

# **Worker and Community Right To Know Act**

P.L. 1983, c.315 as amended through November 13, 1995

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**NOTE:** This statute is for ready reference only.  
For official text consult the New Jersey Statutes Annotated.

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# New Jersey Permanent Statutes

## TITLE 34 LABOR AND WORKMEN'S COMPENSATION

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### 34:5A-1. Short title

This act shall be known and may be cited as the "Worker and Community Right to Know Act."

P.L.1983, c. 315, s. 1, eff. Aug. 29, 1984. As amended through November 13, 1995.

### 34:5A-2. Legislative findings and declarations

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 adequately monitor 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 adequately plan for, and respond to, emergencies, and enforce compliance with applicable laws and regulations concerning these substances.

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 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.

### 34:5A-3. Definitions

As used in this act:

a. "Chemical Abstracts Service number" means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

b. "Chemical name" means 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.

c. "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.

d. "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" shall not include process containers.

e. "Council" means the Right to Know Advisory Council created pursuant to N.J.S.A. 34:5A-18.

f. "County health department" means a county health agency established pursuant to N.J.S.A. 26:3A2-1 et seq., or the office of a county clerk in a county which has not established a department.

g. "Employee representative" means a certified collective bargaining agent or an attorney whom an employee authorizes to exercise his rights to request information pursuant to the provisions of this act, or a parent or legal guardian of a minor employee.

h. "Employer" means any person or corporation in the State engaged in business operations which has a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be, except as otherwise provided herein: Major Group Number 07 (Agricultural Services), only Industry Number 0782--Lawn and garden services; Major Group Numbers 20 through 39 inclusive (manufacturing industries); Major Group Number 45 (Transportation by Air), only Industry Number 4511--Air Transportation, certified carriers, and Group Number 458--Air Transportation Services; Major Group Number 46 (Pipelines, Except Natural Gas); Major Group Number 47 (Transportation Services), only Group Numbers 471--Freight Forwarding, 474--Rental of Railroad Cars, and 478--Miscellaneous Services Incidental to Transportation; Major Group Number 48 (Communication), only Group Numbers 481--Telephone Communication, and 482--Telegraph Communication; Major Group Number 49 (Electric, Gas and Sanitary Services); Major Group Number 50 (Wholesale Trade--Durable Goods), only Industry Numbers 5085--Industrial Supplies, 5087--Service Establishment Equipment and Supplies, and 5093--Scrap and Waste Materials; Major Group Number 51

(Wholesale trade, nondurable goods), only Group Numbers 512--Drugs, Drug Proprietaries and Druggist's Sundries, 516--Chemicals and Allied Products, 517--Petroleum and petroleum products, 518--Beer, Wine and Distilled Alcoholic Beverages, and 519--Miscellaneous Nondurable Goods; Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551--Motor Vehicle Dealers (New and Used), 552--Motor Vehicle Dealers (Used only), and 554--Gasoline Service Stations; Major Group Number 72 (Personal Services), only Industry Numbers 7216--Dry Cleaning Plants, Except Rug Cleaning, 7217--Carpet and Upholstery Cleaning, and 7218--Industrial Launderers; Major Group Number 73 (Business Services), only Industry Number 7397 Commercial testing laboratories; Major Group Number 75 (automotive repair, services, and garages), only Group Number 753--Automotive Repair Shops; Major Group Number 76 (miscellaneous repair services), only Industry Number 7692--Welding Repair; Major Group Number 80 (health services), only Group Number 806--Hospitals; and Major Group Number 82 (educational services), only Group Numbers 821--Elementary and Secondary Schools and 822--Colleges and Universities, and Industry Number 8249--Vocational Schools. Except for the purposes of N.J.S.A. 34:5A-26, "employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, or any non-profit, non-public school, college or university.

i. "Environmental hazardous substance" means any substance on the environmental hazardous substance list.

j. "Environmental hazardous substance list" means the list of environmental hazardous substances developed by the Department of Environmental Protection pursuant to N.J.S.A. 34:5A-4.

k. "Environmental survey" means a written form prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at his facility, including, but not limited to, the following:

- (1) The chemical name and Chemical Abstracts Service number of the environmental hazardous substance;
- (2) A description of the use of the environmental hazardous substance at the facility;
- (3) The quantity of the environmental hazardous substance produced at the facility;
- (4) The quantity of the environmental hazardous substance brought into the facility;
- (5) The quantity of the environmental hazardous substance consumed at the facility;
- (6) The quantity of the environmental hazardous substance shipped out of the facility as or in products;
- (7) The maximum inventory of the environmental hazardous substance stored at the facility, the method of storage, and the frequency and methods of transfer;
- (8) The total stack or point-source emissions of the environmental hazardous substance;
- (9) The total estimated fugitive or nonpoint-source emissions of the environmental hazardous substance;
- (10) The total discharge of the environmental hazardous substance into the surface or groundwater, the treatment methods, and the raw wastewater volume and loadings;

- (11) The total discharge of the environmental hazardous substance into publicly owned treatment works;
- (12) The quantity, and methods of disposal, of any wastes containing an environmental hazardous substance, the method of on-site storage of these wastes, the location or locations of the final disposal site for these wastes, and the identity of the hauler of the wastes;
- (13) The total quantity of environmental hazardous substances generated at the facility, including hazardous substances generated as nonproduct output;
- (14) The quantity of environmental hazardous substances recycled on-site and off-site; and
- (15) Information pertaining to pollution prevention activities at the facility.

As used in this subsection, "pollution prevention" and "nonproduct output" shall have the same meaning as set forth in N.J.S.A.13:1D-37.

l. "Facility" means the building, equipment and contiguous area at a single location used for the conduct of business. Except for the purposes of N.J.S.A. 34:5A-13c, N.J.S.A. 34:5A-14, and N.J.S.A. 34:5A-25b, "facility" shall not include a research and development laboratory.

m. "Hazardous substance" means any substance, or substance contained in a mixture, included on the workplace hazardous substance list developed by the Department of Health pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, or otherwise handled at a facility. "Hazardous substance" shall not include:

- (1) Any article containing a hazardous substance if the hazardous substance is present in a solid form which does not pose any acute or chronic health hazard to an employee exposed to it;
- (2) Any hazardous substance constituting less than 1% of a mixture unless the hazardous substance is present in an aggregate amount of 500 pounds or more at a facility;
- (3) Any hazardous substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health for that special health hazard substance when present in a mixture; or
- (4) Any hazardous substance present in the same form and concentration as a product packaged for distribution and use by the general public to which an employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the toxic substance.

n. "Hazardous substance fact sheet" means a written document prepared by the Department of Health for each hazardous substance and transmitted by the department to employers pursuant to the provisions of this act, which shall include, but not be limited to, the following information:

- (1) The chemical name, the Chemical Abstracts Service number, the trade name, and common names of the hazardous substance;
- (2) A reference to all relevant information on the hazardous substance from the most recent edition of the National Institute for Occupational Safety and Health's Registry of Toxic Effects of Chemical Substances;
- (3) The hazardous substance's solubility in water, vapor pressure at standard conditions of temperature and pressure, and flash point;

**34:5A-9. Environmental surveys; file; clarifying information; update; request for copy**

- a. The Department of Environmental Protection shall maintain a file of all completed environmental surveys received from employers. Each environmental survey received by the department shall be retained by the department for 30 years.
- b. The department may require an employer to submit information clarifying any statement made on the environmental survey. The department, subject to the provisions of N.J.S.A. 34:5A-15 if applicable, shall transmit this clarifying information to the appropriate county health department, local fire department, and local police department as it deems necessary.
- c. The department shall require every employer to update the environmental survey for his facility every other year. If there is any significant change during a nonreporting year in the information reported on his environmental survey, the employer shall inform the department of the change. The department may require an employer to update the environmental survey for his facility every year.
- d. Any person may request in writing from the department a copy of an environmental survey for a facility, and the department shall transmit any survey so requested within 30 days of the request therefor.

**34:5A-10. Retention of workplace surveys**

- a. The Department of Health shall maintain a file of all completed workplace surveys received from employers. Each workplace survey received shall be retained by the department for 30 years. The department shall also retain for 30 years each hazardous substance fact sheet.
- b. The department shall require every employer to update the workplace survey for his facility every five years, and shall supply each employer with any necessary additional hazardous substance fact sheets. If any additional workplace hazardous substance is present at the employer's facility during a non-reporting year that had not been previously reported, the employer shall inform the department and all other appropriate departments or entities which receive a copy of the completed survey as required pursuant to N.J.S.A. 34:5A-7 of the change no later than the July 15 following the change.
- c. Upon request by the department, an employer shall provide the department with copies of employee health and exposure records, including those maintained for, and supplied to, the federal government.
- d. Any person may request in writing from the department a copy of a workplace survey for a facility, together with the appropriate hazardous substance fact sheets, and the department shall transmit any material so requested within 30 days of the request therefor. Any request by an employee for material pertaining to the facility where he is employed made pursuant to this subsection shall be treated by the department as confidential.

**34:5A-11. Request for Spanish translation**

- a. An employer shall, upon request, provide an employee whose native language is Spanish with a Spanish translation of a workplace survey, hazardous substance fact sheet, and, if applicable, an environmental survey obtained from the Department of Health or the Department of Environmental Protection, as the case may be. An employer shall, upon request, provide employees whose native language is Spanish with the education and training program required pursuant to N.J.S.A. 34:5A-13 in Spanish.
- b. A county health department shall, upon request, provide copies of the environmental survey and the workplace survey in a Spanish translation provided by the Department of Health and Department of Environmental Protection.

**34:5A-12. Employer's central file; posting of notice; distribution of literature on employee rights; employee access to information**

Every employer shall establish and maintain a central file at his facility in which he shall retain a workplace survey for the facility, appropriate hazardous substance fact sheets, and, if applicable, a copy of the environmental survey for the facility. Every employer shall post on bulletin boards readily accessible to employees a notice of the availability of the information in the file. Every employer employing employees whose native language is Spanish shall also post the notice in Spanish. Every employer shall supply employees with any material designed and provided by the Department of Health, the Department of Environmental Protection, or the Department of Labor to inform employees of their rights under this act. An employer shall provide an employee with access to a workplace survey, appropriate hazardous substance fact sheets, and, if applicable, an environmental survey, within five working days of a request therefor.

**34:5A-13. Employee education, training program; certification of instructors**

- a. Every employer shall have until October 30, 1985 to establish an education and training program for his 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, and to train them in the proper and safe procedures for handling the hazardous substances under all circumstances. An employer shall provide his employees with the program not later than December 31, 1985, and every two years thereafter. Any person who becomes an employee after the conclusion of the initial program shall be provided with the program within the first month of employment. Prior to entering an employment agreement with a prospective employee an employer shall notify a prospective employee of the availability of workplace surveys and appropriate hazardous substance fact sheets for the facility at which the prospective employee will be employed; except that this notification requirement shall not be applicable to employers before December 31, 1985.
- b. Any employer who has established an employee education and training program for hazardous substances

prior to the effective date of this act may request the Department of Health to certify that education and training program, which certification shall constitute compliance with subsection a. of this section.

c. Every employer shall establish an education and training program for his employees who work in a research and development laboratory, 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, and to train them in the proper and safe procedures for handling the hazardous substances under all circumstances. An employer shall provide his employees with the program not later than December 31, 1985, and every two years thereafter. Any person who becomes an employee after the conclusion of the initial program shall be provided with the program within the first month of employment.

d. The Department of Health shall establish a program for the certification of education and training programs provided to employers, for remuneration, for purposes of compliance with N.J.S.A. 34:5A-1 et seq. The certification shall be valid for at least 12 months, shall provide for provisional and permanent certification, and shall be renewable.

e. The Department of Health shall establish a program for the certification of persons who are paid pursuant to the terms of a contract by employers to conduct education and training programs for purposes of compliance with N.J.S.A. 34:5A-1 et seq. The certification shall be valid for at least 12 months, shall provide for provisional and permanent certification, and shall be renewable.

f. A person paid pursuant to the terms of a contract by an employer to conduct or provide an education and training program for purposes of compliance with N.J.S.A. 34:5A-1 et seq. shall be required to be certified pursuant to subsection d. or e. of this section, as appropriate, prior to conducting or providing the program.

g. The fee for certification for a 12-month period and the fee for a renewal of a certification each shall not exceed \$500.00. The fee for the certification and renewal shall be established pursuant to rules and regulations adopted by the Department of Health. All revenues from fees for the issuance or renewal of certifications shall be credited to the Worker and Community Right to Know Fund created pursuant to N.J.S.A. 34:5A-26. Applications for certification shall be made to the Commissioner of Health in the manner and on a form as the commissioner shall prescribe by rule or regulation.

h. The Department of Health shall adopt, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rules and regulations to implement the provisions of this section.

i. Any person required to be certified by the Department of Health pursuant to this section who violates the provisions of subsection f. of this section, or any rule or regulation adopted pursuant thereto, shall be guilty of a disorderly persons offense.

j. The Commissioner of Health, upon making a finding that a person granted certification has violated any provision of this section or any rules or regulations adopted pursuant thereto, may revoke, suspend, or modify any certification issued pursuant to subsection d. or e. of this section. A person whose certification is to be revoked, suspended, or modified pursuant to this subsection shall be entitled to a hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to contest that action.

#### **34:5A-14. Labeling of containers**

a. Every employer shall have until October 30, 1985 to take any action necessary to assure that every container at his facility containing a hazardous substance shall bear a label indicating the chemical name and Chemical Abstracts Service number of the hazardous substance or the trade secret registry number assigned to the hazardous substance. Employers may label containers in a research and development laboratory by means of a code or number system, if the code or number system will enable an employee to readily make a cross-reference to a hazardous substance fact sheet which will provide the employee with the chemical name and Chemical Abstracts Service number of the hazardous substance contained in the container, or the trade secret registry number assigned to the hazardous substance. The code or number system shall be designed to allow the employee free and ready access at all times to the chemical name and Chemical Abstracts Service number of the hazardous substance in the container, shall be designed to allow the employee access to this information without the permission or assistance of management, and shall be available to the employee at close proximity to his specific job location or locations. Employers shall be required to label pipelines only at the valve or valves located at the point at which a hazardous substance enters a facility's pipeline system, and at normally operated valves, outlets, vents, drains and sample connections designed to allow the release of a hazardous substance from the pipeline.

b. Within two years of the effective date of this act, every employer shall take any action necessary to assure that every container at his facility bears a label indicating the chemical name and Chemical Abstracts Service number of the substance in the container, except as provided in subsection d. of this section, or the trade secret registry number assigned to the substance. Employers may label containers in a research and development laboratory by means of a code or number system, if the code or number system will enable an employee to readily make a cross-reference to documentary material retained on file by the employer at the facility which will provide the employee with the chemical name and Chemical Abstracts Service number of the substance contained in the container, except as provided in subsection d. of this section, or the trade secret registry number assigned to the substance. The code or number system shall be designed to allow the employee free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substance in the container, shall be designed to allow the employee access to this information without the permission or assistance of management, and shall be available to the employee at close proximity to his specific job location or locations. If a container contains a mixture, an employer



shall be required to insure that the label identify the chemical names and Chemical Abstracts Service numbers, except as provided in subsection d. of this section, or the trade secret registry numbers, of the five most predominant substances contained in the mixture. The provisions of this subsection shall not apply to any substance constituting less than 1% of a mixture unless the substance is present at the facility in an aggregate amount of 500 pounds or more. Employers shall be required to label pipelines only at the valve or valves located at the point at which a substance enters a facility's pipeline system, and at normally operated valves, outlets, vents, drains and sample connections designed to allow the release of a substance from the pipeline. One year after the effective date of this act the Department of Health shall establish criteria for containers which, because of the finished and durable characteristics of their contents, shall be exempt from the provisions of this subsection. These standards shall be consistent with the intent of this subsection to provide for the labeling of every container which may contain a substance which is potentially hazardous.

c. The labeling requirements of subsections a. and b. 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. §. 121 et al.). The Department of Health may, by rule and regulation, certify containers labeled pursuant to any other federal act as labeled in compliance with the provisions of this section.

d. One year after the effective date of this act the Department of Health shall adopt, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a list of substances the containers of which may be labeled with the common names and Chemical Abstracts Service numbers of their contents. The department shall include on the list adopted pursuant to this subsection only substances which are widely recognized by their common names. An employer shall provide the chemical name of a substance in a container labeled pursuant to this subsection within five working days of the request therefor.

#### **34:5A-15. Trade secret claim**

a. If an employer believes that disclosing information required by this act will reveal a trade secret, he may file with the appropriate department a trade secret claim as herein provided. As used in this section, "department" means either the Department of Health or Department of Environmental Protection, as the case may be.

b. If an employer claims that disclosing information on either the workplace survey or the environmental survey would reveal a trade secret, he shall file with the appropriate department a trade secret claim within 90 days of receipt of the survey. An employer making a trade secret claim shall submit two copies of the survey to the department, one with the information for which a trade secret claim is being made concealed, and one in an envelope marked "Confidential" containing the information for which a trade secret claim is being made, which the department, during the pendency of the trade secret claim, shall keep in a locked file or room. On the copies of the survey sent to the county health department, local fire department, and local police department, and retained on file at the facility, the employer

shall conceal the information for which he is making a trade secret claim.

c. If an employer claims that labeling a container pursuant to the provisions of N.J.S.A. 34:5A-14 would reveal a trade secret, he shall file a trade secret claim with the Department of Health. Upon receipt of the trade secret claim, the department shall assign a trade secret registry number to the claim, and transmit the trade secret registry number to the employer. Upon receipt of the trade secret registry number, the employer shall affix the trade secret registry number to each container containing a substance for which the trade secret claim was made.

d. The department shall act to make a determination on the validity of a trade secret claim when a request is made pursuant to the provisions of this act for the disclosure of the information for which the trade secret claim was made, or at any time that the department deems appropriate. Upon making a determination on the validity of a trade secret claim, the department shall inform the employer of the determination by certified mail. If the department determines that the employer's trade secret claim is not valid, the employer shall have 45 days from the receipt of the department's determination to file with the department a written request for an administrative hearing on the determination. If the employer does not file such a request within 45 days, the department shall take action to provide that the information for which the trade secret claim was made be disclosed pursuant to the provisions of this act. If an employer requests an administrative hearing pursuant to the provisions of this subsection, the department shall refer the matter to the Office of Administrative Law, for a hearing thereon. At the hearing the employer shall have the burden to show that the trade secret claim is valid. Within 45 days of receipt of the administrative law judge's recommendation, the department shall affirm, reject, or modify the recommendation. The department's action shall be considered the final agency action for the purposes of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and shall be subject only to judicial review as provided in the Rules of Court. The department shall inform the employer of its decision on the administrative law judge's recommendation by certified mail. If the department determines that the trade secret claim is not valid, the employer shall have 45 days to notify the department in writing that he has filed to appeal the department's decision in the courts. If the employer does not so notify the department, the department shall take action to provide that the information for which the trade secret claim was made be disclosed pursuant to the provisions of this act.

e. The department shall provide any information for which a trade secret claim is pending or has been approved pursuant to this section to a physician or osteopath when such information is needed for medical diagnosis or treatment. The department shall require the physician or osteopath to sign an agreement protecting the confidentiality of information disclosed pursuant to this subsection.

f. Any workplace survey or environmental survey containing information for which a trade secret claim is pending or has been approved shall be made available to the public with that information concealed.

g. The subject of any trade secret claim pending or approved shall be treated as confidential information. Except as provided in subsection e. of this section, the department shall not disclose any confidential information to any person except an officer or employee of the State in connection with the official duties of the officer or employee under any law for the protection of public health, or to the contractors of the State and their employees if in the opinion of the department the disclosure is necessary for the completion of any work contracted for in connection with the implementation of this act. Any officer or employee of the State, contractor of the State, physician or osteopath, or employee of a county health department, local fire department, or local police department who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

h. The provisions of this section shall not apply to the disclosure of information concerning emissions, and shall not apply to the disclosure of any information required pursuant to any other act.

i. The Department of Health and the Department of Environmental Protection shall jointly adopt rules and regulations to implement the provisions of this section.

**34:5A-16. Employee requests for information; refusal to work; complaint; civil actions; penalty**

a. Any employee or employee representative may request, in writing, from his employer, a copy of a workplace survey, hazardous substance fact sheet, or, where applicable, an environmental survey filed pursuant to the provisions of this act for the facility at which he is employed. The employer shall supply this material within five working days of the request. Any employee or employee representative may request, in writing, the chemical name and Chemical Abstracts Service number of the substance contained in any container which is not labeled pursuant to the provisions of N.J.S.A. 34:5A-14, and the employer shall supply the employee or employee representative with this information within five working days of the request. An employee shall have the right to refuse to work with a hazardous substance for which a request was made and not honored without loss of pay or forfeit of any other privilege until the request is honored.

b. Any employee or employee representative who believes that an employer has not complied with the provisions of subsection a. of this section may file a complaint with the Commissioner of the Department of Labor. Upon receipt of the complaint, the commissioner shall investigate the allegations contained in the complaint. If the commissioner, following an administrative hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., finds that the employer has violated the provisions of subsection a. of this section, he shall initiate a civil action by summary proceeding pursuant to The Penalty Enforcement Law" N.J.S.A. 2A:58-1 et seq. Any employer violating the provisions of subsection a. of this section is liable to a penalty of not less than \$2,500.00 for each offense.

**34:5A-17. Discharge or penalizing of employee for exercising rights; complaint; adjudication**

a. No employer shall discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or his employee representative has exercised any right established in this act.

b. Any employee who believes that he has been discharged, or otherwise disciplined, penalized, or discriminated against by an employer in violation of subsection a. of this section may, within 30 days of the violation, or within 30 days of obtaining knowledge that a violation occurred, file a complaint with the Commissioner of the Department of Labor alleging the violation. Within 30 days of the receipt of a complaint, the commissioner shall conduct an investigation of the complaint. If after the investigation the commissioner determines that there is probable cause that the complaint is valid, he may refer the complaint to the Office of Administrative Law, which, upon the referral, shall commence an adjudicatory proceeding on the complaint, to be conducted as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq.. If the Commissioner of Labor or the employee introduces evidence that prior to the alleged violation the employee exercised any right provided in this act, the employer shall have the burden to show just cause for his action by clear and convincing evidence. Within 45 days of the receipt of the recommendations of the administrative law judge, the commissioner shall adopt, reject, or modify the recommendations. The final decision of the commissioner shall be considered the final agency action thereon for the purposes of the Administrative Procedure Act and shall be subject only to judicial review as provided in the Rules of Court.

**34:5A-18. Right to know advisory council; membership; term; qualifications; quorum; officers and employees; compensation**

a. There is established in the Department of Health a Right to Know Advisory Council, which shall consist of 11 members appointed by the Governor with the advice and consent of the Senate. 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 Governor, four shall serve for terms of one year, four shall serve for terms of two years, and three 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 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 firefighters; 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; and one from persons with training and experience in environmental epidemiology recommended by recognized research or academic organizations. In the event that no recommendations for a particular category of membership are made to the Governor three months prior to the effective date of this act in the case of the initial appointments, or within 60 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 Governor shall appoint as a member for that category of membership a person whom he believes will be representative thereof.

b. A majority of the membership of the council shall constitute 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.

c. The council shall meet regularly as it may determine, and shall also meet at the call of the Commissioner of the Department of Health, the Commissioner of the Department of Environmental Protection, or the Commissioner of the Department of Labor.

d. 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.

e. 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.

#### **34:5A-19. Duties**

The council shall:

a. Advise the Department of Health on the revision of the workplace hazardous substance list and the Department of Environmental Protection on the revision of the environmental hazardous substance list.

b. Advise the Department of Environmental Protection, the Department of Health, and the Department of Labor on the implementation of his act.

c. Review any matters submitted to it by the Department of Health, Department of Environmental Protection, or the Department of Labor, and state its position within 90 days.

#### **34:5A-20. Powers**

The council may:

a. Review any aspect of the implementation of this act, and transmit its recommendations to the appropriate department or departments.

b. Hold public meetings or hearings within the State on any matter or matters related to the provisions of this act.

c. Call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, commission, or agency as may be required and made available for such purposes.

#### **34:5A-21. Joint procedure concerning implementation of act; revision of workplace or environmental hazardous substance list**

The Department of Health, the Department of Environmental Protection, and the Department of Labor, in conjunction with the council, shall jointly 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 act. This procedure shall include a mechanism for revising the workplace hazardous substance list and the environmental hazardous substance list. Any revision of the workplace hazardous substance list or environmental hazardous substance list shall be based on documented scientific evidence. The Department of Health and Department of Environmental Protection shall publicly announce any revisions of the workplace hazardous substance list or the environmental hazardous substance list, and any such additions or revisions shall be made pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

#### **34:5A-22. County health department file of surveys; public access**

Each county health department shall maintain a file of workplace surveys and environmental surveys transmitted to it pursuant to the provisions of this act. These surveys, pursuant to the provisions of subsection f. of N.J.S.A. 34:5A-15, shall be made available to the public at reasonable hours and at a fee not to exceed the cost of reproducing the surveys.

#### **34:5A-23. Civil actions for violations; jurisdiction; award**

Any person may bring a civil action in law or equity on his own behalf against any employer for a violation of any provision of this act or any rule and regulation promulgated pursuant thereto or against the Department of Environmental Protection or the Department of Health for failure to enforce the provisions of this act or any rule or regulation promulgated pursuant thereto. The Superior Court shall have jurisdiction over these actions. The court may award, whenever it deems appropriate, costs of litigation, including reasonable attorney and expert witness fees.

#### **34:5A-24. Substances not included on hazardous substance lists; reporting; liability**

Substances not included on the workplace hazardous substance list or the environmental hazardous substance list shall not be subject to the reporting provisions of this act. However, the absence of any substance from the workplace hazardous substance list or the environmental 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 act, shall not in any way 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 or regulation adopted pursuant thereto.

**34:5A-25. Local police or fire departments; availability of surveys to public; request for additional information; communications program with research and development laboratory**

a. No local police department or local fire department receiving workplace surveys or environmental surveys pursuant to the provisions of this act shall make the surveys available to the public. Any county health department, local police department, or local fire 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 therefor. The employer may require the requester to sign an agreement protecting the confidentiality of any additional information provided pursuant to this section.

b. Every employer with a research and development laboratory at his facility shall establish a communications program with the local fire department, which shall be designed to assist the fire department in adequately preparing to respond to emergencies at the research and development laboratory.

**34:5A-26. "Worker and Community Right to Know Fund" established**

a. There is established in the Department of the Treasury a nonlapsing, revolving fund to be known as the "Worker and Community Right To Know Fund." The "Worker and Community Right To Know Fund" shall be credited with all fees collected pursuant to paragraph (1) of subsection b. of this section and interest on moneys in the "Worker and Community Right To Know Fund" shall be credited to the "Worker and Community Right To Know Fund" and all moneys in the "Worker and Community Right To Know Fund" are appropriated for the purposes of the "Worker and Community Right To Know Fund," and no moneys shall be expended for those purposes without the specific appropriation thereof by the Legislature. The State Treasurer shall be the administrator of the "Worker and Community Right To Know Fund," and all disbursements from the "Worker and Community Right To Know Fund" shall be made by the State Treasurer upon the warrant of the Director of the Division of Budget and Accounting.

b. (1) The Department of Labor shall annually assess each employer a fee of not less than \$50.00 nor more than an amount equal to \$2.00 per employee to provide for the implementation of the provisions of this act. All fees collected by the department pursuant to this paragraph shall be deposited in the "Worker and Community Right To Know Fund."

(2) The Department of Labor shall annually assess each employer a fee of \$2.00 per employee for the implementation of N.J.S.A. 13:1D-35 et seq. All fees collected by the department pursuant to this paragraph shall

be deposited in the Pollution Prevention Fund established pursuant to section 16 of N.J.S.A. 13:1D-50, and shall be used only for the implementation of N.J.S.A. 13:1D-35 et seq.

c. The moneys in the "Worker and Community Right To Know Fund" shall be disbursed only for the following purposes:

(1) Expenses approved by the Director of the Division of Budget and Accounting and incurred by the Department of Health, the Department of Environmental Protection, the Department of Labor, the Department of the Treasury, and the county health departments in implementing the provisions of this act; and  
(2) Repayment to the General Fund of any moneys appropriated by law in order to implement the provisions of this act.

d. The State Treasurer shall annually disburse the moneys in the "Worker and Community Right To Know Fund" for expenditures approved by the Director of the Division of Budget and Accounting pursuant to paragraph (1) of subsection c. of this section, but in no case in an amount to the several departments that is greater than the following percentages of the "Worker and Community Right To Know Fund" available in any one year: the Department of Health, 40%; the Department of Environmental Protection, 20%; the county health departments, 15%; the Department of Labor, 15%; and the Department of the Treasury, 10%.

e. Beginning two years after the effective date of this act, the State Treasurer shall make an annual audit of the "Worker and Community Right To Know Fund" to determine the adequacy of moneys on deposit in the "Worker and Community Right To Know Fund" to support the implementation of the provisions of this act. If the State Treasurer, in consultation with the Department of Health, the Department of Environmental Protection, and the Department of Labor makes a determination that the revenues in the "Worker and Community Right To Know Fund" are sufficient to warrant a reduction in the fees imposed pursuant to paragraph (1) of subsection b. of this section for the ensuing year, he may reduce the amount of the fees imposed during that year by an amount warranted by the balance in the "Worker and Community Right To Know Fund" at the time of the determination.

**34:5A-26.1. Fee refund**

The Department of Labor shall refund any fee collected pursuant to N.J.S.A. 34:5A-26 to any employer who has paid this fee and is exempt from the fee pursuant to N.J.S.A. 34:5A-8.

**34:5A-27. Legislative intent**

It is the intent of the Legislature that the program established by this act for the disclosure of information concerning hazardous substances to employees and the public constitute the principal program in this State. To this end, no municipality or county shall enact any law or ordinance requiring the disclosure of information about, or the identification of, hazardous substances in the workplace or the environment to the extent that the disclosure of information or identification is provided for under this act,

and, further, the enactment of this act shall supersede any municipal or county law or ordinance enacted subsequent to May 11, 1983 providing for this disclosure or identification.

#### **34:5A-28. Joint report**

Within two years of the effective date of this act the Department of Health, the Department of Environmental Protection, and the Department of Labor shall jointly prepare and submit to the Governor and the Legislature a report evaluating the implementation of this act together with any recommendations for legislative or administrative action deemed necessary or appropriate.

#### **34:5A-29. Right to enter facility to determine compliance**

a. The Department of Health shall have the right to enter an employer's facility during the normal operating hours of the facility to determine the employer's compliance with the provisions of N.J.S.A. 34:5A-7a., 10, 11, 12, 13, and 14, and any rules and any regulations adopted pursuant thereto.

b. The Department of Environmental Protection shall have the right to enter an employer's facility during the normal operating hours of the facility to determine compliance with N.J.S.A. 34:5A-7b. and 9, and any rules and any regulations adopted pursuant thereto.

#### **34:5A-30. Rules and regulations**

Except as otherwise provided in this act, the Department of Health, the Department of Environmental Protection, the Department of Labor and the Department of the Treasury shall adopt any rules and regulations necessary to carry out their respective responsibilities under this act.

#### **34:5A-31. Remedies**

a. Whenever, on the basis of information available to him, the Commissioner of Environmental Protection finds that an employer is in violation of N.J.S.A. 34:5A-7b. or 9b. or 9c, or any rule and regulation adopted pursuant thereto, or the Commissioner of Health finds that an employer is in violation of N.J.S.A. 34:5A-7a. or 10, 11, 12, 13, or 14, or any rule and regulation adopted pursuant thereto, the Commissioner of Environmental Protection, or the Commissioner of Health, as the case may be, shall:

- (1) Issue an order in accordance with subsection b. of this section requiring the employer to comply;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of information available to him, the Commissioner of Environmental Protection finds that an employer is in violation of N.J.S.A. 34:5A-7b., or 9b., or 9c.,

or any rule or regulation adopted pursuant thereto, or the Commissioner of Health finds that an employer is in violation of N.J.S.A. 34:5A-7a., or 10, 11, 12, 13, or 14, or any rule or regulation adopted pursuant thereto, the Commissioner of Environmental Protection or the Commissioner of Health, as the case may be, may issue an order (1) specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto of which the employer is in violation; (2) citing the action which caused the violation; (3) requiring compliance with the provision of this act or the rules and regulations adopted pursuant thereto of which he is in violation; and (4) giving notice to the employer of his right to a hearing on the matters contained in the order.

c. The Commissioner of Environmental Protection or the Commissioner of Health, as appropriate, is authorized to commence a civil action in Superior Court for appropriate relief from a violation of this act. This relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection.

d. The Commissioner of Environmental Protection or the Commissioner of Health, as appropriate, is authorized to impose a civil administrative penalty of not more than \$2,500.00 for each violation and additional penalties of not more than \$1,000.00 for each day during which a violation continues after receipt of an order from the commissioner to cease the violation. Any amount imposed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. No civil administrative penalty shall be imposed until after the employer has been notified by certified mail or personal service. The notice shall include a reference to the section of the act, rule, regulation or order violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil administrative penalties to be imposed; and a statement of the employer's right to a hearing. The employer shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after imposing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied. A civil administrative penalty imposed under this section may be compromised by the commissioner upon the posting of a performance bond by the employer, or upon terms and conditions the commissioner may establish by regulation.

e. An employer who violates this act, an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, shall be subject, upon order of

a court, to a civil penalty not to exceed \$2,500.00 for each day during which the violation continues. An employer who willfully or knowingly violates this act, or who willfully or knowingly makes a false statement, representation, or certification in any document filed or required to be maintained under this act, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device required to be maintained pursuant to this act, is subject upon order of a court, to a civil penalty of not less than \$10,000.00, nor more than \$5,000.00 per day of violation. Any penalty imposed pursuant to this subsection may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to The Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce The Penalty Enforcement Law.

#### **34:5A-31.1 Effective Date**

This act shall take effect immediately, except that in the case of an employer\* required to comply with the provisions of this act pursuant to P.L. 1985, c. 543, this act shall take effect 270 days following enactment. The Department of Environmental Protection, Department of Health, and the Department of Labor shall take any action necessary for the timely implementation of this act prior to its effective date.

\*Employer means a new employer included in this act on January 21, 1986 pursuant to P.L. 1985, c. 543.