

HOUSE BILL NO. 850

Introduced 02/15/83

Referred to Committee on Labor & Employment Relations: 02/15/83

Hearing: 2/19/83

Report: 02/19/83, Do Pass, As Amended

2nd Reading: 02/22/83, Do Pass, As Amended

3rd Reading: 02/23/83, Do Pass

Transmitted to Senate: 02/23/83

Referred to Committee on Labor & Employment Relations: 3/1/83

Hearing: 3/22/83

Report: 03/25/83

Bill Killed: 03/25/83

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House BILL NO. *850*

INTRODUCED BY *Orusell, Richard Manning, D.B. Berg, Christiane Broad, Zachem, Norman Ferris, Smith, J. Brown, Rivett*

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE EMPLOYERS TO DISCLOSE TO EMPLOYEES AND AFFECTED CITIZENS THE IDENTITY AND HEALTH HAZARDS OF CERTAIN SUBSTANCES FOUND IN THE WORKPLACE AND TO REQUIRE THAT IN AN EMERGENCY INVOLVING HAZARDOUS OR TOXIC SUBSTANCES INFORMATION ON THOSE SUBSTANCES BE MADE AVAILABLE TO EMERGENCY PERSONNEL; AMENDING SECTIONS 50-70-109 AND 50-70-118, MCA."

WHEREAS, the handling, storage, use, transport, and processing of toxic or hazardous substances may endanger the health, welfare, and safety of those who live and work within the state; and

WHEREAS, it is necessary for the protection of the citizens and workers of the state that employers who manufacture, process, use, or store toxic or hazardous substances disclose to their employees, local fire departments, and the Department of Health and Environmental Sciences the identity of and the hazards associated with those substances; and

WHEREAS, disclosure is necessary so that workers, residents, and fire departments may respond quickly to any health problem or emergency created by the handling,

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storage, use, transporting, or processing of toxic or hazardous substances; and

WHEREAS, individuals who live and work within the state are entitled to know the identities of the toxic or hazardous substances to which they may be exposed, and these same individuals as well as local fire departments are entitled to know the health hazards associated with the substances to which they may be exposed.

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

~~NEW SECTION.~~ Section 1. Short title. This act may be cited as the "Disclosure of Hazardous or Toxic Substances Act".

~~NEW SECTION.~~ Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

- (1) "Chemical name" means:
 - (a) the scientific designation of a substance in accordance with:
 - (i) the nomenclature system developed by the international union of pure and applied chemistry (IUPAC);
 - (ii) the chemical abstract service (CAS) rules of nomenclature; or
 - (iii) an alternate name found in the National Institute of Occupational Safety and Health Registry of Toxic Effects of Chemical Substances (RTECS); or

1 (b) a prescription generic drug name.

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

6 (3) "Department" means the department of health and
7 environmental sciences established in Title 2, chapter 15,
8 part 21.

9 (4) "Employee" means a current employee, a former
10 employee, or an employee being assigned or transferred to
11 work in a place where he may be exposed to hazardous or
12 toxic substances. "Employee" includes any worker who may be
13 exposed under normal conditions of use or foreseeable
14 emergencies to hazardous substances.

15 (5) "Employer" means a person, firm, corporation,
16 partnership, association, governmental agency, or other
17 entity engaged in business or providing services who has
18 employees.

19 (6) "Employee representative" means an individual or
20 organization to whom an employee or former employee gives
21 written authorization to exercise such employee's rights
22 under [sections 1 through 10]. A recognized or certified
23 collective bargaining agent is treated automatically as an
24 employee representative without regard to written employee
25 authorization.

1 (7) "Expose" or "exposure" means ingestion,
2 inhalation, absorption, or other contact in the workplace
3 with a hazardous or toxic substance and includes past
4 exposure and potential, accidental, or possible exposure.

5 (8) "Hazardous substance" means:
6 (a) any substance determined by the latest edition of
7 the Fire Protection Guide on Hazardous Materials prepared by
8 the national fire protection association (NFPA) to be
9 combustible, explosive, flammable, pyrophoric, unstable
10 (reactive), water reactive, or a compressed gas;
11 (b) any substance listed as a hazardous or toxic
12 substance by the department or any other state agency
13 responsible for the health and safety of Montana citizens.

14 (9) "Local fire department" means a fire department or
15 district organized pursuant to Title 7, chapter 33, part 21,
16 22, 23, or 41.

17 (10) "Manufacturer" means a person or establishment by
18 whom or in which hazardous substances are produced,
19 synthesized, extracted, imported, or otherwise made for use
20 or distribution.

21 (11) "Toxic substance" is a chemical, physical, or
22 biological substance that:
23 (a) is listed in the latest "Current File" of the
24 National Institute for Occupational Safety and Health
25 (NIOSH) Registry of Toxic Effects of Chemical Substances;

(b) has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by or known to the employer;

(c) has a material safety data sheet or other information available to the employer indicating that the material may pose a hazard to human health; or

(d) is regulated by any federal or state law or rule due to a hazard to health.

(12) "Work area" means any room or defined space, inside or outside of a building or other structure, where toxic or hazardous substances are present, produced, or used or where exposure could occur.

(13) "Workplace" means any location where an employee performs any work-related act in the course of employment regardless of whether the location is temporary or permanent.

NEW SECTION. Section 3. Applicability. The provisions of [sections 1 through 10] do not apply to:

(1) consumer products and foodstuffs packaged for distribution to and intended for use by the general public, including any labeled product used or stored in a workplace in the same form, approximate volume, or amount, concentration, and manner as it is sold to and used by the general public, if it remains labeled in the workplace and the employee exposure is not significantly different from

that of the general public during the foreseeable use of the substance;

(2) ingredients used in the production of food or food additives that are regulated by the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31; or

(3) a substance subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.

NEW SECTION. Section 4. Employer responsibility. (1) Each employer who manufactures, processes, uses, or stores hazardous or toxic substances in a workplace within the state shall develop and maintain a hazardous or toxic substance disclosure list containing, except as provided in [section 10], the common and trade names of all hazardous or toxic substances present in the workplace in alphabetical order, cross-referenced to their chemical names.

(2) Each employer who manufactures, processes, uses, or stores a hazardous or toxic substance in a workplace within the state shall annually provide to the local fire department and the department a material safety data sheet that has been prepared by the manufacturer under 29 C.F.R. Sec. 1915.97(b) and (c), as that regulation reads on [the effective date of this act], for every hazardous or toxic substance that appears in the workplace. If a prepared material safety data sheet is not available, the employer

1 shall compile one. The material safety data sheet must set
2 forth the following information:

3 (a) the chemical name, trade name, common name, and
4 any other commonly used name of the substance, except as
5 provided in [section 10];

6 (b) the primary route or routes of exposure to the
7 substance such as inhalation, ingestion, or absorption;

8 (c) the symptoms and the acute and chronic effects of
9 exposure to the substance at hazardous levels and any
10 medical conditions that may be caused or aggravated by
11 exposure to the substance;

12 (d) the potential for flammability, explosion,
13 reactivity, and water reactivity, including the class of
14 flammable or combustible liquid to which the substance
15 belongs as determined by the national fire protection
16 association, inc.;

17 (e) the precautions for safe handling and use,
18 including appropriate hygiene practices and personal
19 protective clothing and equipment recommended;

20 (f) procedures and precautions for spills, leaks,
21 fire, and disposal, including cleanup and decontamination
22 procedures;

23 (g) appropriate emergency and first-aid treatment and
24 procedures to be used in case of exposure to the substance;

25 (h) the name, address, and telephone number of the

1 manufacturer and the date of preparation of the material
2 safety data sheet or of the last alternation of it; and

3 (i) the name and telephone number of a person or
4 persons authorized to disclose, on a 24-hour-a-day basis,
5 information withheld from the material safety data sheet
6 under [section 10].

7 (3) If an employer becomes aware of any information
8 that is significant regarding the health hazard of a
9 substance, this information must be added to the material
10 safety data sheet within a reasonable period of time not to
11 exceed 30 days.

12 (4) Manufacturers and distributors must ensure that
13 purchasers of hazardous or toxic substances are given an
14 appropriate material safety data sheet with their initial
15 shipment and with the first shipment after a material safety
16 data sheet is changed. If the material safety data sheet is
17 not provided with the shipment, the purchasing employer
18 shall obtain one from the manufacturer as soon as possible.

19 ~~NEW SECTION.~~ Section 5. Access to records --
20 employee rights. (1) Each employer shall ensure that copies
21 of material safety data sheets are located at each workplace
22 and are readily accessible to an employee or an employee
23 representative for examination during all hours of operation
24 and no later than 1 working day after a request for the
25 information.

1 (2) One or more employees, their designated
2 representatives, or their recognized collective bargaining
3 agent may request in writing and the employer or employers
4 shall provide any information relating to toxic or hazardous
5 substances that the employer is required to maintain
6 pursuant to [sections 1 through 10].

7 (3) The employer shall provide the requested
8 information within 1 working day of the request at no charge
9 to the employee. If the information is not provided within 1
10 day, the employer may not require the employee to work with
11 the hazardous or toxic substance until the information is
12 made available.

13 (4) An employer may not discharge, discipline,
14 discriminate against, or initiate any adverse personnel
15 action against an employee because the employee has
16 exercised his rights under [sections 1 through 10] or has
17 testified or plans to testify in any proceeding related to
18 [sections 1 through 10].

19 **NEW_SECTION.** Section 6. Retention of records. (1) The
20 employer shall retain a material safety data sheet for a
21 period equivalent to the time that the substance described
22 is used, manufactured, processed, or stored in the
23 workplace, but in no case for less than 1 year.

24 (2) The employer shall retain annual copies of
25 hazardous or toxic substance disclosure lists for 40 years.

1 **NEW_SECTION.** Section 7. Posting requirements. (1)
2 Each employer who manufactures, processes, uses, or stores a
3 hazardous or toxic substance in the workplace shall post a
4 sign in every work area at the location where notices to
5 employees are normally posted to inform employees that they
6 or their designated representative has a right to
7 information from the employer regarding the hazardous or
8 toxic substances found in the workplace.

9 (2) A copy or copies of the hazardous substance
10 disclosure list required under [subsection (1) of section 4]
11 must be posted in every work area.

12 **NEW_SECTION.** Section 8. Location of hazardous or
13 toxic substances -- emergencies. (1) For the purposes of
14 local fire department inspections or emergencies, each
15 employer shall compile and provide to the local fire chief,
16 upon request, lists of the work areas in the workplace where
17 toxic or hazardous substances are manufactured, processed,
18 used, or stored. The list shall specify in alphabetical
19 order by chemical name all toxic or hazardous substances
20 regularly present in each work area.

21 (2) The supplying of information to the local fire
22 chief under subsection (1) is not considered to be
23 disclosure of trade secret information. An employer may
24 specify, however, which information, if any, contained on
25 such lists is trade secret information protected from

1 improper use and dissemination under the provisions of
2 [section 10].

3 (3) In the event of an accident or emergency in the
4 course of transporting hazardous or toxic substances,
5 shipping manifests or other records must be made available,
6 upon request, to authorized emergency personnel or the local
7 fire department.

8 **NEW SECTION.** Section 9. Citizen access to
9 information. (1) Citizens residing within sight, smell, or
10 sound of a workplace using hazardous or toxic substances or
11 who may be adversely affected by accidental or other
12 exposure to such substances discharged from the workplace
13 into the airshed or waterways adjoining the workplace or by
14 any manner into the surrounding environment may request and
15 receive the information provided for in [section 4].

16 (2) The provisions regarding determination of trade
17 secret claims under [section 10] apply to this section.

18 (3) A request by a citizen to receive information must
19 be in the form of a notarized affidavit containing the
20 following:

- 21 (a) the name and address of the requesting citizen;
22 (b) names or descriptions of materials or mixtures
23 believed by the citizen to contain hazardous substances;
24 (c) a statement that the requesting citizen either
25 resides within sight, smell, or sound of the particular

1 workplace or may be adversely affected by accidental or
2 other exposure to the hazardous substances discharged from
3 the workplace into the surrounding environment; and

4 (d) the signature of the requesting party.

5 (4) The employer shall furnish the requested
6 information within 15 working days of receipt of a request
7 under this section. A material safety data sheet is
8 sufficient, unless supplementary data is requested,
9 consistent with the provisions of [sections 1 through 10],
10 in the affidavit.

11 **NEW SECTION.** Section 10. Trade secrets. (1) An
12 employer or manufacturer may withhold the chemical name of a
13 hazardous or toxic substance from the hazardous or toxic
14 substance disclosure list and the material safety data sheet
15 required by [section 4] if:

16 (a) the employer or manufacturer can establish that
17 the substance is a trade secret by obtaining from the
18 chemical manufacturer or distributor a written justification
19 within 30 days of receipt of a written request for
20 substantiation of the trade secret classification by an
21 employee, employee representative, subsequent user, or the
22 department;

23 (b) the employer can establish that the substance is
24 not a suspected or recognized carcinogen, mutagen,
25 teratogen, or otherwise a cause of a material impairment to

1 health;

2 (c) the hazardous or toxic substance is identified by
3 a generic chemical classification that would provide
4 sufficient information upon which a health professional
5 could render recommendations for adequate safeguards to
6 prevent hazardous exposure to the substance;

7 (d) all other information on the properties and
8 effects of the substance required to be included in the
9 material safety data sheet as provided in [section 4] is
10 provided;

11 (e) the material safety data sheet indicates which
12 category of information is being withheld on trade secret
13 grounds;

14 (f) the material safety data sheet for the specific
15 substance in question is posted in the work area where the
16 substance is used, manufactured, or stored; and

17 (g) the withheld information is provided on a
18 confidential basis to:

19 (i) a treating physician who states in writing, except
20 in an emergency, that a patient's health problems may be
21 related to exposure to a hazardous or toxic substance; or

22 (ii) a health professional, including an industrial
23 hygienist, toxicologist, or physician who states in writing
24 that the information is needed to evaluate potential health
25 problems resulting from actual exposure.

1 (2) An employer shall provide the chemical name and
2 location of all hazardous or toxic substances,
3 notwithstanding status as a trade secret as provided in
4 subsection (1), to the local fire department as provided in
5 [section 8]. The employer shall designate what information
6 is considered trade secret information to be protected as
7 such by the local fire department pursuant to the provisions
8 of this section and [section 8]. The employer shall also
9 file a statement with the local fire chief, when designating
10 that a certain hazardous substance is a trade secret or that
11 its location would reveal trade secret information, that the
12 conditions of subsection (1) are satisfied.

13 (3) No officer, employee, agent, or contractor of any
14 state or local department, board, or commission may
15 purposely and knowingly disclose to anyone in any manner any
16 trade secret information, except as required to administer
17 or enforce the provisions of [sections 1 through 10] and to
18 perform official duties.

19 (4) The fire chief or his designated representative
20 may disclose information that has been designated a trade
21 secret by an employer when such action is necessary to
22 properly protect health, safety, or property in an emergency
23 situation.

24 Section 11. Section 50-70-109, MCA, is amended to
25 read:

1 "50-70-109. Confidentiality of records. (1) Records
2 Except as provided in [sections 1 through 10], records or
3 other information concerning pollutants or operations which
4 are furnished to or obtained by the board or department and
5 which, as certified by the owner or operator, relate to
6 production or sales figures or to processes or production
7 unique to the owner or operator or which would tend to
8 affect adversely his competitive position are only for the
9 confidential use of the board or department in the
10 administration of this chapter unless the owner expressly
11 agrees to their publication or availability to the general
12 public.

13 (2) This section does not prevent the use of records
14 or information by the board or department in compiling or
15 publishing analyses or summaries relating to the general
16 condition at the work place if the analyses or summaries do
17 not identify an owner or operator or reveal information made
18 otherwise confidential by this section."

19 Section 12. Section 50-70-118, MCA, is amended to
20 read:

21 "50-70-118. Penalty. (1) A person who violates this
22 chapter relating to disclosure of hazardous or toxic
23 substances, limitations of levels, concentrations, or
24 quantities of emissions of various pollutants from a source
25 determined to be necessary to prevent, abate, or control

1 occupational diseases (unless in compliance with this
2 chapter) is guilty of an offense and subject to a fine not
3 to exceed \$1,000. Each day of violation constitutes a
4 separate offense.

5 (2) Proceedings under this section are not a bar to
6 enforcement of this chapter or of rules or orders made under
7 it by injunction or other appropriate remedy. The department
8 may institute and maintain in the name of the state these
9 enforcement proceedings.

10 (3) This chapter does not abridge, limit, impair,
11 create, enlarge, or otherwise affect substantively or
12 procedurally the right of a person to damage or other relief
13 on account of injury to persons or property and to maintain
14 an action or other appropriate proceeding.

15 (4) Fines collected shall be deposited to the state
16 general fund."

17 ~~NEW SECTION.~~ Section 13. Codification instruction.
18 Sections 1 through 10 are intended to be codified as an
19 integral part of Title 50, chapter 70, and the provisions of
20 Title 50, chapter 70, apply to sections 1 through 10.

21 ~~NEW SECTION.~~ Section 14. Severability. If a part of
22 this act is invalid, all valid parts that are severable from
23 the invalid part remain in effect. If a part of this act is
24 invalid in one or more of its applications, the part remains
25 in effect in all valid applications that are severable from

1 the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 447-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 850 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

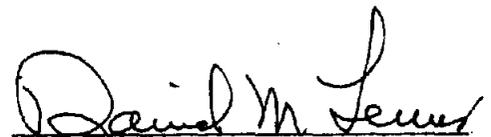
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 850 is a proposal to require employers to disclose health hazards found in the workplace and provides to various public health and safety agencies a list of hazardous material located in the workplace.

COMMENTS:

No dollar estimate can be made for House Bill 850. The department is able to maintain files of hazardous materials required in Section 4 (2) within existing appropriation. House Bill 850 could have an expenditure impact on the department, if increased, hazardous material complaints are received and investigations or enforcement action are necessary.

FISCAL NOTE 15: L/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

1 **STATEMENT OF INTENT**

2 **HOUSE BILL 850**

3 **House Labor and Employment Relations Committee**

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A statement of intent is required for this bill because it extends the duties and rulemaking authority of the Board of Health and Environmental Sciences as defined in Title 50, chapter 70, for the purpose of implementing the provisions of this bill.

Sections 4 through 10 require employers to provide specific information and data on hazardous substances in the workplace to employees, fire officials, the Department of Health and Environmental Sciences, and in certain instances to affected citizens. It is necessary that rules and guidelines for implementing and enforcing these provisions be established.

SECOND READING
AB850

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 850

INTRODUCED BY DRISCOLL, R. MANNING, DOZIER,
BERG, CHRISTIAENS, BRAND, BACHINI, NORMAN,
FARRIS, C. SMITH, J. BROWN, ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE EMPLOYERS TO DISCLOSE TO EMPLOYEES AND AFFECTED CITIZENS THE IDENTITY AND HEALTH HAZARDS OF CERTAIN SUBSTANCES FOUND IN THE WORKPLACE AND TO REQUIRE THAT IN AN EMERGENCY INVOLVING HAZARDOUS OR TOXIC SUBSTANCES INFORMATION ON THOSE SUBSTANCES BE MADE AVAILABLE TO EMERGENCY PERSONNEL; AMENDING SECTIONS 50-70-109 AND 50-70-118, MCA."

WHEREAS, the handling, storage, use, transport, and processing of toxic or hazardous substances may endanger the health, welfare, and safety of those who live and work within the state; and

WHEREAS, it is necessary for the protection of the citizens and workers of the state that employers who manufacture, process, use, or store toxic or hazardous substances disclose to their employees, local fire departments, and the Department of Health and Environmental Sciences the identity of and the hazards associated with those substances; and

WHEREAS, disclosure is necessary so that workers,

residents, and fire departments may respond quickly to any health problem or emergency created by the handling, storage, use, transporting, or processing of toxic or hazardous substances; and

WHEREAS, individuals who live and work within the state are entitled to know the identities of the toxic or hazardous substances to which they may be exposed, and these same individuals as well as local fire departments are entitled to know the health hazards associated with the substances to which they may be exposed.

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

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(1) "Chemical name" means:

(a) the scientific designation of a substance in accordance with:

(i) the nomenclature system developed by the international union of pure and applied chemistry (IUPAC);

(ii) the chemical abstract service (CAS) rules of nomenclature; or

(iii) an alternate name found in the National Institute

1 of Occupational Safety and Health Registry of Toxic Effects
2 of Chemical Substances (RTECS); or

3 (b) a prescription generic drug name.

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

8 (3) "Department" means the department of health and
9 environmental sciences established in Title 2, chapter 15,
10 part 21.

11 (4) "Employee" means a current employee, a former
12 employee, or an employee being assigned or transferred to
13 work in a place where he may be exposed to hazardous or
14 toxic substances. "Employee" includes any worker who may be
15 exposed under normal conditions of use or foreseeable
16 emergencies to hazardous substances.

17 (5) "Employer" means a person, firm, corporation,
18 partnership, association, governmental agency, or other
19 entity engaged in business or providing services who has
20 employees.

21 (6) "Employee representative" means an individual or
22 organization to whom an employee or former employee gives
23 written authorization to exercise such employee's rights
24 under [sections 1 through 10]. A recognized or certified
25 collective bargaining agent is treated automatically as an

1 employee representative without regard to written employee
2 authorization.

3 (7) "Expose" or "exposure" means ingestion,
4 inhalation, absorption, or other contact in the workplace
5 with a hazardous or toxic substance and includes past
6 exposure and potential, accidental, or possible exposure.

7 (8) "Hazardous substance" means:

8 (a) any substance determined by the latest edition of
9 the Fire Protection Guide on Hazardous Materials prepared by
10 the national fire protection association (NFPA) to be
11 combustible, explosive, flammable, pyrophoric, unstable
12 (reactive), water reactive, or a compressed gas;

13 (b) any substance listed as a hazardous or toxic
14 substance by the department or any other state agency
15 responsible for the health and safety of Montana citizens.

16 (9) "Local fire department" means a fire department or
17 district organized pursuant to Title 7, chapter 33, part 21,
18 22, 23, or 41.

19 (10) "Manufacturer" means a person or establishment by
20 whom or in which hazardous substances are produced,
21 synthesized, extracted, imported, or otherwise made for use
22 or distribution.

23 ~~111. "STORE" MEANS TO DEPOSIT IN ONE LOCATION IN THE~~
24 ~~STATE FOR OVER 72 HOURS.~~

25 ~~112. "Toxic substance" is a chemical, physical, or~~

1 biological substance that:

2 (a) is listed in the latest "Current File" of the
3 National Institute for Occupational Safety and Health
4 (NIOSH) Registry of Toxic Effects of Chemical Substances;

5 (b) has yielded positive evidence of an acute or
6 chronic health hazard in human, animal, or other biological
7 testing conducted by or known to the employer;

8 (c) has a material safety data sheet or other
9 information available to the employer indicating that the
10 material may pose a hazard to human health; or

11 (d) is regulated by any federal or state law or rule
12 due to a hazard to health.

13 ~~(13)~~ "Work area" means any room or defined space,
14 inside or outside of a building or other structure, where
15 toxic or hazardous substances are present, produced, or used
16 or where exposure could occur.

17 ~~(14)~~ "Workplace" means any location where an
18 employee performs any work-related act in the course of
19 employment regardless of whether the location is temporary
20 or permanent.

21 NEW SECTION. Section 3. Applicability. The provisions
22 of [sections 1 through 10] do not apply to:

23 (1) consumer products and foodstuffs packaged for
24 distribution to and intended for use by the general public,
25 including any labeled product used or stored in a workplace

1 in the same form, approximate volume, or amount,
2 concentration, and manner as it is sold to and used by the
3 general public, if it remains labeled in the workplace and
4 the employee exposure is not significantly different from
5 that of the general public during the foreseeable use of the
6 substance;

7 (2) ingredients used in the production of food or food
8 additives that are regulated by the Montana Food, Drug, and
9 Cosmetic Act, Title 50, chapter 31; or

10 (3) a substance subject to the packaging and labeling
11 requirements imposed under the Federal Insecticide,
12 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.; OR

13 ~~(4) TEACHING, RESEARCH, OR TESTING LABORATORIES AND~~
14 ~~ASSOCIATED STOREROOMS OPERATED BY BONA FIDE EDUCATIONAL~~
15 ~~INSTITUTIONS.~~

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17 Each employer who manufactures, processes, uses, or stores
18 hazardous or toxic substances in a workplace within the
19 state shall develop and maintain a hazardous or toxic
20 substance disclosure list containing, except as provided in
21 [section 10], the common and trade names of all hazardous or
22 toxic substances present in the workplace in alphabetical
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 14 substance such as inhalation, ingestion, or absorption;

15 (c) the symptoms and the acute and chronic effects of
 16 exposure to the substance at hazardous levels and any
 17 medical conditions that may be caused or aggravated by
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19 (d) the potential for flammability, explosion,
 20 reactivity, and water reactivity, including the class of
 21 flammable or combustible liquid to which the substance
 22 belongs as determined by the national fire protection
 23 association, inc.;

24 (e) the precautions for safe handling and use,
 25 including appropriate hygiene practices and personal

1 protective clothing and equipment recommended;

2 (f) procedures and precautions for spills, leaks,
 3 fire, and disposal, including cleanup and decontamination
 4 procedures;

5 (g) appropriate emergency and first-aid treatment and
 6 procedures to be used in case of exposure to the substance;

7 (h) the name, address, and telephone number of the
 8 manufacturer and the date of preparation of the material
 9 safety data sheet or of the last alternation of it; and

10 (i) the name and telephone number of a person or
 11 persons authorized to disclose, on a 24-hour-a-day basis,
 12 information withheld from the material safety data sheet
 13 under [section 10].

14 (3) If an employer becomes aware of any information
 15 that is significant regarding the health hazard of a
 16 substance, this information must be added to the material
 17 safety data sheet within a reasonable period of time not to
 18 exceed 30 days.

19 (4) Manufacturers and distributors must ensure that
 20 purchasers of hazardous or toxic substances are given an
 21 appropriate material safety data sheet with their initial
 22 shipment and with the first shipment after a material safety
 23 data sheet is changed. If the material safety data sheet is
 24 not provided with the shipment, the purchasing employer
 25 shall obtain one from the manufacturer as soon as possible.

1 ~~NEW_SECTION.~~ Section 5. Access to records --
 2 employee rights. (1) Each employer shall ensure that copies
 3 of material safety data sheets are located at each workplace
 4 and are readily accessible to an employee or an employee
 5 representative for examination during all hours of operation
 6 and no later than 1 working day after a request for the
 7 information.

8 (2) One or more employees, their designated
 9 representatives, or their recognized collective bargaining
 10 agent may request in writing and the employer or employers
 11 shall provide any information relating to toxic or hazardous
 12 substances that the employer is required to maintain
 13 pursuant to [sections 1 through 10].

14 (3) The employer shall provide the requested
 15 information within 1 working day of the request at no charge
 16 to the employee. If the information is not provided within 1
 17 day, the employer may not require the employee to work with
 18 the hazardous or toxic substance until the information is
 19 made available.

20 (4) An employer may not discharge, discipline,
 21 discriminate against, or initiate any adverse personnel
 22 action against an employee because the employee has
 23 exercised his rights under [sections 1 through 10] or has
 24 testified or plans to testify in any proceeding related to
 25 [sections 1 through 10].

1 ~~NEW_SECTION.~~ Section 6. Retention of records. (1) The
 2 employer shall retain a material safety data sheet for a
 3 period equivalent to the time that the substance described
 4 is used, manufactured, processed, or stored in the
 5 workplace, but in no case for less than 1 year.

6 (2) The employer shall retain annual copies of
 7 hazardous or toxic substance disclosure lists for 40 years.

8 ~~NEW_SECTION.~~ Section 7. Posting requirements. (1)
 9 Each employer who manufactures, processes, uses, or stores a
 10 hazardous or toxic substance in the workplace shall post a
 11 sign in every work area at the location where notices to
 12 employees are normally posted to inform employees that they
 13 or their designated representative has a right to
 14 information from the employer regarding the hazardous or
 15 toxic substances found in the workplace.

16 (2) A copy or copies of the hazardous substance
 17 disclosure list required under [subsection (1) of section 4]
 18 must be posted in every work area.

19 ~~NEW_SECTION.~~ Section 8. Location of hazardous or
 20 toxic substances -- emergencies. (1) For the purposes of
 21 local fire department inspections or emergencies, each
 22 employer shall compile and provide to the local fire chief,
 23 upon request, lists of the work areas in the workplace where
 24 toxic or hazardous substances are manufactured, processed,
 25 used, or stored. The list shall specify in alphabetical

1 order by chemical name all toxic or hazardous substances
2 regularly present in each work area.

3 (2) The supplying of information to the local fire
4 chief under subsection (1) is not considered to be
5 disclosure of trade secret information. An employer may
6 specify, however, which information, if any, contained on
7 such lists is trade secret information protected from
8 improper use and dissemination under the provisions of
9 [section 10].

10 (3) In the event of an accident or emergency in the
11 course of transporting hazardous or toxic substances,
12 shipping manifests or other records must be made available,
13 upon request, to authorized emergency personnel or the local
14 fire department.

15 ~~NEW SECTION.~~ Section 9. Citizen access to
16 information. (1) Citizens residing within sight, smell, or
17 sound of a workplace using hazardous or toxic substances or
18 who may be adversely affected by accidental or other
19 exposure to such substances discharged from the workplace
20 into the airshed or waterways adjoining the workplace or by
21 any manner into the surrounding environment may request and
22 receive the information provided for in [section 4].

23 (2) The provisions regarding determination of trade
24 secret claims under [section 10] apply to this section.

25 (3) A request by a citizen to receive information must

1 be in the form of a notarized affidavit containing the
2 following:

- 3 (a) the name and address of the requesting citizen;
4 (b) names or descriptions of materials or mixtures
5 believed by the citizen to contain hazardous substances;
6 (c) a statement that the requesting citizen either
7 resides within sight, smell, or sound of the particular
8 workplace or may be adversely affected by accidental or
9 other exposure to the hazardous substances discharged from
10 the workplace into the surrounding environment; and
11 (d) the signature of the requesting party.

12 (4) The employer shall furnish the requested
13 information within 15 working days of receipt of a request
14 under this section. A material safety data sheet is
15 sufficient, unless supplementary data is requested,
16 consistent with the provisions of [sections 1 through 10],
17 in the affidavit.

18 ~~NEW SECTION.~~ Section 10. Trade secrets. (1) An
19 employer or manufacturer may withhold the chemical name of a
20 hazardous or toxic substance from the hazardous or toxic
21 substance disclosure list and the material safety data sheet
22 required by [section 4] if:

- 23 (a) the employer or manufacturer can establish that
24 the substance is a trade secret by obtaining from the
25 chemical manufacturer or distributor a written justification

1 within 30 days of receipt of a written request for
 2 substantiation of the trade secret classification by an
 3 employee, employee representative, subsequent user, or the
 4 department;

5 (b) the employer can establish that the substance is
 6 not a suspected or recognized carcinogen, mutagen,
 7 teratogen, or otherwise a cause of a material impairment to
 8 health;

9 (c) the hazardous or toxic substance is identified by
 10 a generic chemical classification that would provide
 11 sufficient information upon which a health professional
 12 could render recommendations for adequate safeguards to
 13 prevent hazardous exposure to the substance;

14 (d) all other information on the properties and
 15 effects of the substance required to be included in the
 16 material safety data sheet as provided in [section 4] is
 17 provided;

18 (e) the material safety data sheet indicates which
 19 category of information is being withheld on trade secret
 20 grounds;

21 (f) the material safety data sheet for the specific
 22 substance in question is posted in the work area where the
 23 substance is used, manufactured, or stored; and

24 (g) the withheld information is provided on a
 25 confidential basis to:

1 (i) a treating physician who states in writing, except
 2 in an emergency, that a patient's health problems may be
 3 related to exposure to a hazardous or toxic substance; or

4 (ii) a health professional, including an industrial
 5 hygienist, toxicologist, or physician who states in writing
 6 that the information is needed to evaluate potential health
 7 problems resulting from actual exposure.

8 (2) An employer shall provide the chemical name and
 9 location of all hazardous or toxic substances,
 10 notwithstanding status as a trade secret as provided in
 11 subsection (1), to the local fire department as provided in
 12 [section 8]. The employer shall designate what information
 13 is considered trade secret information to be protected as
 14 such by the local fire department pursuant to the provisions
 15 of this section and [section 8]. The employer shall also
 16 file a statement with the local fire chief, when designating
 17 that a certain hazardous substance is a trade secret or that
 18 its location would reveal trade secret information, that the
 19 conditions of subsection (1) are satisfied.

20 (3) No officer, employee, agent, or contractor of any
 21 state or local department, board, or commission may
 22 purposely and knowingly disclose to anyone in any manner any
 23 trade secret information, except as required to administer
 24 or enforce the provisions of [sections 1 through 10] and to
 25 perform official duties.

1 (4) The fire chief or his designated representative
2 may disclose information that has been designated a trade
3 secret by an employer when such action is necessary to
4 properly protect health, safety, or property in an emergency
5 situation.

6 Section 11. Section 50-70-109, MCA, is amended to
7 read:

8 "50-70-109. Confidentiality of records. (1) Records
9 ~~Except as provided in [sections 1 through 10], records~~ or
10 other information concerning pollutants or operations which
11 are furnished to or obtained by the board or department and
12 which, as certified by the owner or operator, relate to
13 production or sales figures or to processes or production
14 unique to the owner or operator or which would tend to
15 affect adversely his competitive position are only for the
16 confidential use of the board or department in the
17 administration of this chapter unless the owner expressly
18 agrees to their publication or availability to the general
19 public.

20 (2) This section does not prevent the use of records
21 or information by the board or department in compiling or
22 publishing analyses or summaries relating to the general
23 condition at the work place if the analyses or summaries do
24 not identify an owner or operator or reveal information made
25 otherwise confidential by this section."

1 Section 12. Section 50-70-118, MCA, is amended to
2 read:

3 "50-70-118. Penalty. (1) A person who violates this
4 chapter relating to disclosure of hazardous or toxic
5 substances, limitations of levels, concentrations, or
6 quantities of emissions of various pollutants from a source
7 determined to be necessary to prevent, abate, or control
8 occupational diseases (unless in compliance with this
9 chapter) is guilty of an offense and subject to a fine not
10 to exceed \$1,000. Each day of violation constitutes a
11 separate offense.

12 (2) Proceedings under this section are not a bar to
13 enforcement of this chapter or of rules or orders made under
14 it by injunction or other appropriate remedy. The department
15 may institute and maintain in the name of the state these
16 enforcement proceedings.

17 (3) This chapter does not abridge, limit, impair,
18 create, enlarge, or otherwise affect substantively or
19 procedurally the right of a person to damage or other relief
20 on account of injury to persons or property and to maintain
21 an action or other appropriate proceeding.

22 (4) Fines collected shall be deposited to the state
23 general fund."

24 NEW SECTION. Section 13. Codification instruction.
25 Sections 1 through 10 are intended to be codified as an

1 integral part of Title 50, chapter 70, and the provisions of
2 Title 50, chapter 70, apply to sections 1 through 10.

3 NEW SECTION. Section 14. Severability. If a part of
4 this act is invalid, all valid parts that are severable from
5 the invalid part remain in effect. If a part of this act is
6 invalid in one or more of its applications, the part remains
7 in effect in all valid applications that are severable from
8 the invalid applications.

-End-

1 **STATEMENT OF INTENT**

2 **HOUSE BILL 850**

3 **House Labor and Employment Relations Committee**

4
5 A statement of intent is required for this bill because
6 it extends the duties and rulemaking authority of the Board
7 of Health and Environmental Sciences as defined in Title 50,
8 chapter 70, for the purpose of implementing the provisions
9 of this bill.

10 Sections 4 through 10 require employers to provide
11 specific information and data on hazardous substances in the
12 workplace to employees, fire officials, the Department of
13 Health and Environmental Sciences, and in certain instances
14 to affected citizens. It is necessary that rules and
15 guidelines for implementing and enforcing these provisions
16 be established.

THIRD READING

H B 850

HOUSE BILL NO. 850

INTRODUCED BY DRISCOLL, R. MANNING, DOZIER,
BERG, CHRISTIAENS, BRAND, BACHINI, NORMAN,
FARRIS, C. SMITH, J. BROWN, ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE EMPLOYERS TO DISCLOSE TO EMPLOYEES AND AFFECTED CITIZENS THE IDENTITY AND HEALTH HAZARDS OF CERTAIN SUBSTANCES FOUND IN THE WORKPLACE AND TO REQUIRE THAT IN AN EMERGENCY INVOLVING HAZARDOUS OR TOXIC SUBSTANCES INFORMATION ON THOSE SUBSTANCES BE MADE AVAILABLE TO EMERGENCY PERSONNEL; AMENDING SECTIONS 50-70-109 AND 50-70-118, MCA."

WHEREAS, the handling, storage, use, transport, and processing of toxic or hazardous substances may endanger the health, welfare, and safety of those who live and work within the state; and

WHEREAS, it is necessary for the protection of the citizens and workers of the state that employers who manufacture, process, use, or store toxic or hazardous substances disclose to their employees, local fire departments, and the Department of Health and Environmental Sciences the identity of and the hazards associated with those substances; and

WHEREAS, disclosure is necessary so that workers,

residents, and fire departments may respond quickly to any health problem or emergency created by the handling, storage, use, transporting, or processing of toxic or hazardous substances; and

WHEREAS, individuals who live and work within the state are entitled to know the identities of the toxic or hazardous substances to which they may be exposed, and these same individuals as well as local fire departments are entitled to know the health hazards associated with the substances to which they may be exposed.

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

~~NEW SECTION.~~ Section 1. Short title. This act may be cited as the "Disclosure of Hazardous or Toxic Substances Act".

~~NEW SECTION.~~ Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Chemical name" means:

(a) the scientific designation of a substance in accordance with:

(i) the nomenclature system developed by the international union of pure and applied chemistry (IUPAC);

(ii) the chemical abstract service (CAS) rules of nomenclature; or

(iii) an alternate name found in the National Institute

1 of Occupational Safety and Health Registry of Toxic Effects
2 of Chemical Substances (RTECS); or

3 (b) a prescription generic drug name.

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

8 (3) "Department" means the department of health and
9 environmental sciences established in Title 2, chapter 15,
10 part 21.

11 (4) "Employee" means a current employee, a former
12 employee, or an employee being assigned or transferred to
13 work in a place where he may be exposed to hazardous or
14 toxic substances. "Employee" includes any worker who may be
15 exposed under normal conditions of use or foreseeable
16 emergencies to hazardous substances.

17 (5) "Employer" means a person, firm, corporation,
18 partnership, association, governmental agency, or other
19 entity engaged in business or providing services who has
20 employees.

21 (6) "Employee representative" means an individual or
22 organization to whom an employee or former employee gives
23 written authorization to exercise such employee's rights
24 under [sections 1 through 10]. A recognized or certified
25 collective bargaining agent is treated automatically as an

1 employee representative without regard to written employee
2 authorization.

3 (7) "Exposure" or "exposure" means ingestion,
4 inhalation, absorption, or other contact in the workplace
5 with a hazardous or toxic substance and includes past
6 exposure and potential, accidental, or possible exposure.

7 (8) "Hazardous substance" means:

8 (a) any substance determined by the latest edition of
9 the Fire Protection Guide on Hazardous Materials prepared by
10 the national fire protection association (NFPA) to be
11 combustible, explosive, flammable, pyrophoric, unstable
12 (reactive), water reactive, or a compressed gas;

13 (b) any substance listed as a hazardous or toxic
14 substance by the department or any other state agency
15 responsible for the health and safety of Montana citizens.

16 (9) "Local fire department" means a fire department or
17 district organized pursuant to Title 7, chapter 33, part 21,
18 22, 23, or 41.

19 (10) "Manufacturer" means a person or establishment by
20 whom or in which hazardous substances are produced,
21 synthesized, extracted, imported, or otherwise made for use
22 or distribution.

23 ~~(11) "STORE" MEANS TO DEPOSIT IN ONE LOCATION IN THE~~
24 ~~STATE FOR OVER 72 HOURS.~~

25 ~~+++~~(12) "Toxic substance" is a chemical, physical, or

1 biological substance that:

2 (a) is listed in the latest "Current File" of the
3 National Institute for Occupational Safety and Health
4 (NIOSH) Registry of Toxic Effects of Chemical Substances;

5 (b) has yielded positive evidence of an acute or
6 chronic health hazard in human, animal, or other biological
7 testing conducted by or known to the employer;

8 (c) has a material safety data sheet or other
9 information available to the employer indicating that the
10 material may pose a hazard to human health; or

11 (d) is regulated by any federal or state law or rule
12 due to a hazard to health.

13 ~~(12)~~(13) "Work area" means any room or defined space,
14 inside or outside of a building or other structure, where
15 toxic or hazardous substances are present, produced, or used
16 or where exposure could occur.

17 ~~(13)~~(14) "Workplace" means any location where an
18 employee performs any work-related act in the course of
19 employment regardless of whether the location is temporary
20 or permanent.

21 **NEW SECTION.** Section 3. Applicability. The provisions
22 of [sections 1 through 10] do not apply to:

23 (1) consumer products and foodstuffs packaged for
24 distribution to and intended for use by the general public,
25 including any labeled product used or stored in a workplace

1 in the same form, approximate volume, or amount,
2 concentration, and manner as it is sold to and used by the
3 general public, if it remains labeled in the workplace and
4 the employee exposure is not significantly different from
5 that of the general public during the foreseeable use of the
6 substance;

7 (2) ingredients used in the production of food or food
8 additives that are regulated by the Montana Food, Drug, and
9 Cosmetic Act, Title 50, chapter 31; or

10 (3) a substance subject to the packaging and labeling
11 requirements imposed under the Federal Insecticide,
12 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.; or

13 ~~(4) ANY TEACHING, RESEARCH, OR TESTING LABORATORIES
14 AND LABORATORY, INCLUDING ANY ASSOCIATED STORAGE
15 ROOM OPERATED BY A BONA FIDE EDUCATIONAL INSTITUTIONS
16 INSTITUTION; OR~~

17 ~~(5) ANY CLINICAL LABORATORY OR HEALTH CARE FACILITY AS
18 DEFINED IN 50-5-101, PHARMACY AS DEFINED IN 37-7-101, OR THE
19 CLINIC OR OFFICE OF ANY PHYSICIAN, DENTIST, OSTEOPATH,
20 PODIATRIST, OR VETERINARIAN LICENSED UNDER TITLE 37.~~

21 **NEW SECTION.** Section 4. Employer responsibility. (1)
22 Each employer who manufactures, processes, uses, or stores
23 hazardous or toxic substances in a workplace within the
24 state shall develop and maintain a hazardous or toxic
25 substance disclosure list containing, except as provided in

1 [section 10], the common and trade names of all hazardous or
2 toxic substances present in the workplace in alphabetical
3 order, cross-referenced to their chemical names.

4 (2) Each employer who manufactures, processes, uses,
5 or stores a hazardous or toxic substance in a workplace
6 within the state shall annually provide to the local fire
7 department and the department a material safety data sheet
8 that has been prepared by the manufacturer under 29 C.F.R.
9 Sec. 1915.97(b) and (c), as that regulation reads on [the
10 effective date of this act], for every hazardous or toxic
11 substance that appears in the workplace. If a prepared
12 material safety data sheet is not available, the employer
13 shall compile one. The material safety data sheet must set
14 forth the following information:

15 (a) the chemical name, trade name, common name, and
16 any other commonly used name of the substance, except as
17 provided in [section 10];

18 (b) the primary route or routes of exposure to the
19 substance such as inhalation, ingestion, or absorption;

20 (c) the symptoms and the acute and chronic effects of
21 exposure to the substance at hazardous levels and any
22 medical conditions that may be caused or aggravated by
23 exposure to the substance;

24 (d) the potential for flammability, explosion,
25 reactivity, and water reactivity, including the class of

1 flammable or combustible liquid to which the substance
2 belongs as determined by the national fire protection
3 association, inc.;

4 (e) the precautions for safe handling and use,
5 including appropriate hygiene practices and personal
6 protective clothing and equipment recommended;

7 (f) procedures and precautions for spills, leaks,
8 fire, and disposal, including cleanup and decontamination
9 procedures;

10 (g) appropriate emergency and first-aid treatment and
11 procedures to be used in case of exposure to the substance;

12 (h) the name, address, and telephone number of the
13 manufacturer and the date of preparation of the material
14 safety data sheet or of the last alternation of it; and

15 (i) the name and telephone number of a person or
16 persons authorized to disclose, on a 24-hour-a-day basis,
17 information withheld from the material safety data sheet
18 under [section 10].

19 (3) If an employer becomes aware of any information
20 that is significant regarding the health hazard of a
21 substance, this information must be added to the material
22 safety data sheet within a reasonable period of time not to
23 exceed 30 days.

24 (4) Manufacturers and distributors must ensure that
25 purchasers of hazardous or toxic substances are given an

1 appropriate material safety data sheet with their initial
2 shipment and with the first shipment after a material safety
3 data sheet is changed. If the material safety data sheet is
4 not provided with the shipment, the purchasing employer
5 shall obtain one from the manufacturer as soon as possible.

6 ~~NEW SECTION.~~ Section 5. Access to records --
7 employee rights. (1) Each employer shall ensure that copies
8 of material safety data sheets are located at each workplace
9 and are readily accessible to an employee or an employee
10 representative for examination during all hours of operation
11 and no later than 1 working day after a request for the
12 information.

13 (2) One or more employees, their designated
14 representatives, or their recognized collective bargaining
15 agent may request in writing and the employer or employers
16 shall provide any information relating to toxic or hazardous
17 substances that the employer is required to maintain
18 pursuant to [sections 1 through 10].

19 (3) The employer shall provide the requested
20 information within 1 working day of the request at no charge
21 to the employee. If the information is not provided within 1
22 day, the employer may not require the employee to work with
23 the hazardous or toxic substance until the information is
24 made available.

25 (4) An employer may not discharge, discipline,

1 discriminate against, or initiate any adverse personnel
2 action against an employee because the employee has
3 exercised his rights under [sections 1 through 10] or has
4 testified or plans to testify in any proceeding related to
5 [sections 1 through 10].

6 ~~NEW SECTION.~~ Section 6. Retention of records. (1) The
7 employer shall retain a material safety data sheet for a
8 period equivalent to the time that the substance described
9 is used, manufactured, processed, or stored in the
10 workplace, but in no case for less than 1 year.

11 (2) The employer shall retain annual copies of
12 hazardous or toxic substance disclosure lists for 40 years.

13 ~~NEW SECTION.~~ Section 7. Posting requirements. (1)
14 Each employer who manufactures, processes, uses, or stores a
15 hazardous or toxic substance in the workplace shall post a
16 sign in every work area at the location where notices to
17 employees are normally posted to inform employees that they
18 or their designated representative has a right to
19 information from the employer regarding the hazardous or
20 toxic substances found in the workplace.

21 (2) A copy or copies of the hazardous substance
22 disclosure list required under [subsection (1) of section 4]
23 must be posted in every work area.

24 ~~NEW SECTION.~~ Section 8. Location of hazardous or
25 toxic substances -- emergencies. (1) For the purposes of

1 local fire department inspections or emergencies, each
 2 employer shall compile and provide to the local fire chief,
 3 upon request, lists of the work areas in the workplace where
 4 toxic or hazardous substances are manufactured, processed,
 5 used, or stored. The list shall specify in alphabetical
 6 order by chemical name all toxic or hazardous substances
 7 regularly present in each work area.

8 (2) The supplying of information to the local fire
 9 chief under subsection (1) is not considered to be
 10 disclosure of trade secret information. An employer may
 11 specify, however, which information, if any, contained on
 12 such lists is trade secret information protected from
 13 improper use and dissemination under the provisions of
 14 [section 10].

15 (3) In the event of an accident or emergency in the
 16 course of transporting hazardous or toxic substances,
 17 shipping manifests or other records must be made available,
 18 upon request, to authorized emergency personnel or the local
 19 fire department.

20 NEW SECTION. Section 9. Citizen access to
 21 information. (1) Citizens residing within sight, smell, or
 22 sound of a workplace using hazardous or toxic substances or
 23 who may be adversely affected by accidental or other
 24 exposure to such substances discharged from the workplace
 25 into the airshed or waterways adjoining the workplace or by

1 any manner into the surrounding environment may request and
 2 receive the information provided for in [section 4].

3 (2) The provisions regarding determination of trade
 4 secret claims under [section 10] apply to this section.

5 (3) A request by a citizen to receive information must
 6 be in the form of a notarized affidavit containing the
 7 following:

8 (a) the name and address of the requesting citizen;

9 (b) names or descriptions of materials or mixtures
 10 believed by the citizen to contain hazardous substances;

11 (c) a statement that the requesting citizen either
 12 resides within sight, smell, or sound of the particular
 13 workplace or may be adversely affected by accidental or
 14 other exposure to the hazardous substances discharged from
 15 the workplace into the surrounding environment; and

16 (d) the signature of the requesting party.

17 (4) The employer shall furnish the requested
 18 information within 15 working days of receipt of a request
 19 under this section. A material safety data sheet is
 20 sufficient, unless supplementary data is requested,
 21 consistent with the provisions of [sections 1 through 10],
 22 in the affidavit.

23 NEW SECTION. Section 10. Trade secrets. (1) An
 24 employer or manufacturer may withhold the chemical name of a
 25 hazardous or toxic substance from the hazardous or toxic

1 substance disclosure list and the material safety data sheet
2 required by [section 4] if:

3 (a) the employer or manufacturer can establish that
4 the substance is a trade secret by obtaining from the
5 chemical manufacturer or distributor a written justification
6 within 30 days of receipt of a written request for
7 substantiation of the trade secret classification by an
8 employee, employee representative, subsequent user, or the
9 department;

10 (b) the employer can establish that the substance is
11 not a suspected or recognized carcinogen, mutagen,
12 teratogen, or otherwise a cause of a material impairment to
13 health;

14 (c) the hazardous or toxic substance is identified by
15 a generic chemical classification that would provide
16 sufficient information upon which a health professional
17 could render recommendations for adequate safeguards to
18 prevent hazardous exposure to the substance;

19 (d) all other information on the properties and
20 effects of the substance required to be included in the
21 material safety data sheet as provided in [section 4] is
22 provided;

23 (e) the material safety data sheet indicates which
24 category of information is being withheld on trade secret
25 grounds;

1 (f) the material safety data sheet for the specific
2 substance in question is posted in the work area where the
3 substance is used, manufactured, or stored; and

4 (g) the withheld information is provided on a
5 confidential basis to:

6 (i) a treating physician who states in writing, except
7 in an emergency, that a patient's health problems may be
8 related to exposure to a hazardous or toxic substance; or

9 (ii) a health professional, including an industrial
10 hygienist, toxicologist, or physician who states in writing
11 that the information is needed to evaluate potential health
12 problems resulting from actual exposure.

13 (2) An employer shall provide the chemical name and
14 location of all hazardous or toxic substances,
15 notwithstanding status as a trade secret as provided in
16 subsection (1), to the local fire department as provided in
17 [section 8]. The employer shall designate what information
18 is considered trade secret information to be protected as
19 such by the local fire department pursuant to the provisions
20 of this section and [section 8]. The employer shall also
21 file a statement with the local fire chief, when designating
22 that a certain hazardous substance is a trade secret or that
23 its location would reveal trade secret information, that the
24 conditions of subsection (1) are satisfied.

25 (3) No officer, employee, agent, or contractor of any

1 state or local department, board, or commission may
 2 purposely and knowingly disclose to anyone in any manner any
 3 trade secret information, except as required to administer
 4 or enforce the provisions of [sections 1 through 10] and to
 5 perform official duties.

6 (4) The fire chief or his designated representative
 7 may disclose information that has been designated a trade
 8 secret by an employer when such action is necessary to
 9 properly protect health, safety, or property in an emergency
 10 situation.

11 Section 11. Section 50-70-109, MCA, is amended to
 12 read:

13 "50-70-109. Confidentiality of records. (1) Records
 14 ~~Except as provided in [sections 1 through 10], records~~ or
 15 other information concerning pollutants or operations which
 16 are furnished to or obtained by the board or department and
 17 which, as certified by the owner or operator, relate to
 18 production or sales figures or to processes or production
 19 unique to the owner or operator or which would tend to
 20 affect adversely his competitive position are only for the
 21 confidential use of the board or department in the
 22 administration of this chapter unless the owner expressly
 23 agrees to their publication or availability to the general
 24 public.

25 (2) This section does not prevent the use of records

1 or information by the board or department in compiling or
 2 publishing analyses or summaries relating to the general
 3 condition at the work place if the analyses or summaries do
 4 not identify an owner or operator or reveal information made
 5 otherwise confidential by this section."

6 Section 12. Section 50-70-118, MCA, is amended to
 7 read:

8 "50-70-118. Penalty. (1) A person who violates this
 9 chapter relating to disclosure of hazardous or toxic
 10 substances, limitations of levels, concentrations, or
 11 quantities of emissions of various pollutants from a source
 12 determined to be necessary to prevent, abate, or control
 13 occupational diseases (unless in compliance with this
 14 chapter) is guilty of an offense and subject to a fine not
 15 to exceed \$1,000. Each day of violation constitutes a
 16 separate offense.

17 (2) Proceedings under this section are not a bar to
 18 enforcement of this chapter or of rules or orders made under
 19 it by injunction or other appropriate remedy. The department
 20 may institute and maintain in the name of the state these
 21 enforcement proceedings.

22 (3) This chapter does not abridge, limit, impair,
 23 create, enlarge, or otherwise affect substantively or
 24 procedurally the right of a person to damage or other relief
 25 on account of injury to persons or property and to maintain

1 an action or other appropriate proceeding.

2 (4) Fines collected shall be deposited to the state
3 general fund."

4 NEW SECTION. Section 13. Codification instruction.
5 Sections 1 through 10 are intended to be codified as an
6 integral part of Title 50, chapter 70, and the provisions of
7 Title 50, chapter 70, apply to sections 1 through 10.

8 NEW SECTION. Section 14. Severability. If a part of
9 this act is invalid, all valid parts that are severable from
10 the invalid part remain in effect. If a part of this act is
11 invalid in one or more of its applications, the part remains
12 in effect in all valid applications that are severable from
13 the invalid applications.

-End-