

1981 Assembly Bill 615

Date published: May 7, 1982

CHAPTER 364 , Laws of 1981
(Vetoed in Part)

AN ACT to renumber 101.58 and 101.59; and to create 20.445 (1) (br) and 101.58 to 101.599 of the statutes, relating to employes' right to know regarding toxic substances, infectious agents and pesticides, granting rule-making authority, providing a penalty and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.005 (2) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	1981-82	1982-83
20.445 Industry, labor and human relations, department of		
(1) INDUSTRY, LABOR AND HUMAN RELATIONS		
(br) Toxic substance and infectious agent outreach program	GPR A -0-	20,000

SECTION 2. 20.445 (1) (br) of the statutes is created to read:

20.445 (1) (br) *Toxic substance and infectious agent outreach program.* The amounts in the schedule for the purposes of s. 101.597 (3).

SECTION 3. 101.58 and 101.59 of the statutes, as affected by chapter 20, laws of 1981, are renumbered 101.573 and 101.575.

SECTION 4. 101.58 to 101.599 of the statutes are created to read:

101.58 Employes' right to know. (1) **SHORT TITLE.** Sections 101.58 to 101.599 shall be known as the "Employes' Right to Know Law".

(2) **DEFINITIONS.** In ss. 101.58 to 101.599:

(a) "Agricultural employer" means any person, including the state and its political subdivisions, who engages the services of any employe to perform agricultural labor. If any employe is present at the workplace of an agricultural employer under an agreement

between that agriculture employer and another agricultural employer or employer, “agricultural employer” means the agricultural employer with control or custody of a pesticide. An agricultural employer who engages some employees to perform agricultural labor and other employees for other purposes is only an agricultural employer with respect to the employees engaged to perform agricultural labor.

(b) “Agricultural labor” has the meaning provided in s. 108.02 (23).

(c) “Employee” means any person whose services are currently or were formerly engaged by an employer or an agricultural employer, or any applicant at the time an employer or agricultural employer offers to engage his or her services.

(d) “Employee representative” means an individual or organization to whom an employee gives written authorization to exercise his or her rights to request information under s. 101.583, 101.585 or 101.586, a parent of a minor employee or a recognized or certified collective bargaining agent.

(e) “Employer” means any person, except an agricultural employer, with control or custody of any employment or workplace who engages the services of any employee. “Employer” includes the state and its political subdivisions. If any employee is present at the workplace of an employer under an agreement between that employer and another employer or agricultural employer, “employer” means the employer with control or custody of a toxic substance or infectious agent. An employer who engages some employees to perform agricultural labor and other employees for other purposes is only considered an employer with respect to the employees engaged for other purposes.

(f) “Infectious agent” means a bacterial, mycoplasmal, fungal, parasitic or viral agent identified by the department by rule as causing illness in humans or human fetuses or both, which is introduced by an employer to be used, studied or produced in the workplace. “Infectious agent” does not include such an agent in or on the body of a person who is present in the workplace for diagnosis or treatment.

(g) “Legal holiday” has the meaning provided in s. 757.17.

(h) “Overexposure” means any chronic or acute exposure to a toxic substance or infectious agent which results in illness or injury.

(i) “Pesticide” means any substance or mixture of substances which is registered with the federal environmental protection agency under 7 USC 136 to 136y or the department of agriculture, trade and consumer protection under ch. 94, and which is labeled, designed or intended to prevent, destroy, repel or mitigate any pest or as a plant regulator, defoliant or desiccant.

(j) 1. “Toxic substance” means any substance or mixture containing a substance regulated by the federal occupational safety and health administration under title 29 of the code of federal regulations part 1910, subpart z, which is introduced by an employer to be used, studied or produced in the workplace. “Toxic substance” does not mean lutefish.

2. “Toxic substance” does not include:

a. Any article, including but not limited to an item of equipment or hardware, which contains a substance regulated by the federal occupational safety and health administration under title 29 of the code of federal regulations part 1910, subpart z, if the substance is present in a solid form which does not cause any acute or chronic health hazard as a result of being handled by an employee.

b. Any mixture containing a substance regulated under title 29 of the code of federal regulations part 1910, subpart z, if the substance is less than one percent, or, if the substance is an impurity, less than 2%, of the product.

c. Any consumer product packaged for distribution to and used by the general public, for which the employee’s exposure during use is not significantly greater than the consumer’s exposure occurring during the principal use of the product.

d. Any substance received by an employer 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.

e. Any waste material regulated under the federal resource conservation and recovery act, P.L. 94-580.

(k) "Workplace" means any location where an employee performs a work-related duty in the course of his or her employment, except a personal residence.

(3) RELATIONSHIP TO FEDERAL REGULATIONS. (a) If the federal occupational safety and health administration promulgates a hazards communication regulation which, with respect to toxic substances, has requirements comparable to those in s. 101.583, 101.59 or 101.597 (1), and has time periods no less stringent than s. 101.589 and confidentiality requirements no less stringent than s. 101.592, an employer, manufacturer or supplier may apply to the department for an exemption from s. 101.583, 101.59 or 101.597 (1).

(b) An employer applying to the department for an exemption under par. (a) shall provide a copy of the application to appropriate certified collective bargaining agents and shall post a statement at the place where notices to employees are normally posted. The posted statement shall summarize the application, specify a place where employees may examine it and inform employees of their right to request a hearing on it.

(c) Upon receipt of a written request from an affected employer, manufacturer, supplier, employee or employee representative, the department shall hold a hearing on the application. If a hearing has been requested, the department is prohibited from approving the application until a hearing has been held. In no case may the department approve the application within less than 60 days after receiving it.

101.581 Notice requirements. (1) EMPLOYER. An employer who uses, studies or produces a toxic substance or infectious agent shall post in every workplace at the location where notices to employees are usually posted a sign which informs employees that the employer is required, upon request, to provide an employee or employee representative with information regarding all of the following:

(a) The identity of any toxic substance or infectious agent which an employee works with or is likely to be exposed to.

(b) A description of any hazardous effect of the toxic substance or infectious agent.

(c) Precautions to be taken when handling the toxic substance or infectious agent.

(d) Procedures for emergency treatment in the event of overexposure to the toxic substance or infectious agent.

(2) AGRICULTURAL EMPLOYER. An agricultural employer who uses pesticides shall post in a prominent place in the workplace a sign which informs employees that the agricultural employer is required, upon request, to provide an employee or employee representative with access to the information contained on the label of any pesticide with which the employee works or to which the employee is likely to be exposed.

101.583 Toxic substance information requirements; employer to employee. (1) RETENTION OF INFORMATION; LISTS. Except as provided by department rule under s. 101.598, an employer shall:

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(a) Retain any material safety data sheet relating to a toxic substance and containing the information required to be provided to employees under sub. (2) for 30 years after the date upon which the employer last received the toxic substance in the workplace; or

(b) 1. Maintain a written list identifying any toxic substance present in a workplace on or after the effective date of this paragraph (1981), except as provided in subd. 2, and the dates that the toxic substance is present in the workplace. If a list is maintained, each toxic substance required to be on the list shall be included on the list until 30 years after the last date on which the substance is received in the workplace. Within 30 days after a

written request by an employee or employee representative, exclusive of weekends and legal holidays, the employer shall provide to the employee or employee representative a copy of any list maintained for the employee's workplace or the workplace of the employees represented by the employee representative.

2. a. A toxic substance need not be included on a list if in the area in which any employee usually works the toxic substance is received in packages of one kilogram or less and if no more than 10 kilograms of the toxic substance are used in or purchased for that area per year.

b. A toxic substance need not be included on a list if it is a mixture containing one or more mineral dusts listed in 29 CFR 1910.1000, table Z-3.

(1m) Any employer with less than 10 employees \$750,000 in gross sales in the most recent calendar or fiscal year is not subject to the requirements of sub. (1).

(2) INFORMATION. (a) Except as provided in s. 101.589, within 15 days after a written request by an employee or employee representative, exclusive of weekends and legal holidays, an employer shall provide to the employee or employee representative in writing the following information regarding any toxic substance with which the employee works or worked or to which the employee is likely to be or has been exposed:

1. The trade name of the toxic substance.
2. The chemical name and any commonly used synonym for the toxic substance and the chemical name and any commonly used synonym for its major components.
3. The boiling point, vapor pressure, vapor density, solubility in water, specific gravity, percentage volatile by volume, evaporation rate for liquids and appearance and odor of the toxic substance.
4. The flash point and flammable limits of the toxic substance.
5. Any permissible exposure level, threshold limit value or other established limit value for exposure to the toxic substance.
6. The stability of the toxic substance.
7. Recommended fire extinguishing media, special fire fighting procedures and any unusual fire and explosion hazard information for the toxic substance.
8. Any effect of overexposure to the toxic substance, emergency and first aid procedures and a telephone number to be called in an emergency.
9. Any condition or material which is incompatible with the toxic substance and must be avoided.
10. Any personal protective equipment to be worn or used and special precautions to be taken when handling or coming into contact with the toxic substance.
11. Procedures for the handling, cleanup and disposal of toxic substances leaked or spilled.

(b) An employer is not required to provide information regarding a toxic substance under par. (a) if the employee or employee representative making the request has requested information about the toxic substance under par. (a) within the preceding 12 months, unless the employee's job assignment has changed or there is new information available concerning any of the subjects about which information is required to be provided.

101.585 Infectious agent information requirements; employer to employee. (1) Except as provided in s. 101.589 (1) and (3), within 72 hours after a written request by an employee or employee representative, exclusive of weekends and legal holidays, an employer shall provide in writing to the employee or employee representative the following information regarding any infectious agent which the employee works with or is likely to be exposed to if the infectious agent is present in the workplace when the request is made or at any time during the 30 days immediately preceding the request:

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- (a) The name and any commonly used synonym of the infectious agent.
- (b) Any method or route of transmission of the infectious agent.
- (c) Any symptom or effect of infection, emergency and first aid procedures and a telephone number to be called in an emergency.
- (d) Any personal protective equipment to be worn or used and special precautions to be taken when handling or coming into contact with the infectious agent.
- (e) Procedures for handling, cleanup and disposal of infectious agents leaked or spilled.

(2) An employer is not required to provide information regarding an infectious agent under sub. (1) if the employee or employee representative making the request has requested information about the infectious agent under sub. (1) within the preceding 12 months, unless the employee's job assignment has changed or there is new information available concerning any of the subjects about which information is required to be provided.

101.586 Pesticide information requirements; agricultural employer to employee. Within 72 hours of a request from an employee or employee representative, exclusive of weekends and legal holidays, an agricultural employer shall provide the requesting employee or employee representative with access to the container label or the information required by the federal environmental protection agency or the department of agriculture, trade and consumer protection to be on the container label, for any pesticide with which the employee works or to which the employee is likely to be exposed.

101.587 Information requirements; employer or agricultural employer to department. The department or the department of health and social services may request the information required to be provided to employees under ss. 101.583, 101.585 and 101.586. The employer or agricultural employer shall provide the information within the time periods provided in ss. 101.583, 101.585, 101.586 and 101.589.

101.589 Extended time periods; exceptions. (1) If an employer has not obtained the information required to be provided under ss. 101.583 (2) (a) and (c) and 101.585 (1) at the time of a request made under s. 101.583 (2) (a) or (c) or 101.585 (1), the employer shall provide the information within 30 days after the request, exclusive of weekends and legal holidays.

(2) If a toxic substance was present in the workplace at any time on or after the effective date of this subsection (1981), but is not present in the workplace when a request is made under s. 101.583 (2) (a) or (c), the employer shall provide the information within 30 days after the request, exclusive of weekdays and legal holidays.

(3) An employer who has requested from the manufacturer or supplier of a toxic substance or from the supplier of an infectious agent any information required to be provided under s. 101.583 (2) (a) or (c) or 101.585 (1), but who has not received and does not already have that information, is not required to provide the information but shall notify any requesting employee or employee representative that the employer has requested, has not received and does not otherwise have the information.

101.59 Manufacturer, supplier; requirements. Within 15 days, exclusive of weekends and legal holidays, after receipt of a request from an employer, any manufacturer or supplier of a toxic substance transported or sold for use in this state, or any supplier of an infectious agent transported or sold for use in this state, shall provide to that employer the information the employer is required to provide employees under s. 101.583 (2) (a) or 101.585 (1).

101.592 Confidential information. (1) A manufacturer or supplier of a toxic substance, a supplier of an infectious agent or an employer may declare that information required to be provided under s. 101.583, 101.585, 101.59 or 101.597, except information described in ss. 101.583 (2) (a) 7 to 11, 101.585 (1) (b) to (e) and 101.597 (1) (a) 2 to 7 and (b) 2 and 3, relates to a process or production technique which is unique to, or is

information the disclosure of which would adversely affect the competitive position of, the manufacturer, supplier or employer. If an employer, employee or employee representative requests information under s. 101.583, 101.585 or 101.59 that is confidential, the manufacturer, supplier or employer shall inform the requester that part of the requested information is confidential, but shall provide any part of the requested information that is not confidential or that, under this subsection, may not be declared confidential. When a manufacturer, supplier or employer declares information confidential, it shall notify the department and shall state the general use of the toxic substance or infectious agent and the items of information which it did and did not provide to the requester.

(2) Notwithstanding sub. (1), a manufacturer, supplier or employer shall provide the information specified in s. 101.583 (2) (a) 1 and 2 or 101.585 (1) (a) upon a request from an employee's authorized physician stating that the information is necessary for medical treatment of the employee. No physician receiving information under this subsection may disclose it to any person without the written consent of the patient and of the manufacturer, supplier or employer.

101.595 Employee rights. (1) **NOT TO WORK WITH TOXIC SUBSTANCE, INFECTIOUS AGENT OR PESTICIDE.** Except as provided in ss. 101.589 (3) and 101.592, if an employee has requested information about a toxic substance, infectious agent or pesticide under s. 101.583, 101.585 or 101.586 and has not received the information required to be provided under s. 101.583, 101.585, 101.586 or 101.589 (1) or (2), the employee may refuse to work with or be exposed to the toxic substance, infectious agent or pesticide until such time as the employer supplies the information under s. 101.583, 101.585 or 101.586 to the employee who has made the request.

(2) **RETALIATION PROHIBITED.** No employer or agricultural employer may discharge or otherwise discipline or discriminate against any employee because the employee has exercised any rights under ss. 101.58 to 101.599 or has testified or is about to testify in any proceeding related to those sections.

(3) **WAIVER PROHIBITED.** No person may request or require any employee to waive any rights under ss. 101.58 to 101.599.

101.597 Education and training programs. (1) **BY EMPLOYER; TOXIC SUBSTANCE OR INFECTIOUS AGENT.** (a) *Generally.* Except as provided in par. (b), prior to an employee's initial assignment to a workplace where the employee may be routinely exposed to any toxic substance or infectious agent, an employer shall provide the employee with an education or training program. The employer shall provide additional instruction whenever the employee may be routinely exposed to any additional toxic substance or infectious agent. For each toxic substance or infectious agent to which the employee may be routinely exposed, the education or training program shall include:

1. a. For a toxic substance, the trade name, generic or chemical name and any commonly used synonym for the toxic substance and the trade name, generic or chemical name and any commonly used synonym for its major components.
- b. For an infectious agent, its name and any commonly used synonym.
2. The location of the toxic substance or infectious agent.
3. Any symptom of acute or chronic effect of overexposure to the toxic substance or infectious agent.
4. For a toxic substance, the potential for flammability, explosion and reactivity.
5. Proper conditions for safe use of and exposure to the toxic substance or infectious agent.
6. Special precautions to be taken and personal protective equipment to be worn or used, if any, when handling or coming into contact with the toxic substance or infectious agent.

7. Procedures for handling, cleanup and disposal of toxic substances or infectious agents leaked or spilled.

(b) *Exception.* In an area where employees usually work where employees work with a large number of toxic substances or infectious agents which are received in packages of one kilogram or less and no more than 10 kilograms of which are used or purchased per year, the employer may provide a general education or training program in lieu of the education or training program described in par. (a). The general training program shall be provided prior to an employee's initial assignment to the area and shall include:

1. The information specified in par. (a) 1 and 2.
2. The nature of the hazards posed by the toxic substances or infectious agents or both.
3. General precautions to be taken when handling or coming into contact with the toxic substances or infectious agents.

(2) **BY AGRICULTURAL EMPLOYER; PESTICIDE.** Prior to an agricultural employee's initial assignment to a workplace where the employee may be routinely exposed to a pesticide, an agricultural employer shall provide the employee with an education or training program. The agricultural employer shall provide additional instruction whenever the employee may be routinely exposed to any additional pesticide. For each pesticide to which the employee may be routinely exposed, the education or training program shall include:

(a) The trade name, generic or chemical name and any commonly used synonym for the pesticide and the trade name, generic or chemical name and any commonly used synonym for its major ingredients.

(b) The location of the pesticide and the location where it is used.

(c) Any symptom of acute or chronic effect of overexposure to the pesticide.

(d) Proper conditions for safe use of and exposure to the pesticide.

(e) Special precautions to be taken and personal protective equipment to be worn or used, if any, when handling or coming into contact with the pesticide.

(f) Procedures for handling, cleanup and disposal of leaks or spills of the pesticide.

(3) **BY DEPARTMENT.** The department shall inform manufacturers, suppliers, employers, agricultural employers and employees of their duties and rights under ss. 101.58 to 101.599. As part of this program, the department shall cooperate with the departments of development and revenue to notify any employer commencing operations on or after the effective date of this subsection (1981), of that employer's duties and rights.

(4) **DEFINITION.** In this section, "routinely exposed to any toxic substance" means exposure of at least 30 days per year at exposure levels exceeding 50 % of the permissible exposure level established by the federal occupational safety and health administration, or any exposure exceeding 100 % of the permissible exposure level, regardless of the exposure period.

101.598 Rules. (1) The department shall, by rule, identify as an infectious agent any bacterial, mycoplasmal, fungal, parasitic or viral agent which causes illness in humans or human fetuses or both. The department shall consult with the department of health and social services in promulgating these rules.

(2) The department may, by rule, exempt employers from retaining a data sheet or maintaining a list, under s. 101.583 (1), regarding any mixture containing a toxic substance if the nature of the toxic substance or the quantity of toxic substance present in the mixture is such that the mixture is highly unlikely to pose an unreasonable acute or chronic health hazard to an employee who works with or is likely to be exposed to the mixture.

Vetoed
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101.599 Remedies; civil forfeitures. (1) **COMPLAINT.** An employee or employee representative who has not been afforded his or her rights by an employer or agricultural employer in violation of s. 101.583, 101.585, 101.586, 101.593 or 101.597 (1) or (2) may, within 30 days after the violation occurs or the employee or employee representative first

obtains knowledge of the violation, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after receipt by the department of the complaint.

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(2) REMEDIES. The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer or agricultural employer has violated s. 101.583, 101.585, 101.586, 101.595 or 101.597 (1) or (2), it may order the employer or agricultural employer to take such action as will remedy the effects of the violation, including instituting an education or training program, providing the requested information, reinstating an employee or providing back pay to an employee.

(3) CIVIL FORFEITURE. (a) Except as provided in par. (b), any person who violates ss. 101.58 to 101.599 or an order of the department issued under ss. 101.58 to 101.599 shall forfeit not more than \$1,000 for each violation.

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(b) Any person who wilfully violates or exhibits a pattern of violation of ss. 101.58 to 101.599 or an order of the department issued under ss. 101.58 to 101.599 shall forfeit not more than \$10,000 for each violation.

Vetoed
in Part

SECTION 4m. Appropriation changes; department of industry, labor and human relations. The appropriation to the department of industry, labor and human relations under section 20.445 (1) (a) of the statutes, as affected by the laws of 1981, is increased by \$-0- for fiscal year 1981-82 and by \$21,740 for fiscal year 1982-83 to fund and authorize 1.0 GPR position to carry out the purposes of this act.

SECTION 5. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(10) DEVELOPMENT.

(a) *Employee's right to know law.*

A Statute Sections	B References Deleted	C References Inserted
15.151	none	101.597 (3)

(20) HEALTH AND SOCIAL SERVICES.

(a) *Employee's right to know law.*

A Statute Sections	B References Deleted	C References Inserted
15.191 (intro.)	none	101.598

(45) REVENUE.

(a) *Employee's right to know law.*

A Statute Sections	B References Deleted	C References Inserted
15.431 (intro.)	none	101.597 (3)

SECTION 6. Effective dates. The treatment of sections 101.58 to 101.599 of the statutes by this act takes effect on the first day of the 7th month commencing after its publication, except that the creation of sections 20.445 (1) (br) and 101.597 (3) of the statutes by this act takes effect on the day after publication.