

SENATE BILL NO. 452

INTRODUCED BY ECK, BARDANOUVE, COHEN, RANEY, LORY,
NORMAN, VAN VALKENBURG, HANSEN, DRISCOLL, VINCENT,
BLAYLOCK, HARBIN, D. BROWN, HARPER, BRADLEY

IN THE SENATE

February 20, 1985	Introduced and referred to Committee on Labor and Employment Relations. Fiscal Note requested.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Fiscal Note returned. Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 7, 1985	Introduced and referred to Committee on Business and Labor.
April 1, 1985	On motion, taken from Committee on Business and Labor and referred to second reading as amended.

April 4, 1985 Second reading, concurred in
as amended.

April 8, 1985 Third reading, concurred in.

Returned to Senate with
amendments.

IN THE SENATE

April 13, 1985 On motion, rules suspended to
accept. Motion adopted.

April 15, 1985 Received from House.

April 17, 1985 Second reading, amendments
concurred in.

April 18, 1985 Third reading, amendments
concurred in. Ayes, 44;
Noes, 5.

Sent to enrolling.

Reported correctly enrolled.

Jonny
W. Kelly
Sen. Barbara Lee
Sen. Stella Javorkova
Sen. Jim Nutt
Sen. Stanley Haeber
Sen. Dave Beem
Sen. Frank

1 ~~Senate~~ BILL NO. 452
 2 INTRODUCED BY
 3 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "EMPLOYEE
 4 AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT"; REQUIRING
 5 EMPLOYERS TO PROVIDE EMPLOYEES WITH INFORMATION CONCERNING
 6 HAZARDOUS CHEMICALS IN THE WORKPLACE; REQUIRING COUNTY CLERK
 7 AND RECORDERS TO MAINTAIN AND PROVIDE PUBLIC ACCESS TO THIS
 8 INFORMATION; PROVIDING FOR INSPECTIONS BY LOCAL FIRE CHIEFS;
 9 SPECIFYING RIGHTS OF EMPLOYEES; PROVIDING TRADE SECRET
 10 CONFIDENTIALITY IN CERTAIN CIRCUMSTANCES; AND PROVIDING A
 11 DELAYED EFFECTIVE DATE."
 12

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

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

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

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

25 (2) "Chemical name" means the scientific designation

1 of a chemical in accordance with the nomenclature system
 2 developed by the international union of pure and applied
 3 chemistry or the chemical abstracts service rules of
 4 nomenclature.

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

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

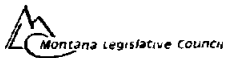
12 (5) "Designated representative" means:
 13 (a) the individual or organization to whom an employee
 14 gives written authorization to exercise the employee's
 15 rights under [this act]; or

16 (b) a recognized or certified collective bargaining
 17 agent who is automatically a designated representative
 18 without regard to written employee authorization.

19 (6) "Distributor" means a business, other than a
 20 chemical manufacturer, that supplies hazardous chemicals to
 21 other distributors or to employers.

22 (7) "Employee" means a person who may be exposed to
 23 hazardous chemicals in his workplace under normal operating
 24 conditions or possible emergencies.

25 (8) "Employer" means a person, firm, corporation,



1 partnership, association, governmental agency, or other
2 entity engaged in business or providing services that
3 employs workers.

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

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

10 (a) any element, chemical compound, or mixture of
11 elements or compounds which is a physical hazard or health
12 hazard as defined by subsection (c) of the OSHA standard;

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

15 (c) any emitter of ionizing radiation.

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

19 (12) "Local fire chief" means:

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

22 (b) the county rural fire chief or the district rural
23 fire chief or his agent, for any workplace not located
24 within a city or town.

25 (13) "Manufacturing employer" means an employer with a

1 workplace classified in any standard industrial
2 classification code 20 through 39 who manufactures, uses, or
3 stores a hazardous chemical.

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

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

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

15 (17) "Trade secret" means a confidential formula,
16 pattern, process, device, or information, including chemical
17 name or other unique chemical identifier, which is used in
18 an employer's business and which gives the employer an
19 opportunity to obtain an advantage over competitors.

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

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

25 (20) "Workplace chemical list" means the list of

1 hazardous chemicals developed under [this act] or under
2 subsection (e)(1)(i) of the OSHA standard.

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

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

7 (b) any retail food sale establishment or other retail
8 trade establishment, exclusive of processing and repair
9 areas;

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

13 (d) a source of ionizing radiation that is an exempt
14 or generally licensed material or device, as defined and
15 described in rules adopted under 75-3-202 and implementing
16 75-3-104 and 75-3-202.

17 (2) Employers operating the following workplaces are
18 in compliance with [this act] if they retain and make
19 accessible to employees and, when applicable, to students,
20 all material safety data sheets received or, if no material
21 safety data sheet is received for a hazardous chemical, any
22 other information received on its hazards and safe handling
23 and if the provisions of [sections 8, 9(5) through (7), and
24 12] are met:

25 (i) a teaching, research, or testing laboratory,

1 including any associated storeroom;

2 (ii) a clinical laboratory or health care facility as
3 defined in 50-5-101;

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

5 (iv) an office of a physician, dentist, osteopath,
6 podiatrist, optometrist, or veterinarian licensed under
7 Title 37.

8 (3) The provisions of [this act] do not apply to any
9 hazardous chemical subject to the packaging and labeling
10 requirements imposed under the Federal Insecticide,
11 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
12 except that:

13 (a) a person storing such hazardous chemicals for the
14 purpose of resale must comply with the provisions of
15 [section 9]; and

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

18 Section 4. Relationship to OSHA standard.

19 (1) Manufacturing employers and distributors that are
20 regulated by and complying with the provisions of the OSHA
21 standard are exempt from the provisions of [this act],
22 except for [sections 6, 7, 9, and 10].

23 (2) Nonmanufacturing employers that adopt and comply
24 with the provisions of the OSHA standard are exempt from the
25 provisions of [this act], except for [sections 6, 7, 9, and

1 10].

2 Section 5. Notice to employees. Employers shall post
3 adequate notice at locations where notices are normally
4 posted informing employees about their rights under [this
5 act].

6 Section 6. Workplace chemical list. (1) Each employer
7 shall compile and maintain a workplace chemical list that
8 must contain the following information for each hazardous
9 chemical present in the workplace:

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

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

15 (2) The workplace chemical list may be prepared for
16 the workplace as a whole or for each work area, provided the
17 list is readily available to employees and their designated
18 representatives.

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

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

24 Section 7. Material safety data sheets. (1) Each
25 chemical manufacturer or distributor shall provide a

1 manufacturing or nonmanufacturing employer with the
2 appropriate material safety data sheet upon delivery of a
3 hazardous chemical.

4 (2) Each employer shall maintain the most current
5 material safety data sheet for each hazardous chemical in
6 the workplace. If a material safety data sheet has not been
7 provided by the chemical manufacturer or distributor at the
8 time a hazardous chemical is delivered to the employer, the
9 employer shall request one in writing within 5 working days.
10 The employer shall send a copy of the letter requesting the
11 material safety data sheet to the clerk and recorder of the
12 county in which the workplace is located.

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

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

21 (2) Any portable container intended for an immediate
22 transfer of a hazardous chemical is not required to be
23 labeled.

24 Section 9. Emergency and community information.
25 (1) An employer normally having hazardous chemicals in the

1 workplace of his employees shall submit the following
2 information to the clerk and recorder of the county in which
3 the workplace is located:

4 (a) a copy of the most current material safety data
5 sheet for each hazardous chemical in the workplace;

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

10 (c) a copy of each new annual workplace chemical list;
11 and

12 (d) the names and telephone numbers of knowledgeable
13 representatives of the employer or the chemical manufacturer
14 who can be contacted for further information or in case of
15 an emergency.

16 (2) The county clerk and recorder shall record, file,
17 or otherwise maintain the information provided under
18 subsection (1). The county clerk and recorder shall maintain
19 a copy of each current material safety data sheet until
20 informed by the employer that the hazardous chemical is no
21 longer used or present in the workplace. The county clerk
22 and recorder shall maintain a copy of each annual workplace
23 chemical list for 30 years. All information for any given
24 workplace must be filed, recorded, or maintained in a manner
25 that allows it to be readily retrievable as a whole.

1 (3) All information submitted under subsection (1) is
2 public information and must be available at the office of
3 the county clerk and recorder during normal working hours to
4 any person for inspection and copying at the expense of the
5 person requesting copies.

6 (4) The local fire chief shall inspect all information
7 maintained by the county clerk and recorder on workplace
8 hazardous chemicals and upon request must be provided with a
9 copy of any document.

10 (5) The local fire chief must be permitted onsite
11 inspection of hazardous chemicals in any workplace,
12 including workplaces under the control of a state agency,
13 for the purposes of planning fire department activities in
14 case of an emergency and reviewing compliance with [this
15 act].

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

21 (7) The local fire chief shall consult at least
22 annually on safety and emergency considerations with each
23 person responsible for the operation of any research,
24 educational, or testing laboratory workplace. The
25 consultation may result in recommendations or, under the

1 provisions of 50-62-108, orders by the fire chief to be
2 implemented by the laboratory operator to enhance public
3 safety, to reduce the likelihood of emergency incidents, or
4 to improve emergency response in the event of an accident.
5 The person responsible for the operation of the laboratory
6 shall contact the local fire chief at any time there is a
7 significant change in the location or nature of the
8 hazardous chemicals in the workplace, initiation of any new
9 and potentially dangerous method of processing or reacting
10 hazardous chemicals, or any other operational change
11 affecting emergency response considerations.

12 Section 10. Employee rights. (1) An employee who may
13 be exposed to hazardous chemicals must be informed of the
14 potential or actual exposure and must be provided access to
15 the workplace chemical list and to the material safety data
16 sheet for each hazardous chemical. An employer who does not
17 provide an employee with information on a hazardous
18 chemical, as required by [this act], may not require the
19 employee to work with the hazardous chemical until the
20 information is made available.

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

25 (3) Each employee required to work with a hazardous

1 chemical must be provided with appropriate personal
2 protective equipment.

3 (4) No employer shall discharge, cause to be
4 discharged, discipline, discriminate against, or initiate
5 any adverse personnel action against any employee who
6 exercises his rights, testifies, or assists others in
7 exercising their rights or duties under [this act].

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

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

16 Section 11. Trade secret confidentiality. (1) An
17 employer who believes that the name of a hazardous chemical
18 is a trade secret may withhold the chemical name from the
19 material safety data sheet and workplace chemical list only
20 if:

21 (a) a material safety data sheet, coded to an
22 identifying notation on each container of the hazardous
23 chemical, is available in the work area where the hazardous
24 chemical is present;

25 (b) the material safety data sheet discloses the

1 properties and effects of the hazardous chemical;

2 (c) the specific chemical identity is provided to a
3 treating physician or nurse in the event of a medical
4 emergency, as provided for in subsection (i)(2) of the OSHA
5 standard;

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

11 (e) the employer obtains a declaratory judgment or an
12 action is pending therefor, as provided in subsection (2).

13 (2) In order to obtain confidentiality protection for
14 a trade secret, an employer shall obtain a declaratory
15 judgment in an action filed in the district court for Lewis
16 and Clark County. Before entering judgment conferring
17 confidentiality protection, the court must find, based on
18 supporting documentation, that a need for trade secret
19 classification has been established. The department must be
20 served and may intervene as a party in the action. During
21 the pendency of any such declaratory judgment action, the
22 department must maintain the information as confidential.

23 Section 12. Employee education program. (1) Each
24 employer shall provide, at least annually, an education and
25 training program for all his employees using or handling

1 hazardous chemicals. Additional instruction must be provided
2 whenever the potential for exposure to hazardous chemicals
3 is altered or whenever new and significant information is
4 received by the employer concerning the hazards of a
5 chemical. New or newly assigned employees must be provided
6 training before working with or in a work area containing a
7 hazardous chemical.

8 (2) The programs must provide instruction in:

9 (a) interpreting labels and material safety data
10 sheets and the relationship between these two methods of
11 hazard communication;

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

14 (c) the safe handling, protective equipment, first-aid
15 treatment, and cleanup and disposal procedures for hazardous
16 chemicals.

17 (3) The employer shall keep a record of the dates of
18 training sessions given to employees and the names of the
19 employees attending.

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

24 (2) The department may develop an education and
25 training program to assist employers in complying with the

1 provisions of [section 10].

2 (3) The department may develop and distribute a supply
3 of informational leaflets on employer duties, employee
4 rights, the effects of hazardous chemicals, and any other
5 topic related to hazardous chemicals in the workplace.

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

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

21 Section 15. Complaints, investigation, and penalties.

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

1 administration.

2 (2) A person who believes an employer is not complying
3 with the provisions of [this act] may submit a written
4 complaint to the local health officer, as defined and
5 described in Title 50, chapter 2, part 1.

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

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

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

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

17 (d) if the evidence suggests that the employer has
18 violated and will continue to violate the provisions of
19 [this act], file a complaint in the appropriate court or
20 request appropriate action by the county attorney to
21 prosecute the alleged violation.

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

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

1 (b) if the local health officer chooses not to act on
2 the complaint, does not follow the provisions of subsection
3 (3), or does not achieve compliance with the law.

4 (5) The county attorney shall investigate any
5 complaint received and, if a violation appears to have
6 occurred, initiate appropriate court proceedings to
7 prosecute the violation.

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

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

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

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

1 one or more of its applications, the part remains in effect
2 in all valid applications that are severable from the
3 invalid applications.

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

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN486-85

Form BD-15

In compliance with a written request received February 20 19 85, there is hereby submitted a Fiscal Note for S.B. 452 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:

An act creating the "Employee and Community Hazardous Chemical Information Act" to provide employees with information on hazardous chemicals in the work place.

ASSUMPTIONS:

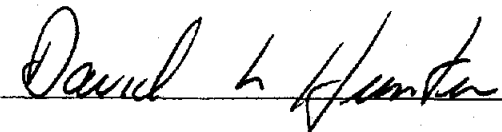
The Department of Health and Environmental Sciences will attempt to implement Senate Bill 452 within available resources.

FISCAL IMPACT:

No fiscal impact.

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURE:

This bill may add considerable expense to local health and fire departments. The clerk and recorders' offices will also experience increased work and expense. A fiscal impact cannot be determined.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 26, 1985

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 452

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AND RECORDERS TO MAINTAIN AND PROVIDE PUBLIC ACCESS TO THIS
INFORMATION; PROVIDING FOR INSPECTIONS BY LOCAL FIRE CHIEFS;
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(a) the individual or organization to whom an employee
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rights under [this act]; or

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3 partnership, association, governmental agency, or other
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8 consumption or use by an employee;

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10 trade establishment, exclusive of processing and repair
11 areas;

12 (c) a food, drug, or cosmetic as defined in the
13 Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;
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15 (d) a source of ionizing radiation that is an exempt
16 or generally licensed material or device, as defined and
17 described in rules adopted under 75-3-202 and implementing
18 75-3-104 and 75-3-202; OR

19 (E) SEALED CONTAINERS OF HAZARDOUS CHEMICALS DURING
20 TRANSPORTATION OR WHILE IN STORAGE AT TRANSPORTATION
21 TERMINALS, SO LONG AS EXISTING LABELS ARE NOT REMOVED OR
22 DEFACED AND THE EMPLOYER COMPLIES WITH STATE AND FEDERAL
23 REGULATIONS RELATING TO THE TRANSPORTATION OF HAZARDOUS
24 CHEMICALS.

25 (2) Employers operating the following workplaces are

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

8 ~~(i)~~(A) a teaching, research, or testing laboratory,
9 including any associated storeroom;

10 ~~(ii)~~(B) a clinical laboratory or health care facility
11 as defined in 50-5-101;

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

13 ~~(iv)~~(D) an office of a physician, dentist, osteopath,
14 podiatrist, optometrist, or veterinarian licensed under
15 Title 37.

16 (3) The provisions of [this act] do not apply to any
17 hazardous chemical subject to the packaging and labeling
18 requirements imposed under the Federal Insecticide,
19 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
20 except that:

21 (a) a person storing such hazardous chemicals for the
22 purpose of resale must comply with the provisions of
23 [section 9]; and

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

1 Section 4. Relationship to OSHA standard.

2 (1) Manufacturing employers and distributors that are
3 regulated by and complying with the provisions of the OSHA
4 standard are exempt from the provisions of [this act],
5 except for [sections 6, 7, 9, and 10].

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

10 Section 5. Notice to employees. Employers shall post
11 adequate notice at locations where notices are normally
12 posted informing employees about their rights under [this
13 act].

14 Section 6. Workplace chemical list. (1) Each employer
15 shall compile and maintain a workplace chemical list that
16 must contain the following information for each hazardous
17 chemical present in the workplace:

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

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

23 (2) The workplace chemical list may be prepared for
24 the workplace as a whole or for each work area, provided the
25 list is readily available to employees and their designated

1 representatives.

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

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

7 Section 7. Material safety data sheets. (1) Each
8 chemical manufacturer or distributor shall provide a
9 manufacturing or nonmanufacturing employer with the
10 appropriate material safety data sheet upon delivery of a
11 hazardous chemical.

12 (2) Each employer shall maintain the most current
13 material safety data sheet for each hazardous chemical in
14 the workplace. If a material safety data sheet has not been
15 provided by the chemical manufacturer or distributor at the
16 time a hazardous chemical is delivered to the employer, the
17 employer shall request one in writing within 5 working days.
18 The employer shall send a copy of the letter requesting the
19 material safety data sheet to the clerk and recorder of the
20 county in which the workplace is located. EACH EMPLOYER
21 SHALL MAINTAIN A COPY OF ANY CORRESPONDENCE SENT OR RECEIVED
22 BY THE EMPLOYER IN AN EFFORT TO OBTAIN A MATERIAL SAFETY
23 DATA SHEET FOR A HAZARDOUS CHEMICAL WHEN NONE WAS PROVIDED
24 BY THE CHEMICAL MANUFACTURER OR DISTRIBUTOR.

25 (3) Material safety data sheets must be provided by

1 the employer to any employee or designated representative
2 upon request for review or copying.

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

8 (2) Any portable container intended for an immediate
9 transfer of a hazardous chemical is not required to be
10 labeled.

11 Section 9. Emergency and community information.

12 (1) An employer normally having hazardous chemicals in the
13 workplace of his employees shall submit the following
14 information to the clerk and recorder of the county in which
15 the workplace is located:

16 (a) a copy of the most current material safety data
17 sheet for each hazardous chemical in the workplace;

18 ~~(b) a copy of any correspondence sent or received by~~
19 ~~the employer in an effort to obtain a material safety data~~
20 ~~sheet for a hazardous chemical when none was provided by the~~
21 ~~chemical manufacturer or distributor;~~

22 ~~(c)~~ (B) a copy of each new annual workplace chemical
23 list; and

24 ~~(d)~~ (C) the names and telephone numbers of
25 knowledgeable representatives of the employer or the

1 chemical manufacturer who can be contacted for further
2 information or in case of an emergency.

3 (2) The county clerk and recorder shall record, file,
4 or otherwise maintain the information provided under
5 subsection (1). The county clerk and recorder shall maintain
6 a copy of each current material safety data sheet until
7 ~~informed--by~~ the employer RECORDS NOTICE that the hazardous
8 chemical is no longer used or present in the workplace. ~~The~~
9 ~~county--clerk--and--recorder--shall--maintain--a--copy--of--each~~
10 ~~annual--workplace--chemical--list--for--30--years--At~~
11 ~~information--for--any--given--workplace--must--be--filed,--recorded,~~
12 ~~or--maintained--in--a--manner--that--allows--it--to--be--readily~~
13 ~~retrievable--as--a--whole:~~ THE COUNTY CLERK AND RECORDER SHALL
14 INDEX THE INFORMATION PROVIDED UNDER SUBSECTION (1) BY
15 WORKPLACE NAME AND ALL ENTRIES FOR A WORKPLACE MUST BE
16 GROUPED TOGETHER IN THE INDEX. THE INDEX MUST NOT BE
17 COMBINED WITH ANY OTHER TYPE OF INDEX.

18 (3) All information submitted under subsection (1) is
19 public information and must be available at the office of
20 the county clerk and recorder during normal working hours to
21 any person for inspection and copying at the expense of the
22 person requesting copies.

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

1 copy of any document.

2 (5) The local fire chief must be permitted onsite
3 inspection of hazardous chemicals in any workplace,
4 including workplaces under the control of a state agency,
5 for the purposes of planning fire department activities in
6 case of an emergency and reviewing compliance with [this
7 act].

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

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

1 and potentially dangerous method of processing or reacting
2 hazardous chemicals, or any other operational change
3 affecting emergency response considerations.

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

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

17 (3) Each employee required to work with a hazardous
18 chemical must be provided with appropriate personal
19 protective equipment.

20 (4) No employer shall discharge, cause to be
21 discharged, discipline, discriminate against, or initiate
22 any adverse personnel action against any employee who
23 exercises his rights, testifies, or assists others in
24 exercising their rights or duties under [this act].

25 (5) A waiver by an employee of the benefits, rights,

1 or requirements of [this act] is against public policy and
 2 is void. An employer's request or requirement that an
 3 employee waive any rights under [this act] as a condition of
 4 employment is a violation of [this act].

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

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

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

17 (b) the material safety data sheet discloses the
 18 properties and effects of the hazardous chemical;

19 (c) the specific chemical identity is provided to a
 20 treating physician or nurse in the event of a medical
 21 emergency, as provided for in subsection (i)(2) of the OSHA
 22 standard;

23 (d) the specific chemical identity is provided in
 24 nonemergency situations to a health professional providing
 25 medical or other occupational health services to an exposed

1 employee, as provided for in subsections (i)(3) through (5)
 2 of the OSHA standard; and

3 (e) the employer obtains a declaratory judgment or an
 4 action is pending therefor, as provided in subsection (2).

5 (2) In order to obtain confidentiality protection for
 6 a trade secret, an employer shall obtain a declaratory
 7 judgment in an action filed in the district court for Lewis
 8 and Clark County. Before entering judgment conferring
 9 confidentiality protection, the court must find, based on
 10 supporting documentation, that a need for trade secret
 11 classification has been established. The department must be
 12 served and may intervene as a party in the action. During
 13 the pendency of any such declaratory judgment action, the
 14 department must maintain the information as confidential.

15 Section 12. Employee education program. (1) Each
 16 employer shall provide, at least annually, an education and
 17 training program for all his employees using or handling
 18 hazardous chemicals. Additional instruction must be provided
 19 whenever the potential for exposure to hazardous chemicals
 20 is altered or whenever new and significant information is
 21 received by the employer concerning the hazards of a
 22 chemical. New or newly assigned employees must be provided
 23 training before working with or in a work area containing a
 24 hazardous chemical.

25 (2) The programs must provide instruction in:

1 (a) interpreting labels and material safety data
2 sheets and the relationship between these two methods of
3 hazard communication;

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

6 (c) the safe handling, protective equipment, first-aid
7 treatment, and cleanup and disposal procedures for hazardous
8 chemicals.

9 (3) The employer shall keep a record of the dates of
10 training sessions given to employees and the names of the
11 employees attending.

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

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

19 (3) The department may develop and distribute a supply
20 of informational leaflets on employer duties, employee
21 rights, the effects of hazardous chemicals, and any other
22 topic related to hazardous chemicals in the workplace.

23 (4) The department may contract with the Montana
24 university system or any other public or private
25 organization to develop and implement an information program

1 on hazardous chemicals in the workplace.

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

13 Section 15. Complaints, investigation, and penalties.
14 (1) An employee in a workplace covered by the OSHA standard
15 who believes his employer is not complying with the
16 provisions of the OSHA standard may report the alleged
17 violation to the federal occupational safety and health
18 administration.

19 (2) A person who believes an employer is not complying
20 with the provisions of [this act] may submit a written
21 complaint to the local health officer, as defined and
22 described in Title 50, chapter 2, part 1.

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

25 (a) within 5 working days of receipt of the complaint,

1 investigate the complaint and, in the event of an apparent
2 violation, seek a corrective response from the employer;

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

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

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

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

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

20 (b) if the local health officer chooses not to act on
21 the complaint, does not follow the provisions of subsection
22 (3), or does not achieve compliance with the law.

23 (5) The county attorney shall investigate any
24 complaint received and, if a violation appears to have
25 occurred AND THE COUNTY ATTORNEY DOES NOT RECEIVE A

1 CORRECTIVE RESPONSE WITHIN 10 DAYS OF NOTIFYING THE EMPLOYER
2 OF THE VIOLATION, initiate appropriate court proceedings to
3 prosecute the violation.

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

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

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

19 Section 16. Severability. If a part of this act is
20 invalid, all valid parts that are severable from the invalid
21 part remain in effect. If a part of this act is invalid in
22 one or more of its applications, the part remains in effect
23 in all valid applications that are severable from the
24 invalid applications.

25 Section 17. Effective date. This act is effective

SB 0452/02

1 November 25, 1985.

-End-

HOUSE COMMITTEE OF THE WHOLE AMENDMENT 4011911L.CW

~~4-1-85~~
DATE

~~7:11~~ PM
TIME

MR. CHAIRMAN: I MOVE TO AMEND

SENATE BILL

No. 452 #1

~~second reading~~ working copy (gray) as follows:
~~strike~~ Color

1. Page 7, lines 4 through 8.
Strike: ":" through "(b)" on line 8

COMMITTEE OF THE WHOLE AMENDMENT

4011912L.CW

~~4-1-85~~
DATE

~~7:12~~ PM
TIME

MR. CHAIRMAN: I MOVE TO AMEND

Senate
~~HOUSE~~ BILL

No. 452 #2

~~second reading~~ working copy (gray) as follows:
~~strike~~ Color

1. Page 18, line 24.
Page 19, line 12.
Page 19, line 21.
Strike: "person"
Insert: "employee"
2. Page 19, line 22.
Strike: ":"
Insert: "."
3. Page 19, lines 23 through 25 and page 20, lines 1 and 2.
Strike: subsections (a) and (b) in their entirety
4. Page 20, lines 9 through 14.
Strike: subsection (5) in its entirety
Renumber: subsequent subsection
5. Page 20, lines 18 through 23.
Strike: subsection (8) in its entirety

ADOPT
REJECT

Ray Brandewie
Rep. Brandewie

ADOPT
REJECT

Ray Brandewie
Rep. Brandewie

COMMITTEE OF THE WHOLE AMENDMENT

4812360L-CW

4-1-85
DATE

11:00 PM
TIME

MR. CHAIRMAN: I MOVE TO AMEND

SENATE BILL

No. 452 #3

~~second reading~~ ^{working} copy (~~white~~ ^{gray}) as follows:
Color

1. Page 9, line 20.

Strike: "An"

Insert: "Except as provided in subsection (2), an"

2. Page 10, following line 13.

Insert: "(2) A county clerk and recorder shall record and update as necessary an index listing each hazardous chemical for which a material safety data sheet has been recorded in the county. The index must include the name of the employer who recorded the material safety data sheet. No employer shall be required to record a material safety data sheet for any hazardous chemical for which a material safety data sheet has already been recorded by any employer in the county."

Renumber: subsequent subsections

ADOPT
REJECT

Ray B. Brandewie
Rep. Brandewie

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.

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

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

14 (5) "Designated representative" means:

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

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

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

24 (7) "Employee" means a person who may be exposed to
25 hazardous chemicals in his workplace under normal operating

1 conditions or possible emergencies.

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

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

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

12 (a) any element, chemical compound, or mixture of
13 elements or compounds which is a physical hazard or health
14 hazard as defined by subsection (c) of the OSHA standard;

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

17 (c) any emitter of ionizing radiation.

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

21 (12) "Local fire chief" means:

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

24 (b) the county rural fire chief or the district rural
25 fire chief or his agent, for any workplace not located

1 within a city or town.

2 (13) "Manufacturing employer" means an employer with a
3 workplace classified in any standard industrial
4 classification code 20 through 39 who manufactures, uses, or
5 stores a hazardous chemical.

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

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

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

17 (17) "Trade secret" means a confidential formula,
18 pattern, process, device, or information, including chemical
19 name or other unique chemical identifier, which is used in
20 an employer's business and which gives the employer an
21 opportunity to obtain an advantage over competitors.

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

25 (19) "Workplace" means an establishment at one

1 geographical location containing one or more work areas.

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

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

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

9 (b) any retail food sale establishment or other retail
10 trade establishment, exclusive of processing and repair
11 areas;

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

15 (d) a source of ionizing radiation that is an exempt
16 or generally licensed material or device, as defined and
17 described in rules adopted under 75-3-202 and implementing
18 75-3-104 and 75-3-202; OR

19 (E) SEALED CONTAINERS OF HAZARDOUS CHEMICALS DURING
20 TRANSPORTATION OR WHILE IN STORAGE AT TRANSPORTATION
21 TERMINALS, SO LONG AS EXISTING LABELS ARE NOT REMOVED OR
22 DEFACED AND THE EMPLOYER COMPLIES WITH STATE AND FEDERAL
23 REGULATIONS RELATING TO THE TRANSPORTATION OF HAZARDOUS
24 CHEMICALS.

25 (2) Employers operating the following workplaces are

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

8 ~~++~~(A) a teaching, research, or testing laboratory,
9 including any associated storeroom;

10 ~~+++~~(B) a clinical laboratory or health care facility
11 as defined in 50-5-101;

12 ~~+++~~(C) a pharmacy as defined in 37-7-101; or

13 ~~++v~~(D) an office of a physician, dentist, osteopath,
14 podiatrist, optometrist, or veterinarian licensed under
15 Title 37.

16 (3) The provisions of [this act] do not apply to any
17 hazardous chemical subject to the packaging and labeling
18 requirements imposed under the Federal Insecticide,
19 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
20 except that:

21 (a) a person storing such hazardous chemicals for the
22 purpose of resale must comply with the provisions of
23 [section 9]; and

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

1 Section 4. Relationship to OSHA standard.

2 (1) Manufacturing employers and distributors that are
3 regulated by and complying with the provisions of the OSHA
4 standard are exempt from the provisions of [this act],
5 except for [sections 6, 7, 9, and 10].

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

10 Section 5. Notice to employees. Employers shall post
11 adequate notice at locations where notices are normally
12 posted informing employees about their rights under [this
13 act].

14 Section 6. Workplace chemical list. (1) Each employer
15 shall compile and maintain a workplace chemical list that
16 must contain the following information for each hazardous
17 chemical present in the workplace:

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

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

23 (2) The workplace chemical list may be prepared for
24 the workplace as a whole or for each work area, provided the
25 list is readily available to employees and their designated

1 representatives.

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

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

7 Section 7. Material safety data sheets. (1) Each
8 chemical manufacturer or distributor shall provide a
9 manufacturing or nonmanufacturing employer with the
10 appropriate material safety data sheet upon delivery of a
11 hazardous chemical.

12 (2) Each employer shall maintain the most current
13 material safety data sheet for each hazardous chemical in
14 the workplace. If a material safety data sheet has not been
15 provided by the chemical manufacturer or distributor at the
16 time a hazardous chemical is delivered to the employer, the
17 employer shall request one in writing within 5 working days.
18 The employer shall send a copy of the letter requesting the
19 material safety data sheet to the clerk and recorder of the
20 county in which the workplace is located. EACH EMPLOYER
21 SHALL MAINTAIN A COPY OF ANY CORRESPONDENCE SENT OR RECEIVED
22 BY THE EMPLOYER IN AN EFFORT TO OBTAIN A MATERIAL SAFETY
23 DATA SHEET FOR A HAZARDOUS CHEMICAL WHEN NONE WAS PROVIDED
24 BY THE CHEMICAL MANUFACTURER OR DISTRIBUTOR.

25 (3) Material safety data sheets must be provided by

1 the employer to any employee or designated representative
2 upon request for review or copying.

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

8 (2) Any portable container intended for an immediate
9 transfer of a hazardous chemical is not required to be
10 labeled.

11 Section 9. Emergency and community information.
12 (1) An employer normally having hazardous chemicals in the
13 workplace of his employees shall submit the following
14 information to the clerk and recorder of the county in which
15 the workplace is located:

16 (a) a copy of the most current material safety data
17 sheet for each hazardous chemical in the workplace;

18 ~~(b) a copy of any correspondence sent or received by~~
19 ~~the employer in an effort to obtain a material safety data~~
20 ~~sheet for a hazardous chemical when none was provided by the~~
21 ~~chemical manufacturer or distributor;~~

22 ~~(c)~~ (B) a copy of each new annual workplace chemical
23 list; and

24 ~~(d)~~ (C) the names and telephone numbers of
25 knowledgeable representatives of the employer or the

1 chemical manufacturer who can be contacted for further
2 information or in case of an emergency.

3 (2) The county clerk and recorder shall record, file,
4 or otherwise maintain the information provided under
5 subsection (1). The county clerk and recorder shall maintain
6 a copy of each current material safety data sheet until
7 informed--by the employer RECORDS NOTICE that the hazardous
8 chemical is no longer used or present in the workplace. The
9 county--clerk--and--recorder--shall--maintain--a--copy--of--each
10 annual--workplace--chemical--list--for--30--years.---All
11 information--for--any--given--workplace--must--be--filed,--recorded,
12 or--maintained--in--a--manner--that--allows--it--to--be--readily
13 retrievable--as--a--whole. THE COUNTY CLERK AND RECORDER SHALL
14 INDEX THE INFORMATION PROVIDED UNDER SUBSECTION (1) BY
15 WORKPLACE NAME AND ALL ENTRIES FOR A WORKPLACE MUST BE
16 GROUPED TOGETHER IN THE INDEX. THE INDEX MUST NOT BE
17 COMBINED WITH ANY OTHER TYPE OF INDEX.

18 (3) All information submitted under subsection (1) is
19 public information and must be available at the office of
20 the county clerk and recorder during normal working hours to
21 any person for inspection and copying at the expense of the
22 person requesting copies.

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

1 copy of any document.

2 (5) The local fire chief must be permitted onsite
3 inspection of hazardous chemicals in any workplace,
4 including workplaces under the control of a state agency,
5 for the purposes of planning fire department activities in
6 case of an emergency and reviewing compliance with [this
7 act].

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

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

1 and potentially dangerous method of processing or reacting
2 hazardous chemicals, or any other operational change
3 affecting emergency response considerations.

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

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

17 (3) Each employee required to work with a hazardous
18 chemical must be provided with appropriate personal
19 protective equipment.

20 (4) No employer shall discharge, cause to be
21 discharged, discipline, discriminate against, or initiate
22 any adverse personnel action against any employee who
23 exercises his rights, testifies, or assists others in
24 exercising their rights or duties under [this act].

25 (5) A waiver by an employee of the benefits, rights,

1 or requirements of [this act] is against public policy and
 2 is void. An employer's request or requirement that an
 3 employee waive any rights under [this act] as a condition of
 4 employment is a violation of [this act].

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

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

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

17 (b) the material safety data sheet discloses the
 18 properties and effects of the hazardous chemical;

19 (c) the specific chemical identity is provided to a
 20 treating physician or nurse in the event of a medical
 21 emergency, as provided for in subsection (i)(2) of the OSHA
 22 standard;

23 (d) the specific chemical identity is provided in
 24 nonemergency situations to a health professional providing
 25 medical or other occupational health services to an exposed

1 employee, as provided for in subsections (i)(3) through (5)
 2 of the OSHA standard; and

3 (e) the employer obtains a declaratory judgment or an
 4 action is pending therefor, as provided in subsection (2).

5 (2) In order to obtain confidentiality protection for
 6 a trade secret, an employer shall obtain a declaratory
 7 judgment in an action filed in the district court for Lewis
 8 and Clark County. Before entering judgment conferring
 9 confidentiality protection, the court must find, based on
 10 supporting documentation, that a need for trade secret
 11 classification has been established. The department must be
 12 served and may intervene as a party in the action. During
 13 the pendency of any such declaratory judgment action, the
 14 department must maintain the information as confidential.

15 Section 12. Employee education program. (1) Each
 16 employer shall provide, at least annually, an education and
 17 training program for all his employees using or handling
 18 hazardous chemicals. Additional instruction must be provided
 19 whenever the potential for exposure to hazardous chemicals
 20 is altered or whenever new and significant information is
 21 received by the employer concerning the hazards of a
 22 chemical. New or newly assigned employees must be provided
 23 training before working with or in a work area containing a
 24 hazardous chemical.

25 (2) The programs must provide instruction in:

1 (a) interpreting labels and material safety data
2 sheets and the relationship between these two methods of
3 hazard communication;

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

6 (c) the safe handling, protective equipment, first-aid
7 treatment, and cleanup and disposal procedures for hazardous
8 chemicals.

9 (3) The employer shall keep a record of the dates of
10 training sessions given to employees and the names of the
11 employees attending.

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

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

19 (3) The department may develop and distribute a supply
20 of informational leaflets on employer duties, employee
21 rights, the effects of hazardous chemicals, and any other
22 topic related to hazardous chemicals in the workplace.

23 (4) The department may contract with the Montana
24 university system or any other public or private
25 organization to develop and implement an information program

1 on hazardous chemicals in the workplace.

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

13 Section 15. Complaints, investigation, and penalties.

14 (1) An employee in a workplace covered by the OSHA standard
15 who believes his employer is not complying with the
16 provisions of the OSHA standard may report the alleged
17 violation to the federal occupational safety and health
18 administration.

19 (2) A person who believes an employer is not complying
20 with the provisions of [this act] may submit a written
21 complaint to the local health officer, as defined and
22 described in Title 50, chapter 2, part 1.

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

25 (a) within 5 working days of receipt of the complaint,

1 investigate the complaint and, in the event of an apparent
2 violation, seek a corrective response from the employer;

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

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

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

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

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

20 (b) if the local health officer chooses not to act on
21 the complaint, does not follow the provisions of subsection
22 (3), or does not achieve compliance with the law.

23 (5) The county attorney shall investigate any
24 complaint received and, if a violation appears to have
25 occurred AND THE COUNTY ATTORNEY DOES NOT RECEIVE A

1 CORRECTIVE RESPONSE WITHIN 10 DAYS OF NOTIFYING THE EMPLOYER
2 OF THE VIOLATION, initiate appropriate court proceedings to
3 prosecute the violation.

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

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

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

19 Section 16. Severability. If a part of this act is
20 invalid, all valid parts that are severable from the invalid
21 part remain in effect. If a part of this act is invalid in
22 one or more of its applications, the part remains in effect
23 in all valid applications that are severable from the
24 invalid applications.

25 Section 17. Effective date. This act is effective

SB 0452/02

1 November 25, 1985.

-End-

1 SENATE BILL NO. 452

2 INTRODUCED BY ECK, BARDANOUVE, 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

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

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

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

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

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

20 (b) any hazardous chemical as defined by subsection

21 (d)(3) of the OSHA standard; or

22 (c) any emitter of ionizing radiation.

23 (11) "Label" means any written, printed, or graphic
24 material displayed on or affixed to containers of hazardous
25 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 EXCEPT AS PROVIDED IN SUBSECTION (2), AN employer normally
 22 having hazardous chemicals in the workplace of his employees
 23 shall submit the following information to the clerk and
 24 recorder of the county in which 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} A COUNTY CLERK AND RECORDER SHALL RECORD AND
 15 UPDATE AS NECESSARY AN INDEX LISTING EACH HAZARDOUS CHEMICAL
 16 FOR WHICH A MATERIAL SAFETY DATA SHEET HAS BEEN RECORDED IN
 17 THE COUNTY. THE INDEX MUST INCLUDE THE NAME OF THE EMPLOYER
 18 WHO RECORDED THE MATERIAL SAFETY DATA SHEET. NO EMPLOYER
 19 SHALL BE REQUIRED TO RECORD A MATERIAL SAFETY DATA SHEET FOR
 20 ANY HAZARDOUS CHEMICAL FOR WHICH A MATERIAL SAFETY DATA
 21 SHEET HAS ALREADY BEEN RECORDED BY ANY EMPLOYER IN THE
 22 COUNTY.

23 ~~{2}~~ {3} The county clerk and recorder shall record,
 24 file, ~~or otherwise maintain~~ the information provided under
 25 subsection (1). ~~The county clerk and recorder shall maintain~~

1 a-copy-of-each-current--material--safety--data--sheet--until
 2 informed--by--the-employer ~~RECORDS-NOTICE~~ that-the-hazardous
 3 chemical-is-no-longer-used-or-present-in-the-workplace; The
 4 county--clerk--and--recorder--shall--maintain-a-copy-of-each
 5 annual--workplace--chemical--list---for---30---years;---All
 6 information-for-any-given-workplace-must-be-filed, recorded,
 7 or--maintained--in--a--manner--that--allows-it-to-be-readily
 8 retrievable-as-a-whole; THE COUNTY CLERK AND RECORDER SHALL
 9 INDEX THE INFORMATION PROVIDED UNDER SUBSECTION (1) BY
 10 WORKPLACE NAME AND ALL ENTRIES FOR A WORKPLACE MUST BE
 11 GROUPED TOGETHER IN THE INDEX. THE INDEX MUST NOT BE
 12 COMBINED WITH ANY OTHER TYPE OF INDEX.

13 ~~(3)~~(4) All information submitted under subsection (1)
 14 is public information and must be available at the office of
 15 the county clerk and recorder during normal working hours to
 16 any person for inspection and copying at the expense of the
 17 person requesting copies.

18 ~~(4)~~(5) The local fire chief shall inspect all
 19 information maintained by the county clerk and recorder on
 20 workplace hazardous chemicals and--upon--request--must--be
 21 provided-with-a-copy-of-any-document.

22 ~~(5)~~(6) The local fire chief must be permitted onsite
 23 inspection of hazardous chemicals in any workplace,
 24 including workplaces under the control of a state agency,
 25 for the purposes of planning fire department activities in

1 case of an emergency and reviewing compliance with [this
 2 act]. FOR A WORKPLACE THAT EMPLOYS FIRE SAFETY PERSONNEL,
 3 THE LOCAL FIRE CHIEF SHALL CONSULT WITH THE RESPONSIBLE FIRE
 4 SAFETY OFFICIAL TO CLARIFY RESPECTIVE ROLES AND RESPONSE
 5 PROCEDURES IN THE EVENT OF AN EMERGENCY.

6 ~~(6)~~(7) As a result of an inspection, the local fire
 7 chief may note and report for possible action by the county
 8 attorney or other appropriate law enforcement official any
 9 violation by an employer of a provision of [this act] or any
 10 other law pertaining to hazardous chemicals or fire safety.

11 ~~(7)~~(8) The local fire chief shall consult at least
 12 annually on safety and emergency considerations with each
 13 person responsible for the operation of any research,
 14 educational, or testing laboratory workplace. The
 15 consultation may result in recommendations or, under the
 16 provisions of 50-62-108, orders by the fire chief to be
 17 implemented by the laboratory operator to enhance public
 18 safety, to reduce the likelihood of emergency incidents, or
 19 to improve emergency response in the event of an accident.
 20 The person responsible for the operation of the laboratory
 21 shall contact the local fire chief at any time there is a
 22 significant change in the location or nature of the
 23 hazardous chemicals in the workplace, initiation of any new
 24 and potentially dangerous method of processing or reacting
 25 hazardous chemicals, or any other operational change

1 affecting emergency response considerations.

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

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

16 (3) Each employee required to work with a hazardous
17 chemical must be provided with appropriate personal
18 protective equipment.

19 (4) No employer shall discharge, cause to be
20 discharged, discipline, discriminate against, or initiate
21 any adverse personnel action against any employee who
22 exercises his rights, testifies, or assists others in
23 exercising their rights or duties under [this act].

24 (5) A waiver by an employee of the benefits, rights,
25 or requirements of [this act] is against public policy and

1 is void. An employer's request or requirement that an
2 employee waive any rights under [this act] as a condition of
3 employment is a violation of [this act].

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

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

12 (a) a material safety data sheet, coded to an
13 identifying notation on each container of the hazardous
14 chemical, is available in the work area where the hazardous
15 chemical is present;

16 (b) the material safety data sheet discloses the
17 properties and effects of the hazardous chemical;

18 (c) the specific chemical identity is provided to a
19 treating physician or nurse in the event of a medical
20 emergency, as provided for in subsection (i)(2) of the OSHA
21 standard;

22 (d) the specific chemical identity is provided in
23 nonemergency situations to a health professional providing
24 medical or other occupational health services to an exposed
25 employee, as provided for in subsections (i)(3) through (5)

1 of the OSHA standard; and

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

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

21 (A) THE DEPARTMENT SHALL GIVE NOTICE BY CERTIFIED MAIL
 22 TO THE PERSON MAKING THE CLAIM TO SUBMIT TRADE SECRET
 23 SUBSTANTIATION INFORMATION WITHIN 30 DAYS AFTER RECEIPT OF
 24 SUCH NOTICE. FAILURE TO SUPPLY THE SUBSTANTIATION
 25 INFORMATION CONSTITUTES A WAIVER OF THE TRADE SECRET CLAIM.

1 (B) THE DEPARTMENT HAS THE RESPONSIBILITY TO DETERMINE
 2 THE VALIDITY OF THE TRADE SECRET CLAIM AND SHALL CONSIDER
 3 THE TRADE SECRET SUBSTANTIATION INFORMATION AS CONFIDENTIAL.

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

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

15 Section 12. Employee education program. (1) Each
 16 employer shall provide, at least annually, an education and
 17 training program for all his employees using or handling
 18 hazardous chemicals. Additional instruction must be provided
 19 whenever the potential for exposure to hazardous chemicals
 20 is altered or whenever new and significant information is
 21 received by the employer concerning the hazards of a
 22 chemical. New or newly assigned employees must be provided
 23 training before working with or in a work area containing a
 24 hazardous chemical.

25 (2) The programs must provide instruction in:

1 (a) interpreting labels and material safety data
2 sheets and the relationship between these two methods of
3 hazard communication;

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

6 (c) the safe handling, protective equipment, first-aid
7 treatment, and cleanup and disposal procedures for hazardous
8 chemicals.

9 (3) The employer shall keep a record of the dates of
10 training sessions given to employees and the names of the
11 employees attending.

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

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

19 (3) The department may develop and distribute a supply
20 of informational leaflets on employer duties, employee
21 rights, the effects of hazardous chemicals, and any other
22 topic related to hazardous chemicals in the workplace.

23 (4) The department may contract with the Montana
24 university system or any other public or private
25 organization to develop and implement an information program

1 on hazardous chemicals in the workplace.

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

13 Section 15. Complaints, investigation, and penalties.
14 (1) An employee in a workplace covered by the OSHA standard
15 who believes his employer is not complying with the
16 provisions of the OSHA standard may report the alleged
17 violation to the federal occupational safety and health
18 administration.

19 (2) ~~A--person~~ AN EMPLOYEE who believes an employer is
20 not complying with the provisions of [this act] may submit a
21 written complaint to the local health officer, as defined
22 and described in Title 50, chapter 2, part 1.

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

25 (a) within 5 working days of receipt of the complaint,

1 investigate the complaint and, in the event of an apparent
2 violation, seek a corrective response from the employer;

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

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

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

16 (4) A ~~person~~ AN EMPLOYEE may submit a written
17 complaint to the county attorney;

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

20 ~~(b) if the local health officer chooses not to act on~~
21 ~~the complaint, does not follow the provisions of subsection~~
22 ~~(3), or does not achieve compliance with the law;~~

23 (5) The county attorney shall investigate any
24 complaint received and, if a violation appears to have
25 occurred AND THE COUNTY ATTORNEY DOES NOT RECEIVE A

1 CORRECTIVE RESPONSE WITHIN 10 DAYS OF NOTIFYING THE EMPLOYER
2 OF THE VIOLATION, initiate appropriate court proceedings to
3 prosecute the violation.

4 ~~(6) If the county attorney fails to achieve compliance~~
5 ~~with the provisions of {this act}, the person submitting the~~
6 ~~complaint may request in writing that the attorney general,~~
7 ~~under the powers authorized in 2-15-50, order the county~~
8 ~~attorney to promptly institute proceedings and diligently~~
9 ~~prosecute the violation;~~

10 ~~(7)~~(6) A person found to be KNOWINGLY in violation of
11 [this act] is guilty of a misdemeanor. Each day of violation
12 is a separate offense.

13 ~~(8) In addition to the remedies provided in this~~
14 ~~section, a person who believes his rights have been violated~~
15 ~~under {this act} may apply to the district court for a~~
16 ~~restraining order or temporary or permanent injunction~~
17 ~~prohibiting a person from violating or mandating compliance~~
18 ~~with any provision of {this act}.~~

19 Section 16. Severability. If a part of this act is
20 invalid, all valid parts that are severable from the invalid
21 part remain in effect. If a part of this act is invalid in
22 one or more of its applications, the part remains in effect
23 in all valid applications that are severable from the
24 invalid applications.

25 Section 17. Effective date. This act is effective

SB 0452/03

1 November 25, 1985.

-End-