

v. Burdman. Using that definition for guidance, it is apparent that even a narrowly construed definition of "medically necessary" would place a major new obligation on hospitals. A change of this magnitude deserves full review and public input, which it did not receive during the legislative process. In the meantime, I admonish all hospitals to continue to provide necessary emergency services, without regard to means.

Section 22(2)(k), the second sentence, conditions the receipt of a certificate of need by a hospital on achievement of the regional average of charity care. During a colloquy, both houses clearly stated that they did not want to penalize hospitals who were making a "good faith effort" to reach their regional average. This sentence would, however, regardless of any good faith efforts, penalize not only the hospital, but the community, denying a hospital the right to fund its capital needs in order to assure quality of health care to all.

Similarly, section 14(1)(b) prohibits a hospital from negotiating discounts with health care purchasers unless the hospital is providing charity care at or above the average for the region. This provision is unfair to those hospitals, particularly in rural areas, that provide all the charity care that is demanded yet fall below the regional average. Discounts, as restricted by this bill, may well reduce health care costs. I believe it unwise to frustrate the process at the outset by inextricably tying discounts to mandated levels of charity care.

Section 14(1), on lines 27 and 28, contains a phrase which reads "if all 1984 amendments to this section and section 22 of this 1984 act take effect." This provision allows hospitals to negotiate rates lower than those established by the Commission if the amendments in section 22 take effect. As explained above, I have vetoed portions of section 22 and of section 14. Therefore, in order to preserve the hospital's ability to negotiate competitive rates, it is necessary to veto this provision in section 14.

This bill also contains an emergency clause in section 29. I am concerned that a bill of this complexity proposing such significant changes in the health care industry not be approached precipitously. I am convinced that allowing this bill to become effective in normal course will facilitate the state and the health care industry entering into the process contemplated by this bill in a more deliberative fashion.

With the exception of these provisions, Substitute Senate Bill No. 4403 is approved.

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## CHAPTER 289

### [Engrossed Second Substitute Senate Bill No. 4831] WORKER AND COMMUNITY RIGHT TO KNOW ACT

AN ACT Relating to worker and community right to know; creating a new chapter in Title 49 RCW; creating new sections; prescribing penalties; and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This chapter shall be known and may be cited as the "worker and community right to know act."

NEW SECTION. Sec. 2. The legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety, and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to monitor adequately and detect any adverse health effects attributable thereto; that individuals themselves are often able to detect and thus minimize effects of exposure to

hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

The legislature further declares that local health, fire, police, safety, and other government officials require detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to plan adequately for, and respond to, emergencies, enforce compliance with applicable laws and regulations concerning these substances, and to compile records of exposures to hazardous substances over a period of time that will facilitate the diagnosis, treatment, and prevention of disease.

The legislature further declares that the extent of the toxic contamination of the air, water, and land in this state has caused a high degree of concern among its residents and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The legislature therefore determines that while these substances have contributed to the high quality of life we enjoy in our state, it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this state may gain access to this information.

***\*NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.***

(1) "Chemical abstracts service number" means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

(2) "Chemical name" is the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

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

(4) "Container" means a receptacle used to hold a liquid, solid, or gaseous substance, including, but not limited to, bottles, pipelines, bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and stationary or mobile storage tanks. "Container" does not include process containers.

(5) "Council" means the "right-to-know advisory council" created pursuant to section 17 of this act.

(6) "County health department" means a county health agency established pursuant to Title 70 RCW.

(7) "Department" means the department of labor and industries.

**(8) "Employee" means a person who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is the employee's personal labor for an employer under this chapter whether by way of manual labor or otherwise. Employee does not include:**

**(a) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment;**

**(b) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer;**

**(c) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer;**

**(d) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization;**

**(e) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm; or**

**(f) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67-16 RCW.**

**(9) "Employee representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analysis using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.**

**(10) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which contract is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations but does not include a person who employs less than four employees as agricultural laborers employed forty or more hours a week in such employment. Any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee except for the purposes of section 13 of this act. Where there are two or more employers at the same work place, each employer shall be solely responsible under this chapter for his or her own employees.**

**(11) "Exposure" or "exposed" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry**

such as inhalation, ingestion, skin contact or absorption, and includes potential, such as accidental or possible exposure.

(12) "Hazardous substance" means any substance, or substance contained in a mixture, included on the workplace hazardous substance list developed by the department pursuant to section 5 of this act. Hazardous substances do not include consumer products packaged for distribution to, and used by, the general public, including any product used by an employer or the employer's employees in the same form, concentration, and manner as it is sold to consumers, and to the employer's knowledge, employee exposure is not significantly greater than the consumer exposure occurring during principal consumer use of the product. The department may, by inclusion in the standards adopted under section 5 of this act, determine whether any of the following may be excluded from the definitions of hazardous substance:

(a) Any substance received by an employee in a sealed package and subsequently sold or transferred in that package, if the seal remains intact while the substance is in the employer's workplace; or

(b) Any substance, mixture, or product if present in a physical state, volume, or concentration for which there is no valid and substantial evidence that a significant risk to human health may occur from exposure.

(13) "Label" means a sign, emblem, sticker, or marker affixed to or stenciled onto a container.

(14) "Manufacturer" means a person who produces, synthesizes, extracts, or otherwise makes a hazardous substance.

(15) "Material safety data sheet" means a written document prepared by the manufacturer or supplier for each product containing a hazardous substance and transmitted by the manufacturer or supplier to purchasers pursuant to this chapter. Manufacturers and suppliers shall obtain or develop a material safety data sheet for each hazardous substance they produce or import. Employers shall have a material safety data sheet for each hazardous substance which they use. Each material safety data sheet shall contain at least the following information:

(a) The identity used on the label, and, except as provided for in section 9 of this act on trade secrets:

(i) If the hazardous substance is a single substance, its chemical and common name;

(ii) If the hazardous substance is a mixture which has been tested as a whole to determine its hazards, the chemical and common name of the ingredients which contribute to these known hazards and the common name of the mixture itself; or

(iii) If the hazardous substance is a mixture which has not been tested as a whole:

(A) The chemical and common name of all ingredients that have been determined to be health hazards, and that comprise one percent or greater of the composition, except that hazardous substances identified as carcinogens

shall be listed if the concentrations are one-tenth of one percent or greater; and

(B) The chemical and common name of all ingredients that have been determined to present a physical hazard when present in the mixture;

(b) Physical and chemical characteristics of the hazardous substance, such as vapor pressure and flash point;

(c) The physical hazards of the hazardous substance including the potential for fire, explosion, and reactivity;

(d) The acute and chronic health hazards of the hazardous substance, including signs and symptoms of exposure, and any medical conditions that are generally recognized as being aggravated by exposure to the hazardous substance;

(e) The primary route of entry;

(f) The occupational safety and health act (OSHA) permissible exposure limit, American Conference of Governmental Industrial Hygienists threshold limit value, and any other exposure limit used or recommended by the manufacturer or supplier preparing the material safety data sheet, where available;

(g) Whether the hazardous substance is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or by the occupational safety and health act;

(h) Any generally applicable precautions for safe handling and use that are known to the manufacturer or supplier preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

(i) Any generally applicable control measures that are known to the manufacturer or supplier preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(j) Emergency and first aid procedures;

(k) The date of preparation of the material safety data sheet or the last change to it;

(l) The name, address, and telephone number of the manufacturer, supplier, or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous substance and appropriate emergency procedures, if necessary; and

(m) Any additional information the department may require by rule adopted in accordance with chapter 34.04 RCW necessary to remain consistent with the requirements for material safety data sheets in accordance with United States Occupational Safety and Health Administration regulations. The department may not require more information than the Occupational Safety and Health Administration.

*If no relevant information is found for any given category on the material safety data sheet, the manufacturer or supplier preparing the material safety data sheet shall mark it to indicate that no applicable information was found.*

*Where complex mixtures have similar hazards and contents, i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture, the manufacturer or supplier may prepare one material safety data sheet to apply to all of these similar mixtures.*

*The manufacturer or supplier preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the manufacturer or supplier becomes newly aware of any significant information regarding the hazards of a hazardous substance, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. Effective November 25, 1985, if the hazardous substance is not being produced or imported, the manufacturer or supplier shall add the information to the material safety data sheet before the hazardous substance is introduced into the workplace.*

*(16) "Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.*

*(17) "Nonhazardous substance" means any item not included in the workplace hazardous substance list as prepared by the department pursuant to section 5 of this act.*

*(18) "Process container" means:*

*(a) A container, excluding a pipeline, the content of which is changed frequently;*

*(b) A container into which substances are transferred from labeled containers, and which is intended only for the immediate use of the employee who performs the transfer;*

*(c) A container on which a label would be obscured by heat, spillage, or other factors; or*

*(d) A test tube, beaker, vial, or other container which is routinely used and reused;*

*(e) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other written materials in lieu of affixing labels to individual process containers, as long as the alternative method identifies the containers to which the label is applicable and conveys the information required by section 14 of this act to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift;*

*(f) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.*

(19) "Research and development laboratory" means a specially designated area used primarily for research, development, teaching, and testing activity, and not primarily involved in the production of goods for commercial sale, in which hazardous substances are used by or under the direct supervision of a technically qualified person.

(20) "Supplier" means any firm or individual other than the initial manufacturer, such as an importer or distributor, who supplies or imports products containing hazardous substances.

(21) "Technically qualified individual" means a person who, because of education, training, or experience, understands the health risks associated with the hazardous substance or mixture handled by or under his or her supervision.

(22) "Trade secret" has the definition found in the uniform trade secrets act, RCW 19.108.010(4).

(23) "Work area" means a room or defined space in a workplace where hazardous substances are produced or used and where employees are present.

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

(25) "Workplace hazardous substance list" means the list of health hazard substances developed by the department under section 5 of this act for which a manufacturer or supplier may make a trade secret claim.

\*Sec. 3. was vetoed, see message at end of chapter.

**\*NEW SECTION.** Sec. 4. (1) The application of this chapter is limited with respect to the following employees:

(a) Employees of handlers of sewage or solid waste;  
 (b) Employees of research and development laboratories;  
 (c) Employees who are performing duties subject to regulations regarding the transportation of hazardous substances promulgated by any of the following agencies:

(i) The federal department of transportation,  
 (ii) The Washington utilities and transportation commission, or  
 (iii) The international maritime organization of the United Nations;  
 (d) Other employees who are performing duties directly relating to the transportation of hazardous substances.

(2) Employers shall be limited to the following responsibilities under this chapter with regard to employees listed in subsection (1) of this section:

(a) Extensive education and training programs shall be provided to employees in accordance with section 13 of this act;

(b) Employers shall ensure that labels on incoming containers of hazardous substances are not removed or defaced;

(c) Employers shall maintain material safety data sheets that are received with incoming shipments for each type of hazardous substance in their workplace, and ensure that they are readily accessible to employees;

*(d) The workplace survey required by section 6 of this act shall be completed to the extent that information is reasonably available, and*

*(e) Any employee who is exposed to a hazardous substance shall be immediately provided with a material safety data sheet if possible.*

*(3) The limitations in this section apply only to employees directly involved in the transportation of hazardous substances, directly involved in laboratory research, or directly involved in handling sewage or solid waste. Employees not directly involved in the transportation of hazardous substances, not directly involved in laboratory research, or not directly involved in handling sewage or solid waste are covered by the full terms of this chapter.*

\*Sec. 4. was vetoed, see message at end of chapter.

**\*NEW SECTION. Sec. 5. (1) The department, after consultation with the department of agriculture, shall develop a workplace hazardous substance list in accordance with rules adopted under chapter 34.04 RCW that shall include:**

*(a) Any substance regulated under the Washington industrial safety and health act, chapter 49.17 RCW;*

*(b) Those environmental hazardous substances designated by the federal Environmental Protection Agency pursuant to section 307 and 311 of the federal Clean Water Act of 1977 (33 U.S.C. Secs. 1317 and 1321 respectively) or as hazardous air pollutants pursuant to section 112 of the federal Clean Air Act (42 U.S.C. Sec. 4712) as amended, which have known adverse human health risks;*

*(c) Substances listed as human or animal carcinogens by the International Agency for Research on Cancer (IARC);*

*(d) Substances for which an information alert has been issued by the department; and*

*(e) Any other substance which the department, based on documented scientific evidence, determines may pose a threat to the health or safety of an employee.*

*(2) The department shall develop by rule, in accordance with chapter 34.04 RCW, criteria by which hazardous substances may be placed or deleted from the list established under this section.*

\*Sec. 5. was vetoed, see message at end of chapter.

**\*NEW SECTION. Sec. 6. (1) The department, after consultation with the department of agriculture, shall develop a workplace survey in accordance with rules adopted under chapter 34.04 RCW. The workplace survey shall include a copy of the workplace hazardous substance list.**

*(2) The department shall transmit the workplace survey to each employer in the state no later than June 1, 1986. Employers shall complete the workplace survey and return it to the department within forty-five days except when employer receives an extension from the department. The number of workplace surveys an employer must submit shall be in accordance with criteria developed by the department.*

(3) For those employees who communicate primarily in a language other than English, employers shall make a reasonable effort to inform such employees of their rights under this chapter. When necessary or desirable, the department shall prepare and, upon request, make available to the employers and the public a translation of the workplace survey and each material safety data sheet. The department shall also prepare and make available, when necessary or desirable, translations of written material prepared by the department to inform employees of their rights under this chapter.

An employer shall ensure that all employees, regardless of any language barriers, are provided with a suitable education and training program required pursuant to section 13 of this act.

Every employer employing employees who have trouble communicating in English shall make reasonable efforts to post any notices in the employees' native language as provided by the department.

\*Sec. 6. was vetoed, see message at end of chapter.

**\*NEW SECTION.** Sec. 7. (1) The manufacturer or supplier of any product used or brought into the state, which product contains hazardous substances as listed pursuant to section 5 of this act, shall prepare and/or provide its purchasers of the product and the department with a material safety data sheet or sheets containing information specified in section 3(15) of this act by November 25, 1985. The manufacturer or supplier shall make every reasonable effort to ensure that the information contained in each material safety data sheet is current, accurate, and complete. Failure to provide current, accurate, and complete information as required by this section shall result in civil and criminal penalties as provided in chapter 49.17 RCW.

(a) This material safety data sheet shall be provided to the purchaser and to the department at the time of initial shipment and with the first shipment after each update of the material safety data sheet.

(b) The manufacturer or supplier shall revise a material safety data sheet pursuant to section 3(15) of this act regarding new information that affects the accuracy of the existing material safety data sheet. If the new information indicates either increased or decreased risks or additional measures necessary to protect employee health as compared to those stated on the material safety data sheet previously provided, the manufacturer or supplier shall provide the new material safety data sheet to the department and to those who have purchased the product directly from the manufacturer or supplier within the last year.

(2) If an employer has reason to believe that a product present at the employer's facility contains a hazardous substance as a component, but has not obtained from the manufacturer or supplier of the product a material safety data sheet, the employer shall list the product by its common name in the space provided on the survey. The department shall have the responsibility of obtaining the material safety data sheet, and, upon obtaining this information, shall transmit it to the employer.

(3) *The manufacturer or supplier may provide the information required by section 3(15) of this act on an entire product mixture instead of on each hazardous substance in it when all of the following conditions exist:*

(a) *Hazard test information exists on the mixture itself, or adequate information exists to form a valid judgment of the hazardous properties of the mixture itself and the material safety data sheet indicates that the information presented and the conclusions drawn are from some source other than direct test data on the mixture itself,*

(b) *Providing information on the mixture will be as effective in protecting employee health as information on the ingredients, and*

(c) *The hazardous substances in the mixture are identified on the material safety data sheet unless it is either unfeasible to describe all the ingredients in the mixture or the identity of the ingredients is itself a valid trade secret. In either case, the reason why the hazardous substances in the mixture are not identified shall be stated on the material safety data sheet.*

(4) *A single mixture material safety data sheet may be provided for more than one formulation of a product mixture if the information provided pursuant to section 3(15) of this act does not vary for the formulation.*

(5) *The provisions of this section shall be complied with not later than November 25, 1985.*

\*Sec. 7. was vetoed, see message at end of chapter.

**\*NEW SECTION.** *Sec. 8. (1) The department shall, upon request, transmit a copy of the workplace survey to the health department of the county in which the employer's facility is located, the local fire department, and the local police department.*

(2) *The department shall annually notify the association of Washington cities, the Washington state association of counties, and the Washington fire commissioners association of their rights under this chapter. These organizations shall inform their members of the information available to the members through the department.*

\*Sec. 8. was vetoed, see message at end of chapter.

**\*NEW SECTION.** *Sec. 9. (1) The manufacturer, employer, or supplier may make a trade secret claim to the department. Such a trade secret claim does not relieve the manufacturer or supplier from the duty to provide the department with the material safety data sheet. The department shall, by rules adopted in accordance with chapter 34.04 RCW, establish criteria to determine whether the trade secret claim is warranted, and if warranted set forth procedures for the transmittal of information obtained on the material safety data sheet to the employer while providing protection for the trade secret. While the trade secret claim is under review, a manufacturer, employer, or supplier may withhold the hazardous substance trade secret information from the label required by section 14 of this act, the workplace survey required by section 6 of this act, and the material safety data sheet required by section 7 of this act. The manufacturer or supplier shall notify purchasers of*

*trade secret claims made to the department. For any trade secret claim, the manufacturers or suppliers shall compensate the department for expenses incurred in evaluating the validity of that claim.*

*(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the manufacturer, supplier, or employer shall immediately disclose the specific chemical identity to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The manufacturer, supplier, or employer may require a written statement of need and confidentiality agreement in accordance with provisions developed by the department.*

*(3) Any challenge to the denial of a trade secret claim shall be heard by an administrative law judge in accordance with chapter 34.04 RCW.*

*\*Sec. 9. was vetoed, see message at end of chapter.*

*\*NEW SECTION. Sec. 10. (1) The department shall maintain a file of all completed workplace surveys and material safety data sheets received pursuant to sections 5, 7, and 8 of this act. The workplace surveys and material safety data sheets shall be retained by the department for thirty years.*

*(2) Copies of such records maintained on microfiche or microfilm shall be admissible evidence in any judicial or administrative proceeding.*

*(3) The department shall require employers who have hazardous substances present at their workplaces to update annually the workplace survey for the employer's workplace, unless the department determines that updating the workplace survey less frequently would accomplish the purposes of this act.*

*(4) The department shall require all employers to complete a workplace survey at least once every five years.*

*(5) Any person may request from the department a copy of a workplace survey for a workplace, together with the appropriate material safety data sheets. The department is the only public agency required to respond to these requests. The department shall keep a record of each request to be made available to health and law enforcement agencies. The record shall include the information released and the identification of the person or organization making the request. A "community right-to-know" state-wide toll-free telephone number shall be made available by the department to receive workplace survey and material safety data sheet requests. The department shall advise the employer when requests for information pertaining to his or her workplace have been made by persons or organizations other than (a) employees working for the employer, or (b) local health, fire, and law enforcement agencies. The department shall impose reasonable limits on requests made under this section and may establish reasonable fees to be charged for copies. Any request by an employee for material pertaining to the workplace where*

*the employee is employed made pursuant to this subsection shall be treated by the department as confidential.*

\*Sec. 10. was vetoed, see message at end of chapter.

***\*NEW SECTION. Sec. 11. Every employer shall establish and maintain a central file at that employer's workplace in which the employer shall retain a workplace survey for the workplace and appropriate material safety data sheets. Every employer shall post on bulletin boards or other places readily accessible to employees a notice in a form substantially the same as a notice developed by the department of the availability of the information in the file. Every employer shall supply employees with any material designed and provided by the department to inform employees of their rights under this chapter.***

\*Sec. 11. was vetoed, see message at end of chapter.

***\*NEW SECTION. Sec. 12. (1) Within three working days, employers shall make available as soon as possible without interrupting normal work operations, a workplace survey and a material safety data sheet on each hazardous substance in the employees' work area upon written request of an employee, or the employee's designated representative.***

***(2) If a manufacturer or supplier has failed to provide a material safety data sheet as specified in section 7 of this act, employers shall notify the department and identify the hazardous substance, manufacturer or supplier, and trade name to the department.***

***(3) If the material safety data sheet is not on file with the department, the department shall request the manufacturer or supplier to furnish:***

- (a) The most current material safety data sheet;***
- (b) A statement that the material safety data sheet is under development and the estimated completion date; or***
- (c) A statement that the product is not subject to the requirements of this chapter.***

***(4) The manufacturer or supplier shall provide a response to the request under subsection (3) of this section within fifteen days of receipt of the request.***

***(5) The department shall supply the employer and employee with copies of the response.***

\*Sec. 12. was vetoed, see message at end of chapter.

***\*NEW SECTION. Sec. 13. (1) Every employer or group of employers shall establish or use an existing education and training program for that employer's employees, which shall be designed to inform employees in writing and orally of the nature of the hazardous substances to which they are exposed in the course of their employment and the potential health risks which the hazardous substances pose as provided in the material safety data sheets for the hazardous substances to which the employees may be exposed at the workplace. An employer shall provide current employees with the education***

*and training program by June 1, 1986, and annually thereafter. Beginning June 1, 1986, all new employees shall be provided with the training and education program within the first month of employment. At the time of entering an employment agreement with a prospective employee, an employer shall notify a prospective employee of the availability of workplace surveys and appropriate material safety data sheets for the workplace at which the prospective employee will be employed. The department may develop rules in accordance with chapter 34.04 RCW for less restrictive methods of providing training and education programs for short-term employees to be practical under the circumstances but which, in the opinion of the director, achieve the goal of informing those workers about the existence of potential chemical hazards in their workplace and the measures they may take to minimize the potential adverse health effects.*

*(2) An employer with fewer than thirty-five full-time employees may request assistance, including on-site assistance, from the department in completing its workplace surveys and education and training programs.*

*The department shall develop rules, in accordance with chapter 34.04 RCW, which:*

*(a) Outline the kinds and extent of assistance the department will provide;*

*(b) Outline the delivery mechanism for such assistance;*

*(c) State the procedures a requester must follow to obtain the assistance;*

*(d) Give consideration to the various circumstances and occupational settings which may prompt requests for assistance; and*

*(e) Provide procedures for granting extensions for deadlines for employers requiring assistance.*

*\*Sec. 13. was vetoed, see message at end of chapter.*

*\*NEW SECTION. Sec. 14. (1) A company or individual who manufactures or supplies a hazardous substance or mixture containing a hazardous substance and who supplies the substance or mixture to an employer in the state shall label all such substances and mixtures by the chemical or common name and the appropriate hazard warnings according to chapter 49.17 RCW. These labels shall be updated whenever the product mix is changed or if the manufacturer or supplier becomes aware of any information which is both new and significant regarding the health hazard of a component of the product.*

*(2) By June 1, 1986, every employer shall make every reasonable effort to assure that every container at the employer's workplace containing a hazardous substance shall bear a label indicating the chemical or common name and the appropriate hazard warnings in accordance with chapter 49.17 RCW.*

*(3) The labeling requirements of subsections (1) and (2) of this section shall not apply to containers labeled pursuant to the "Federal Insecticide, Fungicide, and Rodenticide Act" (61 Stat. 163; 7 U.S.C. sec. 121 et al.). The*

*department may, by rule, certify containers labeled pursuant to any other federal rule or regulation as labeled in compliance with this section.*

*(4) Although process containers are excluded from labeling requirements, the employer shall post in a readily available place a workplace hazardous substance list indicating the chemical name or chemical abstracts service number of all hazardous substances contained therein. Labeling of normally-operated vents to the atmosphere, sample connections, and drains in those areas is required if there is potential for employee exposure to a hazardous substance.*

*(5) In cases of pipes or piping systems, a fixed storage tank, or a reaction vessel, an employer may choose to convey the information required by this section by posting signs, placards, or operating instructions, or other methods rather than affixing labels. For any pipe or piping system, the information required by this section shall be provided at points where direct employee exposure to the hazardous substance contained in the pipe or piping system is likely to occur under normal operating conditions.*

*(6) If any provisions of this section are inconsistent with the federal Resource Conservation and Recovery Act, or with applicable regulations issued under that act by the Environmental Protection Agency or with chapter 70 RCW, or with regulations adopted by the department of ecology pursuant to its authority under RCW 70.105.020 and RCW 70.105.130, the provisions of this section shall be deemed superseded by those federal and state statutes and regulations.*

\*Sec. 14. was vetoed, see message at end of chapter.

NEW SECTION. Sec. 15. An employee or employee representative may request, in writing, from the employer, a copy of a workplace survey or a material safety data sheet, filed pursuant to this chapter for the employee's work area. The employer shall supply this material within three working days of the request. If an employer has not complied with section 12 of this act, an employee shall have the right to refuse to work with a particular hazardous substance for which a request was made and not honored within the statutory time period without loss of pay or forfeit of any other privilege until the request is honored. This section shall not apply to employees of vessels while the employees are on the water.

NEW SECTION. Sec. 16. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or the employee's representative has exercised any right established in this chapter. The discrimination provisions of chapter 49.17 RCW apply to this chapter.

NEW SECTION. Sec. 17. (1) The director shall establish in the department a right-to-know advisory council, which shall consist of fifteen members appointed by the director. Each of these members shall be appointed for a term of three years, provided that of the members of the

council first appointed by the director, five shall serve for terms of one year, five shall serve for terms of two years, and five shall serve for terms of three years. Of these members, one shall be appointed from persons having training and experience in industrial hygiene recommended by recognized labor unions; one from persons recommended by recognized agricultural organizations; one from persons recommended by recognized environmental organizations; one from persons recommended by recognized public interest organizations; one from persons recommended by recognized organizations of chemical industries; one from persons recommended by recognized community organizations; one from persons recommended by recognized organizations of petroleum industries; one from persons recommended by recognized organizations of fire fighters; one from persons recommended by recognized business or trade organizations; one from persons recommended by recognized organizations of small business; one from persons holding an M.D. degree recommended by recognized public health organizations; two persons from professional accident and safety organizations; one person from the technology-based industries; and one from persons with training and experience in environmental epidemiology and toxicology recommended by recognized research or academic organizations. In the event that no recommendations for a particular category of membership are made to the director three months after the effective date of this act in the case of the initial appointments, or within sixty days of the date of the expiration of the term of office of any member or the occurrence of any vacancy in the case of subsequent appointments, the director shall appoint as a member for that category of membership a person whom the director believes will be representative thereof.

(2) A majority of the membership of the council constitutes a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the members of the council present and voting.

(3) The council shall meet regularly as it may determine, and shall also meet at the call of the department.

(4) The council shall appoint a chairman and other officers as may be necessary from among its members. The council may, within the limits of any funds appropriated or otherwise made available to it for this purpose, appoint such staff or hire such experts as it may require.

(5) Members of the council shall serve without compensation, but the council may, within the limits of funds appropriated or otherwise made available to it for such purposes, reimburse its members for necessary expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 18. (1) The council shall:

(a) Advise the department on the revision of the workplace hazardous substance lists;

(b) Study the impact of this chapter on employers and make recommendations to the legislature. Special emphasis shall be given to the study of the impacts on agricultural and small business employers;

(c) Prepare an updated fiscal note of the costs of this act to the department and to local governments, school districts, institutions of higher education and hospitals;

(d) Report to the legislature its findings under (b) and (c) of this section by January 1, 1985;

(e) Advise the department on the implementation of this chapter; and

(f) Review any matters submitted to it by the department.

(2) The council may:

(a) Review any aspect of the implementation of this chapter, and transmit its recommendations to the department; and

(b) Hold public meetings or hearings within the state on any matter or matters related to this chapter.

***\*NEW SECTION. Sec. 19. The department, in conjunction with the council, shall establish a procedure for annually receiving information, advice, testimony, and recommendations from the council, the public, and any other interested party concerning the implementation of this chapter. This procedure shall include a mechanism for revising the workplace hazardous substance list. Any revision of the workplace hazardous substance list shall be based on documented scientific evidence. The department shall publicly announce any revisions of the workplace hazardous substance list, and any such additions or revisions shall be made pursuant to chapter 34.04 RCW.***

\*Sec. 19. was vetoed, see message at end of chapter.

***NEW SECTION. Sec. 20. The department shall produce educational brochures and public service announcements detailing information available to citizens under this chapter. These educational materials shall be sent to each county health department. As necessary, the department shall provide information needed to update these educational materials.***

***NEW SECTION. Sec. 21. A person may bring a civil action on his or her own behalf against a manufacturer, supplier, employer, or user to compel compliance with the provisions of this chapter or any rule promulgated under this chapter subject to the provisions of Title 51 RCW. The superior court shall have jurisdiction over these actions. The court may award costs of litigation to the prevailing party, including reasonable attorney and expert witness fees.***

***\*NEW SECTION. Sec. 22. Substances not included on the workplace hazardous substance list shall not be subject to the reporting provisions of this chapter. However, the absence of any substance from the workplace hazardous substance list, or the provision of any information by an employer to an employee or any other person pursuant to the provisions of this chapter shall not affect any other liability of an employer with regard to safeguarding***

*the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential health hazards associated with the use of the substance pursuant to the provisions of any law or rule adopted pursuant thereto.*

\*Sec. 22. was vetoed, see message at end of chapter.

NEW SECTION. Sec. 23. The department may request from an employer submitting surveys to it further information concerning the surveys, and the employer shall provide the additional information upon the request. The employer may require the department to provide reasons why further information is needed and to sign an agreement protecting the confidentiality of any additional information provided under this section.

NEW SECTION. Sec. 24. (1) The worker and community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall after July 1, 1985, assess each employer a fee of seventy-five cents per employee to provide for the implementation of the provisions of this chapter. After this initial assessment, the fees shall be based on a fee schedule developed by the department and shall be collected only from those employers who have hazardous substances present at their workplaces. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his designee including, the traveling auditors, agents or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee pursuant to the procedures set forth in chapter 49.17 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in chapter 49.17 RCW. The employer from whom the fee is demanded or enforced, may however, within thirty days of the board of industrial insurance appeal's final order, pay the fee under written protest setting forth all the grounds upon which such fee is claimed to be unlawful, excessive or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or any portion of the fee which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter.

NEW SECTION. Sec. 25. Unless reference is specifically made to another chapter, this chapter shall be implemented and enforced including penalties, violations, citations, and other administrative procedures pursuant to chapter 49.17 RCW.

NEW SECTION. Sec. 26. If a manufacturer, supplier, employer, or user refuses or fails to provide the department with any data sheets, workplace surveys, or other papers, documents, or information required by this chapter, the department may give written notice to the manufacturer, supplier, employer, or user demanding immediate compliance. If the manufacturer, supplier, employer, or user fails to begin to comply with the terms of the notice within fourteen days of receipt, the department may levy a fine of up to fifty dollars per affected employee per day, not to exceed five thousand dollars per day from the final date for compliance allowed by this section or by the department. In any case where the noncompliance continues for more than fifteen days or where the department determines the failure to comply creates a potential health or safety hazard to employees or hinders the department's performance of its duties under this chapter, the department may, in lieu of levying a fine or further fines, petition the superior court of Thurston county or the county where the manufacturer, supplier, employer, or user is located for an order enjoining the manufacturer, employer, supplier, or user from further noncompliance and granting any other remedies that may be appropriate. The court may award the department costs of litigation, including attorney's fees, if the department is the prevailing party.

NEW SECTION. Sec. 27. Except as otherwise provided in this chapter, the department, after consultation with the department of agriculture, shall adopt any rules necessary to carry out its responsibilities under this chapter.

NEW SECTION. Sec. 28. Sections 3 through 27 of this act shall constitute a new chapter in Title 49 RCW.

NEW SECTION. Sec. 29. There is appropriated from the general fund to the worker and community right to know fund for the biennium ending June 30, 1985, the sum of ninety-seven thousand four hundred fifty-three dollars, or so much thereof as may be necessary, to carry out the purposes of this act.

NEW SECTION. Sec. 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 6, 1984.

Passed the House March 5, 1984.

Approved by the Governor March 30, 1984, with the exception of those provisions noted in the veto message.

Filed in Office of Secretary of State March 30, 1984.

Note: Governor's explanation of partial veto is as follows:

I am returning herewith, without my approval as to several sections, Second Substitute Senate Bill No. 4831, entitled:

"AN ACT Relating to worker and community right to know."

I am confronted with a dilemma with respect to this measure. Protection of workers and the public from inadvertent exposure to hazardous substances is of particular concern to me. I favor a responsible approach to these concerns tailored to the particular circumstances of the state of Washington. Unfortunately, this bill is not such a proposal.

This bill contains serious technical flaws and numerous substantive errors. It is internally inconsistent, creates a monstrous paper burden in the Department of Labor and Industries and on small business and agriculture, and is so broad that it may well constitute an illegal burden on interstate commerce under Federal law. In its present form, this bill would substantially increase costs to consumers and dampen economic recovery.

Rather than reject the concept of this legislation, I am approving those provisions of the bill which will allow the Department of Labor and Industries to be responsive to the need for establishing a program for disclosure of information regarding hazardous substances in the workplace. As a result of my action, the Department will immediately begin work in preparation for reporting to the Governor and the legislature by January 1, 1985, in conjunction with the Right to Know Advisory Council, on the necessary study of the impact of legislation on this subject, and on the need for any additional legislation.

I have vetoed section 3. This section purports to provide definitions for purposes of implementing the act. However, many of these definitions are in fact substantive requirements inappropriately engrossed on the definition section. Necessary definitions for implementation of this chapter may be developed by the Department under the authority of section 27.

I have vetoed sections 4 through 14 of the act, inclusive. Section 4 contains numerous exclusions from coverage under the statute which exclusions may or may not prove to be appropriate after study. Section 5 places on the Department of Labor and Industries the sole burden of development of a hazardous substance list. This section in conjunction with sections 6 through 14 constitutes overly burdensome aspects of the legislation.

I have vetoed section 19 from the bill for the reasons stated above. I have vetoed section 22 for the same reasons.

Many of the substantive action sections of this bill do not become operative for more than a year or two years. Therefore, it would seem prudent and in the best interests of employees, employers, and the public, that they be reviewed, fine-tuned, and acted upon next January.

With the exception of the above vetoes, Second Substitute Senate Bill No. 4831 is approved.