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HOUSE BILL NO. 2536

Offered January 23, 1995

A BILL to amend and reenact §§ 32.1-239 and 32.1-244 of the Code of Virginia, relating to toxic substances information.

Patrons—Grayson, Abbitt, Christian, Connally, Crittenden, Darner, Fisher, Hull, Jones, J.C., Keating, Melvin, Plum, Robinson, Spruill, Van Landingham and Van Yahres; Senators: Lambert, Lucas and Miller, Y.B.

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-239 and 32.1-244 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-239. Definitions.

As used in this article the following definitions shall apply:

"Audit" means an evaluation of the activities, facilities or management systems of a commercial establishment, designed to identify noncompliance and initiate compliance with toxic-substance, health, and environmental laws and regulations.

"Commercial establishment" means any commercial or industrial establishment, mill, factory, plant, refinery and any other works in which any chemical substance is manufactured or used as a raw material, catalyst, final product or process solvent for such; however, this term shall not be construed in the administration of this act to include normal farming and timbering activities.

"Manufacturing" means producing, formulating, packaging or diluting any substance for commercial sale or resale.

"Person" includes, in addition to the entities enumerated in subdivision 4 of § 32.1-3, the Commonwealth and any of its political subdivisions.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal.

§ 32.1-244. Duty of operators to report knowledge of toxicity; retention and return of certain information; diagnosis of employee injuries and illnesses.

Each person who operates a commercial establishment that uses as a raw material, catalyst, final product or process solvent or manufactures any chemical or mixture in a manner that the person knows, or reasonably should know, is toxic and under the circumstances of its manufacture or use may pose a substantial threat to human health or to the environment shall have the affirmative duty to report that information to the Board within five days of receiving it.

In discharging this duty to report, each person shall have the further affirmative duty to make reasonable inquiry into the toxicity of any substance. Any knowledge of toxicity that is possessed by an employee or agent of the person, or by the holder of any patent under which the person is licensed to produce such substance, shall be attributed to that person if the person actually received that knowledge or, in the exercise of due diligence of such person, should have received that knowledge. Any knowledge of toxicity that is possessed by any consultant or independent contractor, who has been retained by the person to perform any evaluation or other task which involves any such substance, shall be attributed to the person if such person actually received that knowledge or, in the exercise of due diligence by such person, should have received that knowledge.

Each person who owns or operates a commercial establishment shall have the further affirmative duty to conduct an audit or have an audit conducted by an independent contractor. The audit shall be conducted in good faith and according to accepted best management practices and standards within the particular industry and in accordance with any requirements for conducting the audit as may be established by the Board. The owner or operator of a commercial establishment shall cause the initial audit to be conducted within one year of the date on which the permit was issued and no later than July 1, 1996. Thereafter, the owner or operator of a commercial establishment shall conduct an audit or have an audit conducted annually by an independent contractor.

A report of each audit of a commercial establishment shall be filed with the Board and the Department of Environmental Quality within sixty days of the date on which the audit was completed. The report shall include, but not be limited to, the plan implemented for conducting the audit, the date of the audit, the names of all persons responsible for conducting or participating in the audit, the

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60 *findings of the audit, including the identification of specific instances of noncompliance, and a*
61 *description of the corrective action or remediation recommended to ensure compliance with*
62 *toxic-substance, health, and environmental laws and regulations. Failure to comply with the provisions*
63 *of this section shall be deemed a violation of any permit issued to the commercial establishment*
64 *pursuant to §§ 10.1-1322, 10.2-1408, 10.1-1426, 62.1-44.15, 62.1-44.16, and 62.1-44.18.*

65 Except as provided in this section, the Board shall not require any reports by operators of
66 commercial establishments to be filed pursuant to this article unless the Board can demonstrate that the
67 report is necessary to prevent or lessen an imminent risk of injury to public health or the environment.

68 Each person who operates a commercial establishment in which any chemical is manufactured or is
69 used as a raw material, catalyst, final product or process solvent shall direct each of his employees to a
70 physician for diagnosis of any injury or illness of any kind whatever that the person knows, or
71 reasonably should know, may be caused by such chemical. Nothing in this article shall be deemed,
72 however, to authorize or require physical examination or medical treatment for any person who objects
73 thereto on religious grounds.

74 The Department shall make reasonable efforts to return all confidential business information filed
75 pursuant to this article to the owner or operator of the business that reported it; however, if the business
76 no longer exists or the owner or operator cannot be located, the Department may retain the confidential
77 information under the same terms and conditions of confidentiality existing prior to July 1, 1992, or, at
78 the discretion of the Commissioner, purge and destroy such information.