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PUBLIC OFFICERS AND EMPLOYEES

State Employees: Disclose Presence of Hazardous Substances

CODE SECTIONS:	O.C.G.A. §§ 45-22-1 to -12 (new)
BILL NUMBER:	HB 503
ACT NUMBER:	1438
SUMMARY:	The Act requires disclosure to public employees of the hazardous chemicals and substances utilized in their workplace. A material safety data sheet is required for each hazardous substance. The Act creates the Hazardous Chemicals Advisory Council which assists the Department of Labor in preparing the Georgia Hazardous Chemical List and the safety data sheets. Neither the state nor state employers are liable for damages for failure to comply with the Act's provisions.
EFFECTIVE DATE:	July 1, 1988

History

Prior to the enactment of HB 503, Georgia's protection of state employees from the risks of hazardous chemicals in the workplace was minimal.¹ HB 503 gives state employees similar protection that private employees receive under the Occupational and Safety Health Act.² Under prior law, the state was not required to inform its employees of the dangers of exposure to hazardous chemicals in the workplace.³ The Act gives state employees the right to be informed of the risks involved in using

1. Other states have addressed an employer's obligation to provide a work environment free from hazardous substances. Frequently, the protection depends on how an "employee" is defined. See ARIZ. REV. STAT. ANN. § 23-401(7) (1983); CAL. LAB. CODE §§ 6300, 6303, 6304.1 (West 1988); CONN. GEN. STAT. ANN. §§ 31-367(d), 31-370 (West 1987); HAW. REV. STAT. §§ 396.3, 396.6 (1985); IND. CODE ANN. § 22-8-1.1-1 (West 1986); IOWA CODE ANN. §§ 88.3, 88.4 (West 1984); MD. ANN. CODE, art. 89, §§ 29, 32 (1957); MINN. STAT. ANN. §§ 182.651(7), 182.653 (West 1988); NEV. REV. STAT. §§ 618.095, 618.195 (1986); OKLA. STAT. ANN. tit. 40, §§ 401—403 (West 1986); TENN. CODE ANN. §§ 50-3-103, -106 (1983); VA. CODE ANN. §§ 40.1-49.3(3), 40.1-51.1 (1986).

2. Occupational Safety and Health Act, 29 U.S.C. § 651(b)(1) (1982).

3. Telephone interview with Representative George M. Brown, House District No. 88 (Apr. 5, 1988) [hereinafter Brown Interview]. Representative Brown and Representative James F. Martin sponsored HB 503.

and handling over 800 hazardous chemicals.⁴

The sponsors of HB 503 have attempted to enact a state employee "right to know" bill since 1984.⁵ HB 206, an earlier version of HB 503, was introduced in the 1986 General Assembly.⁶ Although this bill passed the House, it failed to reach the Senate calendar.⁷ HB 503 was introduced in the 1987 session but almost died in the House Committee on Governmental Affairs.⁸ HB 503 ultimately passed due to the support of citizens and state employees who recognized the dangers of hazardous wastes in the workplace.⁹

HB 503

HB 503 amends Title 45 of the Code by adding a new chapter called the "Public Employee Hazardous Chemical Protection and Right to Know Act of 1988."¹⁰ Under the Act, the state must inform its employees when one of approximately 800 hazardous chemicals exist in the workplace.¹¹ In addition, the state employer must train employees in the use and handling of these chemicals.¹² Public employers and contractors must provide material safety data sheets to all employees using the chemicals.¹³ The sheets must contain information detailing the risks inherent in the use of the chemical, the proper safety precautions for handling the substance, emergency procedures for accidents, and the name, address, and emergency telephone number of the manufacturer of the hazardous substance.¹⁴

In addition, HB 503 creates the Hazardous Chemical Advisory Council.¹⁵ The Council is composed of department agency heads, four members who shall be employee representatives from public employers, and one state-at-large member.¹⁶ The Council assists the Department of Labor in preparing and reviewing the Georgia Hazardous Chemical List.¹⁷ The Act requires manufacturers to provide material safety data sheets for hazard-

4. O.C.G.A. § 45-22-7(i)—(k) (Supp. 1988). *See also* Beasley, *Consumer Affairs, Worker Notice Bills Clear Both Houses*, Atlanta J., Mar. 4, 1988, at 1D, col. 1.

5. Brown Interview, *supra* note 3.

6. Final Composite Status Sheet, Mar. 7, 1986.

7. *Id.*

8. *Hazardous-Chemicals Plan Shelved by House Committee*, Atlanta J., Feb. 2, 1988, at 16A, col. 6.

9. Telephone interview with Patrick M. Kessing, Co-Director of the Georgia Environmental Project (Apr. 5, 1988) [hereinafter Kessing Interview].

10. O.C.G.A. § 45-22-1 to -12 (Supp. 1988).

11. O.C.G.A. § 45-22-8(a) (Supp. 1988); *see also* Beasley, *supra* note 4.

12. O.C.G.A. § 45-22-8(b) (Supp. 1988); *see also* Beasley, *supra* note 4.

13. O.C.G.A. § 45-22-4 (Supp. 1988).

14. O.C.G.A. § 45-22-2(16)(A)—(F) (Supp. 1988).

15. O.C.G.A. § 45-22-6(a) (Supp. 1988).

16. O.C.G.A. § 45-22-6(b) (Supp. 1988).

17. O.C.G.A. §§ 45-22-5(a), -6(a) (Supp. 1988).

ous chemicals to purchasers and, upon request, to the Department of Labor.¹⁸

Finally, HB 503 provides the state with sovereign immunity from civil actions for damages.¹⁹ The purpose of the bill is to provide the state employees a right to information regarding chemicals, not a right to sue the state.²⁰ Although public employers cannot be held liable for damages, the Act gives employees an effective grievance procedure for enforcing their rights.²¹ In HB 503, a "public employee" is defined as a person who handles hazardous chemicals and either works under any state branch, department, or agency or is an inmate committed to the Department of Corrections.²² This definition does not include employees of the Environmental Protection Division of the Department of Natural Resources who handle hazardous chemicals in response to environmental emergencies.²³

HB 503, as introduced, met strong opposition from the Georgia Departments of Transportation (DOT) and Corrections (DOC).²⁴ Although the DOT was concerned with the safety of its employees, it opposed HB 503 because of the cost and complexity of implementing the reporting procedure.²⁵ DOT's concerns were satisfied by the creation of the Hazardous Chemicals Advisory Council and the prerequisite of appropriation of funds.²⁶ Because the definition of public employee includes inmates who handle hazardous chemicals and some inmates manufacture household chemicals, the DOC was concerned that the Act would impose liability for injuries to these inmates.²⁷ The DOC supported the final version of the bill because the Act provides sovereign immunity from civil liability.²⁸

The bill's supporters included the Georgia State Employees Union and the Georgia Environmental Project.²⁹ Input from these lobbying groups aided legislators in drafting both the substitute bill that was favorably reported from the House Committee on Governmental Affairs and a later House floor substitute.³⁰

The House committee substitute included in the definition of a public

18. O.C.G.A. § 45-22-7(a) (Supp. 1988).

19. O.C.G.A. § 45-22-12 (Supp. 1988).

20. Brown Interview, *supra* note 3.

21. O.C.G.A. § 45-22-7(k)(4) (Supp. 1988); Brown Interview, *supra* note 3.

22. O.C.G.A. § 45-22-2(8) (Supp. 1988).

23. *Id.*

24. Beasley, *Committee Passes "Right to Know" Bill Over DOT Objections*, Atlanta J., Feb. 16, 1988, at 15A, col. 5.

25. Telephone interview with Jerry M. Stargel, Public Affairs Director of the Georgia Department of Transportation (Apr. 5, 1988).

26. Telephone interview with Representative James F. Martin, House District No. 26 (Apr. 5, 1988) [hereinafter Martin Interview]. See O.C.G.A. § 45-22-8(d) (Supp. 1988).

27. Martin Interview, *supra* note 26.

28. *Id.*

29. Kessing Interview, *supra* note 9.

30. *Id.*; see also Final Composite Status Sheet, Mar. 7, 1988.

employee persons employed by any political subdivision of the state.³¹ Because opponents of the bill did not want local governments included in the scope of the bill's coverage, the House floor substitute deleted the political subdivision category.³² Even though local governmental employees will not be provided the same notification regarding hazardous chemicals as will their state counterparts, the sponsors believe that local ordinances are the proper vehicle to fill that gap.³³ If local governments fail to protect their employees, then the Act may be amended to include political subdivisions.³⁴

Drafters of the Act consider the bill's adoption progressive because Georgia is generally considered probusiness with respect to employee relations.³⁵ The Act gives public employees the information necessary to understand the proper techniques for handling hazardous chemicals in the workplace.³⁶ As a result, it is hoped that fewer public employees will be injured by the improper use of hazardous materials.³⁷

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31. HB 503 (HCS), 1988 Ga. Gen. Assem.

32. Brown Interview, *supra* note 3; see HB 503 (HFS), 1988 Ga. Gen. Assem.

33. Martin Interview, *supra* note 26.

34. Brown Interview, *supra* note 3.

35. Martin Interview, *supra* note 26.

36. Brown Interview, *supra* note 3.

37. *Id.*