve compliance
10 with the provisions of [this act], the person submitting the
11 complaint may request in writing that the attorney general,
12 under the powers authorized in 2-15-501, order the county
13 attorney to promptly institute proceedings and diligently
14 prosecute the violation.

15 (7) A person found to be KNOWINGLY in violation of
16 [this act] is guilty of a misdemeanor. Each day of violation
17 is a separate offense.

18 (8) In addition to the remedies provided in this
19 section, a person who believes his rights have been violated
20 under [this act] may apply to the district court for a
21 restraining order or temporary or permanent injunction
22 prohibiting a person from violating or mandating compliance
23 with any provision of [this act].

24 Section 16. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 17. Effective date. This act is effective
6 November 25, 1985.

-End-