CHAPTER 442

OCCUPATIONAL SAFETY AND HEALTH

442.001 Short title.—This chapter may be cited as the "Florida Occupational Safety and Health Act."
History.—s. 52, ch. 93-415.

442.002 Definitions.—Unless the context clearly requires otherwise, the definitions set forth in s. 440.02 apply to this chapter.
History.—s. 53, ch. 93-415.

442.003 Legislative intent.—It is the intent of the Legislature to enhance occupational safety and health in this state through the implementation and maintenance of policies, procedures, practices, rules, and standards that reduce the incidence of employee accidents, occupational diseases, and fatalities compensable under chapter 440. The Legislature further intends that the Division of Safety of the Department of Labor and Employment Security develop a means by which it can identify individual employers with a high frequency or severity of work-related injuries; conduct safety inspections of those employers; and assist those employers in the development and implementation of employee safety and health programs. In addition, it is the intent of the Legislature that the Division of Safety of the Department of Labor and Employment Security administer the provisions of this chapter; provide assistance to employers, employees, and insurance carriers; and enforce the policies, rules, and standards set forth in this chapter.
History.—s. 54, ch. 93-415.

442.004 Safety inspections, consultations; rules. The division shall adopt rules governing the manner, means, and frequency of safety inspections and consultations by all carriers and self-insurers.

History.—s. 11, ch. 90-201; s. 9, ch. 91-1; s. 55, ch. 93-415.

Note.—Former s. 440.09(5).

442.005 Division to make study of occupational diseases, etc.—The division shall make a continuous study of occupational diseases and the ways and means for their control and prevention and shall make and enforce necessary regulations for such control. For this purpose, the division is authorized to cooperate with employers, employees, and carriers and with the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 22852, 1945; s. 1, ch. 23921, 1947; ss. 17, 19, 35, ch. 69-106; s. 7, ch. 75-209; s. 331, ch. 77-147; s. 10, ch. 77-320; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1; s. 56, ch. 93-415.

Note.—Former s. 440.152.

442.006 Investigations by the division; refusal to admit; penalty.—

(1) The division shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this chapter, and shall make to the Legislature and employers and carriers such recommendations as it considers proper as to the best means of preventing injuries. In making such studies and investigations, the division may:

(a) Cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this chapter, or any agency or department of the state engaged in enforcing any laws to assure safety for employees.

(b) Allow any such agency or department to have access to the records of the division.

(2) The division and its authorized representatives may enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with this chapter and making inspections for the proper enforcement of this chapter. Any employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to allow investigation and inspection pursuant to this paragraph is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 46, ch. 17481, 1935; CGL 1936 Supp. 5966(44); s. 16, ch. 18413, 1937; s. 4, ch. 57-225; s. 3, ch. 57-245; ss. 17, 35, ch. 69-106; s. 369, ch. 71-136; s. 8, ch. 77-320; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1; s. 57, ch. 93-415.

Note.—Former s. 440.46(1).

442.007 Safety; employer responsibilities.—Every employer as defined in s. 440.02 shall furnish employment that is safe for the employees therein, furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the lives, health, and safety of such employees. As used in this section, the terms "safe" and "safety" as applied to any employment or place of employment mean such freedom from danger as is reasonably necessary for the protection of the lives, health, and safety of employees, including conditions and methods of sanitation and hygiene. Safety devices and safeguards required to be furnished by the employer by this section or by the division under authority of this section shall not include personal apparel and protective devices that replace personal apparel normally worn by employees during regular working hours.

History.—s. 58, ch. 93-415.

442.008 Division authority.—The division shall:

(1) Investigate and prescribe what safety devices, safeguards, or other means of protection must be adopted for the prevention of accidents in every employment or place of employment; determine what suitable devices, safeguards, or other means of protection for the prevention of occupational diseases must be adopted or followed in any or all such employments or places of employment; and adopt reasonable rules for the prevention of accidents and the prevention of occupational diseases.

(2) Ascertain, fix, and order such reasonable standards and rules for the construction, repair, and maintenance of places of employment as shall render them safe. Such rules and standards must be adopted in accordance with chapter 120.

(3) Assist employers in the development and implementation of employee safety training programs by contracting with professional safety organizations.

History.—s. 59, ch. 93-415.

442.009 Right of entry.—The division and its authorized representatives may enter at any reasonable time any place of employment for the purpose of examining any tool, appliance, or machinery used in such employment and may make inspections for the proper enforcement of this chapter. An employer or owner may not refuse to admit any member of the division or its authorized representatives to any place of employment.

History.—s. 60, ch. 93-415.

442.0105 Employers whose employees have a high frequency of work-related injuries.—The division shall develop a means by which it can identify individual employers whose employees have a high frequency or severity of work-related injuries. The division shall carry out safety inspections of the facilities and operations of these employers in order to assist them in reducing the frequency and severity of work-related injuries. The division shall develop safety and health programs for those employers. Carriers shall distribute these safety and health programs to the employers so identified by the division. Those employers identified by the division as having a high frequency or severity of work-related injuries shall implement a division-developed safety and health program. The division shall carry out safety inspections of those employers so identified to ensure compliance with the safety and health program and to assist such employers in reducing the number of work-related injuries. The division may not assess penalties as the result of such inspections, except as provided by s. 442.013. Copies of any report made as the result of such an inspection must be provided to the employer and its carrier. Employers may submit their own safety and health programs to the division for approval in lieu

of using the division-developed safety and health program. The division must promptly review the program submitted and approve or disapprove it. Upon approval by the division, the program must be implemented by the employer. If the program is not approved or if a program is not submitted, the employer must implement the division-developed program. The division shall adopt rules setting forth the criteria for safety and health programs.

History.—s. 61, ch. 93-415.

442.011 Carrier consultations.—Each insurance carrier writing workers' compensation insurance in this state, each employer qualifying as an individual self-insurer under s. 440.38, each self-insurance fund under s. 624.461, and each assessable mutual insurer under s. 628.6011 must provide safety consultations to each of its policyholders who requests such consultations. Each such carrier or self-insurer must inform its policyholders of the availability of such consultations and must report annually on its safety and health programs and consultations to the division in such form and at such time as the division prescribes. The division is responsible for approving all safety and health programs. The division shall aid all insurance carriers and self-insurers in establishing their safety and health programs by setting out criteria in an appropriate format.

History.—s. 62, ch. 93-415.

442.012 Workplace safety committees.—

(1) In order to promote health and safety in places of employment in this state:

(a) Each public or private employer of more than 10 employees shall establish and administer a workplace safety committee in accordance with rules adopted under this section.

(b) Each public or private employer of 10 or fewer employees which is identified by the division as having high frequency or severity of work-related injuries shall establish and administer a workplace safety committee in accordance with rules adopted under this section.

(2) The division shall adopt rules:

(a) Prescribing the membership of the workplace safety committees so as to ensure an equal number of employee representatives, who are volunteers or are elected by their peers, and of employee representatives, and specifying the frequency of meetings.

(b) Requiring employers to make adequate records of each meeting and to file and to maintain the records subject to inspection by the division.

(c) Prescribing the duties and functions of the workplace safety committee, which include, but are not limited to:

1. Establishing procedures for workplace safety inspections by the committee.

2. Establishing procedures investigating all workplace accidents, safety-related incidents, illnesses, and deaths.

3. Evaluating accident-prevention and illness-prevention programs.

4. Prescribing guidelines for the training of safety committee members.

(3) Employers that operate under a collective bargaining agreement that contains provisions regulating the formation and operation of workplace safety committees that meet or exceed the minimum requirements contained in this section, or employers who otherwise have existing workplace safety committees that meet or exceed the minimum requirements established by this section are in compliance with this section.

(4) Employees must be compensated their regular hourly wage while engaged in workplace safety committee training, meetings, or other duties prescribed under this section.

History.—s. 63, ch. 93-415.

442.013 Employer penalties.—If any employer violates or fails or refuses to comply with this chapter or with any rule adopted by the division, in accordance with chapter 120, for the prevention of injuries, accidents, or occupational diseases or with any lawful order of the division in connection with this chapter, or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by the division under this chapter for the prevention of accidents or occupational diseases, the division may assess against the employer a civil penalty of not less than $100 nor more than $5,000 for each day the violation, omission, failure, or refusal continues after the employer has been given notice thereof in writing. The total penalty for each violation may not exceed $50,000. The division shall adopt rules requiring penalties commensurate with the frequency or severity, or both, of safety violations. A hearing must be held in the county where the violation, omission, failure, or refusal is alleged to have occurred, unless otherwise agreed to by the employer and authorized by the division.

History.—s. 64, ch. 93-415.

442.014 Division cooperation with Federal Government; exemption from Division of Safety requirements.

(1) The division shall cooperate with the Federal Government so that duplicate inspections will be avoided yet assure safe places of employment for the citizens of this state.

(2) Except as provided in this section, a private sector employer is not subject to the requirements of the Division of Safety if:

(a) The employer is subject to the federal regulations in 29 C.F.R. ss. 1910 and 1926; and

(b) The employer has adopted and implemented a written safety program that conforms to the requirements of 29 C.F.R. ss. 1910 and 1926; and

(c) An employer with more than 10 full-time employees shall include provisions for a safety committee in the safety program. The safety committee must include employee representation and must meet at least once each calendar quarter. The employer must make adequate records of each meeting and maintain the records subject to inspections under subsection (3). The safety committee shall, if appropriate, make recommendations regarding improvements to the safety program and corrections of hazards affecting workplace safety; and

(d) The employer provides the Division of Safety with a written statement that certifies compliance with this subsection.

(3) The Division of Safety may enter at any reasonable time any place of employment for the purposes of

verifying the accuracy of the written certification. If the Division of Safety determines that the employer has not complied with the requirements of subsection (2), the employer shall be subject to the rules of the Division of Safety until the employer complies with subsection (2) and recertifies that fact to the Division of Safety.

(4) This section shall not restrict the Division of Safety from performing any duties pursuant to a written contract between the Division of Safety and the Federal Occupational Safety and Health Administration (OSHA).

History.—s. 65, ch. 93-415.

442.015 Failure to implement a safety and health program; cancellations.—If an employer that is found by the division to have a high frequency or severity of work-related injuries fails to implement a safety and health program, the carrier or self-insurer's fund that is providing coverage for the employer may cancel the contract for insurance with the employer. In the alternative, the carrier or fund may terminate any discount or deviation granted to the employer for the remainder of the term of the policy. If the contract is canceled or the discount or deviation is terminated, the carrier must make such reports as are required by law.

History.—s. 66, ch. 93-415.

442.016 Expenses of administration.—The total expenses of administering this chapter must be estimated annually and provided to the Division of Workers' Compensation of the Department of Labor and Employment Security for inclusion under s. 440.51. The amounts that are needed to administer this chapter shall be disbursed from the Workers' Compensation Administration Trust Fund, established under s. 440.50, in the manner provided in that section.

History.—s. 67, ch. 93-415.

442.017 Refusal to admit; penalty.—The division and its authorized representatives may enter and inspect any place of employment at any reasonable time for the purpose of investigating compliance with this chapter and conducting inspections for the proper enforcement of this chapter. An employer or owner who refuses to admit any member of the division or its authorized representative to any place of employment or to allow investigation and inspection pursuant to this paragraph, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 68, ch. 93-415.

442.018 Employee rights and responsibilities.—

(1) Each employee of an employer covered under this chapter shall comply with rules adopted by the division and with reasonable workplace safety and health standards, rules, policies, procedures, and work practices established by the employer and the workplace safety committee. An employee who knowingly fails to comply with this subsection may be disciplined or discharged by the employer.

(2) An employer may not discharge, threaten to discharge, cause to be discharged, intimidate, coerce, otherwise discipline, or in any manner discriminate against an employee for any of the following reasons:

(a) The employee has requested information regarding safety and health, filed a complaint or suit, or instituted or caused to be instituted a proceeding under this chapter;

(b) The employee has testified or is about to testify, on his own behalf, or on behalf of others, in any proceeding instituted under this chapter;

(c) The employee has exercised any other right afforded under this chapter; or

(d) The employee is engaged in activities relating to the workplace safety committee.

(3) Neither pay, position, seniority, nor other benefit may be lost for exercising any right under, or for seeking compliance with, any requirement of this chapter.

History.—s. 69, ch. 93-415.

442.019 Compliance.—Failure of an employer or carrier to comply with this chapter or with any rules adopted under this chapter constitutes grounds for the division to seek remedies, including injunctive relief, for compliance by making appropriate filings with the Circuit Court of Leon County.

History.—s. 70, ch. 93-415.

442.020 False statements to carriers.—An employer who knowingly and willfully falsifies or conceals a material fact, makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false document knowing the document to contain any false, fictitious, or fraudulent entry or statement to a carrier of workers' compensation insurance under this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 71, ch. 93-415.

442.021 Carrier penalties.—If any carrier violates, or fails or refuses to comply with, this chapter or with any rule adopted or order issued under this chapter, the division, after notice and hearing in accordance with chapter 120, assess against the carrier a civil penalty of not less than $100 nor more than $5,000 each day the violation, failure, or refusal continues after the carrier has been given written notice thereof. The total penalty for each violation, failure, or refusal may not exceed $50,000. The division shall adopt rules providing for penalties for noncompliance with this chapter by carriers.

History.—s. 72, ch. 93-415.

442.022 Preemption authority.—The division has the authority to adopt rules prescribing occupational safety and health standards that preempt the standards, procedures, or practices of other state agencies or political subdivisions when the division conducts enforcement activities in any such state agency or political subdivision. The authority of the division to adopt such standards is exclusive, notwithstanding any other provisions of state law that delegate rulemaking authority for safety standards to other agencies or political subdivisions of this state.

History.—s. 73, ch. 93-415.

442.023 Matters within jurisdiction of the Division of Safety; false, fictitious, or fraudulent acts, statements, and representations prohibited; penalty; stat-

ute of limitations.—A person may not, in any matter within the jurisdiction of the Division of Safety of the Department of Labor and Employment Security, knowingly and willfully falsify or conceal a material fact; make any false, fictitious, or fraudulent statement or representation; or make or use any false document, knowing the same to contain any false, fictitious, or fraudulent statement or entry. A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The statute of limitations for prosecution of an act committed in violation of this section is 5 years after the date the act was committed.

History.—s. 74, ch. 93-415.

442.101 Legislative intent concerning toxic substances encountered in the course of employment.—It is found and declared that there exists a danger to the health of employees and their families throughout the state because of exposure to toxic substances encountered in the course of employment. Sometimes the tragic results of this exposure may not be realized for years or even for generations. Because of this, it is necessary to require employers to give notice to each employee of the toxic substances involved in his employment which may endanger or cause death to the employee or members of the employee's family. It is further found and declared that an employee has an inherent right to know about the toxic substances at his workplace so that he may make more knowledgeable and reasoned decisions with respect to the continued personal costs of his employment and the need for corrective action. It is also found and declared that the workplace often provides an early warning mechanism for the rest of the environment. The Legislature intends, by this act, to ensure that employees be given information concerning the nature of the toxic substances with which they are working.

History.—s. 1, ch. 84-223.

442.102 Definitions.—As used in ss. 442.101-442.127, the term:

(1) "Article" means a finished product or manufactured item:

(a) Which is formed to a specific shape or design during manufacture;

(b) Which has end use functions dependent in whole or in part upon its shape or design during end use; and

(c) Which does not release, or otherwise result in exposure to, a toxic substance under normal conditions of use.

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

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

(4) "Department" means the Department of Labor and Employment Security.

(5) "Designated representative" means an employee's treating physician who is authorized in writing by the employee, and the employee's collective bargaining agent who is certified or recognized by the employer of the employee. No other individual or organization is eligible to serve as a designated representative.

(6) "Distributor" means an individual or employer, other than the manufacturer or importer, who supplies toxic substances directly to users or to other distributors.

(7) "Employee" means any person employed on or after the effective date of this act who is, has been, or may be exposed under normal operating conditions or foreseeable emergencies to any toxic substance in the employer's workplace.

(8) "Employer" means any person, firm, corporation, partnership, association, or other entity engaged in a business or in providing services, including the state and any of its political subdivisions, that manufactures, produces, uses, applies, or stores toxic substances. An independent contractor or subcontractor shall be deemed the sole employer of his employees, even when his employees are performing work at the workplace of another employer. The term "employer" does not include:

(a) Employers employing two or fewer employees.

(b) Employers of domestic workers in private homes.

(c) Bona fide farmers or an association of farmers employing employees in agricultural labor performed on a farm, or in the onsite packing facilities for agricultural products from such farms, who employ 12 or fewer regular employees and who employ 24 or fewer other employees at one time for seasonal or occasional agricultural labor that is completed in less than 30 continuous days, provided such seasonal or occasional employment does not exceed 60 days in the same calendar year. The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, fish, and truck farms, ranches, nurseries, and orchards. The term "agricultural labor" includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.

(d) Employers of professional athletes, such as professional boxers and wrestlers and professional baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players.

(e) Employers employing labor under court sentences requiring the performance of community services as provided in s. 316.193.

(9) "Expose" or "exposure" means any situation arising from or related to the work operation of an employer in which an employee may inhale, absorb through the skin or eyes, accidentally ingest, or otherwise come into contact with a toxic substance.

(10) "Florida Substance List" means a compilation of toxic substances which are to be subject to the provisions of ss. 442.101-442.127.

(11) "Health professional" means a physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse.

(12) "Importer" means the first individual or employer within the customs territory of the United States who receives toxic substances produced in other countries for the purpose of supplying them to distributors or users within the United States.

(13) "Impurity" means a toxic substance which is unintentionally present with another substance or mixture.

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

(15) "Material safety data sheet" or "MSDS" means written or printed material concerning a toxic substance which sets forth the following information:

(a) The chemical name and the common name of the toxic substance.

(b) The hazards or other risks in the use of the toxic substance, including:

1. The potential for fire, explosion, corrosivity, and reactivity;

2. The known acute health effects and chronic health effects of risks from exposure to the toxic substance, including those medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and

3. The primary routes of entry and symptoms of overexposure.

(c) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.

(d) The emergency procedures for spills, fire, disposal, and first aid.

(e) A description of the known specific potential health risks posed by the toxic substance, which description is written in lay terms and is intended to alert any person who reads this information.

(f) The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

(16) "Medical emergency" means a serious medical condition which poses an imminent threat to a person's health; which was caused, or is suspected to have been caused, by exposure to a toxic substance; and which requires immediate treatment by a physician.

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

(18) "Produce" means to manufacture, process, formulate, or repackage.

(19) "Secretary" means the Secretary of Labor and Employment Security.

(20) "Specific chemical identity" means a chemical name, a Chemical Abstracts Service (CAS) Registry Number, or any other specific information which reveals a precise chemical designation.

(21) "Toxic substance" means any chemical substance or mixture in a gaseous, liquid, or solid state, which substance or mixture causes a significant risk to safety or health during, or as a proximate result of, any customary or reasonably foreseeable handling or use; which is listed in the Florida Substance List compiled in accordance with the provisions of s. 442.103; and which is manufactured, produced, used, applied, or stored in the workplace.

(22) "Trade secret" means any confidential formula, pattern, process, device, information, or compilation of information, including a chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use the formula, pattern, process, device, information, or compilation of information.

(23) "Work area" means a room or defined space in a workplace where toxic substances are manufactured, produced, used, applied, or stored and where employees are present in the course of their employment.

(24) "Workplace" means an establishment or business of an employer at one geographic location at which work is performed and which contains one or more work areas. In the case of the state or any of its political subdivisions acting as an employer, the workplace is defined as all work areas wholly owned or controlled by the state or the subdivision. In the case of an independent contractor or subcontractor, the workplace is defined as all work areas wholly owned or controlled by the independent contractor or subcontractor.

History.—s. 2, ch. 84-223; s. 1, ch. 86-45; s. 1, ch. 87-202.

442.103 Florida Substance List; establishment, content, and revision.—

(1)(a) For the purposes of ss. 442.101-442.127, the secretary shall establish the Florida Substance List and make such list available to manufacturers and employers. Substances on the list may be designated by their chemical names or common names. Only those substances specifically enumerated on the list will be subject to the provisions of ss. 442.101-442.127. The secretary shall prepare and amend the list according to the procedures in this section. The list shall be promulgated only after opportunity has been provided for public comment and hearing pursuant to chapter 120 and upon a finding that, according to a preponderance of the evidence, substantial and valid scientific evidence exists that exposure to, or use of, the substance will result in an acute or chronic risk to human health or safety. This list will become official for purposes of ss. 442.106, 442.107, 442.108, 442.109, 442.115, 442.116, and 442.118 upon adjournment of the 1985 Legislature unless, prior to adjournment, the Legislature affirmatively delays implementation of the list.

(b) The secretary shall, no later than 45 days prior to the convening of the Legislature in regular session each year, make a recommendation to the President of the Senate and the Speaker of the House of Representatives on the need for revising the list. The revised list will become effective upon adjournment of the Legislature in the year in which the revision was made unless, prior to adjournment, the Legislature affirmatively delays implementation of such list.

(c) If at any time it is found that a substance that is not on the revised list poses a serious threat to human health or safety, the secretary may promulgate an emergency revision to the list after providing opportunity for public comment and hearing pursuant to chapter 120. The emergency revision will become effective upon promulgation and will remain effective unless the Legislature affirmatively repeals it in the year in which the emergency revision was promulgated.

(2) The list shall contain only specific chemical substances. Generic substances or categories are to be excluded. The list shall be drawn exclusively from those

chemical substances enumerated in the most current edition of the following designated source lists:

(a) International Agency for Research on Cancer (Sublist: "Substances found to have at least sufficient evidence of carcinogenicity in animals").

(b) National Toxicology Program list of chemicals published in the annual report on carcinogens.

(c) Occupational Safety and Health Administration, Toxic and Hazardous Substances, 29 C.F.R. s. 1910, subpart Z.

(d) National Institute for Occupational Safety and Health/Occupational Safety and Health Administration, Occupational Health Guidelines for Chemical Hazards.

(e) American Conference of Governmental Industrial Hygienists, Threshold Limit Value for Chemical Substances and Physical Agents in the Workplace.

(f) Environmental Protection Agency, Carcinogenic Assessment Group's List of Carcinogens.

(g) National Cancer Institute (substances that meet the National Toxicology Program criteria for significant carcinogenic effect).

(h) National Fire Protection Association, Hazardous Chemicals (NFPA 49).

(i) National Fire Protection Association, Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids (NFPA 325M). (All items rated II through IV as health hazards or III through IV as flammability or reactivity hazards.)

(j) Extremely Hazardous Substances, Threshold Planning Quantities, and Reportable Quantities, 40 C.F.R. part 300, [1]Appendix D and Appendix E.

(3) For the purposes of ss. 442.101–442.127, a toxic substance is present in any mixture if it is 1 percent or more of the mixture, or 2 percent or more of the mixture if the toxic substance exists as an impurity in the mixture. However, the secretary may, by rule, raise the concentration requirement for a toxic substance which he finds is not toxic at the threshold levels, and he may lower the concentration requirement for a toxic substance, including a carcinogen or neurotoxin, for which there is valid and substantial scientific evidence that the substance is extraordinarily toxic. The manufacturer of a toxic substance shall notify the secretary of any valid evidence which indicates either:

(a) That the concentration requirement for a toxic substance is higher than is necessary to protect employees who work with, or may be exposed to, the substance; or

(b) That the concentration levels should be lowered because there is valid and substantial evidence that the substance is extraordinarily toxic.

(4) The provisions of ss. 442.101–442.127 do not apply to:

(a) Impurities which develop as intermediate materials during chemical processing but are not present in the final mixture and to which employee exposure is unlikely;

(b) Substances which are toxic solely due to chronic ingestion;

(c) Alcoholic beverages as defined in the Beverage Law;

(d) Substances which are merely being transported through the state as part of a through-shipment in interstate commerce;

(e) Substances or mixtures which may be toxic but which are labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or the Federal Food, Drug, and Cosmetic Act, as amended;

(f) Articles; or

(g) Any hazardous waste as defined by the federal Resource Conservation and Recovery Act of 1976.

(5) The secretary shall review the Florida Substance List annually. Any revision of the Florida Substance List shall be made only after opportunity has been provided for public comment and hearing pursuant to chapter 120 and upon the secretary's finding that, according to a preponderance of the evidence, substantial and valid scientific evidence exists that any substance added pursuant to this subsection results in an acute or chronic risk to human health or safety.

(6) Substances that are not present on the Florida Substance List established pursuant to this section are not subject to the provisions of ss. 442.101–442.127.

(7) The provisions of ss. 442.108, 442.111, 442.112, 442.113, 442.118, 442.119, and 442.121 do not apply to toxic substances which are:

(a) Stored in sealed containers;

(b) Sold at retail trade establishments as consumer products; and

(c) Not manufactured, produced, used, or applied in the workplace.

History.—s. 4, ch. 84-223; s. 2, ch. 86-45; s. 2, ch. 87-202.

[1]**Note.**—Appendix D and Appendix E no longer exist as part of 40 C.F.R. part 300.

442.104 Secretary to provide information concerning toxic substances.—The secretary shall be responsible for the dissemination of appropriate information available on the nature and hazards of toxic substances from the chemical substance information network of the federal Environmental Protection Agency and the health hazard evaluation program of the National Institute for Occupational Safety and Health (NIOSH). The secretary shall promptly assist employers, employees, and state personnel with inquiries concerning the toxic nature of such substances.

History.—s. 4, ch. 84-223.

442.105 Toxic Substances Advisory Council; function; membership; meetings; recommendations.—

(1) There is created a state Toxic Substances Advisory Council to assist the secretary in reviewing and preparing the Florida Substance List.

(a) The council shall consist of nine members, including four technically qualified employer representatives, four technically qualified employee representatives, and one member to be selected by the secretary to serve as chairman.

(b) The members of the council shall be appointed by the secretary on or before July 1, 1984, and the council shall be funded by general revenue prior to January 1, 1985. Initially, the secretary shall appoint three members for terms of 4 years, two members for terms of 3 years, two members for terms of 2 years, and two members for terms of 1 year. Thereafter, members shall be appointed for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term.

(c) The council shall meet at the call of its chairman, at the request of a majority of its membership, at the

request of the secretary, or at such times as may be prescribed by its rules, but not less than twice a year. The council shall make a report of each meeting, which shall include a record of its discussions and recommendations. The secretary shall make such reports available to any interested person or group.

(d) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

(2)(a) The secretary shall consider the advice and recommendations of the Toxic Substances Advisory Council in promulgating the Florida Substance List and its amendments. If the secretary rejects the advice and recommendations of the council, the secretary must provide written reasons for such rejection.

(b) The Toxic Substances Advisory Council shall submit its recommendations to the secretary for the revision of the Florida Substance List on or before January 1 of each year.

History.—ss. 5, 17, ch. 84-223; s. 5, ch. 91-429.

442.106 Manufacturer, importer, or distributor of toxic substance to provide material safety data sheet; mixture material safety data sheets; exceptions.—

(1)(a) The manufacturer, importer, or distributor of any toxic substance shall prepare and provide each direct purchaser of such toxic substance and, upon request, the secretary with a material safety data sheet which, to the best of the manufacturer's, importer's, or distributor's knowledge, is current, accurate, and complete, based on information then reasonably available to the manufacturer, importer, or distributor.

(b) A manufacturer, importer, or distributor who is responsible for preparing and transmitting a material safety data sheet under the provisions of this section shall revise it on a timely basis, as appropriate to the importance of any new information which would affect the contents of the existing material safety data sheet, and, in any event, within 3 months of such information's becoming available to the manufacturer, importer, or distributor.

(2)(a) Any person who produces a mixture may, for the purposes of this section, prepare and use a mixture material safety data sheet, subject to the provisions of s. 442.109(1).

(b) A manufacturer, importer, distributor, or employer may provide the information required by this section on an entire mixture, instead of on each toxic substance in it, when all of the following conditions exist:

1. Toxicity test information exists on the mixture or adequate information exists to form a valid judgment of the toxic properties of the mixture 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 and that a material safety data sheet on each constituent toxic substance identified on the material safety data sheet is available upon request.

2. The provision of information on the mixture will be as effective in protecting employee health as the provision of information on the ingredients.

3. The toxic substances in the mixture are identified on the material safety data sheet unless it is either infeasible to describe all the ingredients in the mixture or the identity of the ingredients is a valid trade secret, in either of which cases, the reason why the toxic substances in the mixture are not identified shall be stated on the material safety data sheet.

(c) A single mixture material safety data sheet may be provided for more than one formulation of a product mixture if the information provided does not vary for the formulation.

(3) Any person who is subject to the provisions of this section shall be relieved of the obligation to provide a direct purchaser of a toxic substance with a material safety data sheet:

(a) If he has a record that he has provided the direct purchaser with the most recent version of the material safety data sheet;

(b) If the substance is labeled pursuant to:

1. The Federal Insecticide, Fungicide, and Rodenticide Act;

2. The Atomic Energy Act;

3. The Food, Drug and Cosmetic Act; or

4. The Resource Conservation and Recovery Act of 1976; or

(c) If the toxic substance is one sold at retail and is incidentally sold to an employer or the employer's employees in the same form, approximate amount, concentration, and manner as it is sold to consumers and, to the seller's knowledge, employee exposure to the toxic substance is not significantly greater than the consumer exposure occurring during the principal consumer use of the toxic substance.

History.—s. 6, ch. 84-223; s. 3, ch. 86-45.

442.107 Employer to make effort to obtain unsupplied material safety data sheet.—

(1) If an employer is not supplied with the material safety data sheet by a manufacturer, importer, or distributor for a toxic substance pursuant to the mandates of s. 442.106, such employer shall, within a reasonable amount of time after discovering that the material safety data sheet has not been supplied, use diligent efforts to obtain it from the manufacturer, importer, or distributor.

(2) If, after having used diligent efforts, an employer has failed to obtain the material safety data sheet, he shall request the secretary to obtain it on his behalf.

(3) An employer who has used diligent efforts as defined in this section and who has made a documented request to the secretary pursuant to this section shall not be found in violation of this section with respect to the material safety data sheet which was not supplied by the manufacturer, importer, or distributor as required by s. 442.106.

(4) For the purposes of this section, the term "diligent efforts" means a prompt inquiry by the employer to the manufacturer, importer, or distributor of the toxic substance; except that an independent contractor or subcontractor is responsible for obtaining the material safety data sheet for his employees in the workplace of another and except that, for an independent contractor, subcontractor, the state, or any political subdivision of the state acting as an employer, the term

"diligent efforts" means a prompt inquiry to the manufacturer, importer, or distributor or to the owner of a workplace when applicable.

History.—s. 6, ch. 84-223; s. 7, ch. 86-45.

442.108 Employer to post notice concerning employee rights.—Every employer who manufactures, produces, uses, applies, or stores toxic substances in the workplace shall in a place where notices are normally posted post a notice, as prescribed by rule promulgated by the department, informing employees of their rights under ss. 442.101-442.127.

History.—s. 6, ch. 84-223; s. 4, ch. 86-45.

442.109 Material safety data sheet required to be available for employee examination; employer and employee rights when unavailable.—

(1) Every employer who manufactures, produces, uses, or applies toxic substances in the workplace shall maintain a material safety data sheet for each product which is present in such workplace. All material safety data sheets shall be readily available in the workplace. Employers who only store toxic substances in the workplace are not required to maintain material safety data sheets in the workplace so long as the material safety data sheets are made available to the employee within 10 working days.

(a) A material safety data sheet may be kept in any form, including operations procedures, and may be designed to cover groups of toxic chemicals in a work area in which it may be appropriate to address the hazards of a process rather than individual toxic chemicals. However, the employer shall ensure that in all cases the required information is provided for each toxic chemical and is readily accessible during each workshift to employees when they are in their work areas.

(b) Any employee or his designated representative may request in writing and shall have the right to examine and obtain the material safety data sheets for the toxic substances to which he is, has been, or may be exposed. The employer shall provide any material safety data sheet within its possession within 5 of the requesting employee's working days, subject to the provisions of s. 442.107(2). The employer may adopt reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

(c) An independent contractor or subcontractor working in the workplace of another employer may request in writing and shall have the right to examine the material safety data sheets for the toxic substances to which he or his employees, are, have been, or may be exposed. The employer shall provide any material safety data sheet within its possession within 5 of the requesting independent contractor's or subcontractor's working days, subject to the provisions of s. 442.107(2). The employer may adopt reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

(d) If an employee who has requested a material safety data sheet pursuant to this act has not received it within 5 of the requesting employee's working days, subject to the provisions of s. 442.107(2), that employee may refuse to work with the substance for which he has requested the material safety data sheet until it is provided. However, nothing contained in this paragraph shall be construed to permit any employee of the state or any of its political subdivisions to refuse to perform essential services. Further, nothing shall be construed to interfere with the right of the employer to transfer an employee who so refuses to work to other duties until the material safety data sheet is provided; such a transfer shall not be considered as a discriminatory act under s. 442.116. No pay, position, seniority, or other benefit shall be lost as a result of such a transfer for the exercise of any right provided by this act.

(2) For the purposes of this section, an independent contractor, subcontractor, the state, or any political subdivision of the state shall maintain material safety data sheets only for its own workplaces; however, the employees of an independent contractor or subcontractor, insofar as they are exposed in the course of their employment to toxic substances in other workplaces, have the right to examine the material safety data sheets for the substances to which they are exposed in those workplaces from the workplace employers through a written request to their own employer as provided in paragraph (1)(b).

(3) Employers must advise employees that they can obtain further information from the secretary.

(4) Nothing contained in this act shall be construed to require an employer to conduct studies to develop new information.

(5) The exemptions provided in this section are subject to the Open Government Sunset Review Act in accordance with [1]s. 119.14.

History.—s. 6, ch. 84-223; s. 3, ch. 87-202; s. 7, ch. 91-269.

[1]Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

442.111 Trade secrets; claim conditions; disclosure in medical emergency and nonemergency situations.—

(1) A claim of trade secret may be made by a chemical manufacturer or employer by withholding the specific chemical identity from the material safety data sheet if:

(a) The claim that the information withheld is a trade secret can be supported;

(b) Information contained in the material safety data sheet concerning the properties and effects of the toxic substance is disclosed;

(c) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and

(d) The specific chemical identity is made available to health professionals in accordance with the applicable provisions of this section.

(2) When a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic chemical is needed for emergency or first aid treatment, the chemical manufacturer or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a writ-

ten statement of need or of a confidentiality agreement. The chemical manufacturer or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of subsections (3) and (4), as soon as circumstances permit.

(3) In a nonemergency situation, a chemical manufacturer or employer shall, upon request, disclose a specific chemical identity which is otherwise permitted to be withheld under subsection (1) to a health professional if:

(a) The request is in writing;

(b) The request describes with reasonable detail one or more of the following occupational health needs for the information:

1. To assess the toxicity of the chemicals to which employees will be exposed;

2. To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

3. To conduct preassignment or periodic medical surveillance of exposed employees;

4. To provide medical treatment to exposed employees;

5. To select or assess appropriate personal protective equipment for exposed employees;

6. To design or assess engineering controls or other protective measures for exposed employees; or

7. To conduct studies to determine the health effects of exposure;

(c) The request explains in detail why the disclosure of the specific chemical identity is essential and that, the disclosure of the following information, in lieu thereof, would not enable the health professional to provide the occupational health services described in this subsection:

1. The properties and effects of the chemical;

2. Measures for controlling workers' exposure to the chemical;

3. Methods of monitoring and analyzing worker exposure to the chemical; and

4. Methods of diagnosing and treating harmful exposures to the chemical;

(d) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(e) The health professional and the employer or contractor of the health professional's services (i.e., downstream employer, labor organization, or individual employer) agree in a written confidentiality agreement that the health professional will not use the trade secret information for any purpose other than the health needs asserted and agree not to release the information under any circumstances other than to the secretary, as provided in subsection (6), except as authorized by the terms of the agreement or by the chemical manufacturer or employer.

(4) The confidentiality agreement authorized by paragraph (3)(e):

(a) May restrict the use of the information to the health purposes indicated in the written statement of need;

(b) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable preestimate of likely damages; and

(c) May not include requirements for posting of a penalty bond.

(5) Nothing in this act is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

(6) If the health professional receiving the trade secret information decides that there is a need to disclose it to the secretary, the chemical manufacturer or employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

(7) If the chemical manufacturer or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(a) Be provided to the health professional within 30 days of the request;

(b) Be in writing;

(c) Include evidence to support the claim that the specific chemical identity is a trade secret;

(d) State the specific reasons why the request is being denied; and

(e) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) A specific chemical identity for which a claim of trade secret is made is confidential and exempt from the provisions of s. 119.07(1) unless the secretary determines that the chemical identity shall be released in accordance with s. 442.112(2).

(9) The exemptions provided in this section are subject to the Open Government Sunset Review Act in accordance with [1]s. 119.14.

History.—s. 9, ch. 84-223; s. 53, ch. 87-225; s. 8, ch. 91-269.

[1]Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

442.112 Referral to and action by secretary when request for information denied; orders by secretary; review.—

(1) The health professional whose request for information under s. 442.111(3) is denied may refer the request and the written denial of the request to the secretary for consideration. When a health professional refers the denial to the secretary under this subsection, the secretary shall consider the evidence to determine if:

(a) The chemical manufacturer or employer has supported the claim that the specific chemical identity is a trade secret;

(b) The health professional has supported the claim that there is a medical or occupational health need for the information; and

(c) The health professional has demonstrated adequate means to protect the confidentiality.

(2)(a) If the secretary determines that the specific chemical identity requested under s. 442.111(3) is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has

shown adequate means to protect the confidentiality of the information, the chemical manufacturer or employer will be subject to an order by the secretary to show cause why such chemical manufacturer or employer should not be held in violation of this act.

(b) If a chemical manufacturer or employer demonstrates to the secretary that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of the specific chemical identity of the trade secret, the secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer or employer. This exemption is subject to the Open Government Sunset Review Act in accordance with [1]s. 119.14.

(c) If, following the issuance of an order to show cause and any protective orders, the chemical manufacturer or employer continues to withhold the information, a hearing on the order to show cause shall be held pursuant to chapter 120. All final agency action shall be subject to full judicial review pursuant to the Florida Rules of Appellate Procedure. The filing of a timely appeal under this section acts as an automatic stay of the obligation of the chemical manufacturer or employer to supply withheld information.

(3) Notwithstanding the existence of a trade secret claim, a chemical manufacturer or employer shall, upon request, disclose to the secretary any information which s. 442.111 requires the chemical manufacturer or employer to make available.

History.—s. 9, ch. 84-223; s. 9, ch. 91-269.

[1]Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

442.113 Disclosure of trade secret process or percentage-of-mixture not required.—Nothing in s. 442.111 or s. 442.112 shall be construed as requiring the disclosure, under any circumstances, of process or percentage-of-mixture information which is a trade secret.

History.—s. 9, ch. 84-223.

442.115 Employee education and training.—

(1) Employers shall furnish employees with instruction on the nature and effects of each toxic substance that is present in the workplace. Such instruction shall be either in written form or in training programs, as may be appropriate, and shall be in nontechnical language, but may be generic to the extent appropriate and related to the job. Such instruction shall include:

(a) The chemical name and any common names, unless withheld from the material safety data sheet as a trade secret, of the toxic substance to which an employee may be exposed under normal operating conditions;

(b) The location of the toxic substance in the workplace;

(c) Appropriate first aid treatment and antidotes in the event of improper exposure or overexposure to the toxic substance;

(d) The proper and safe handling of the toxic substance;

(e) The health effects of the toxic substance as described in the relevant material safety data sheet;

(f) Appropriate emergency treatment;

(g) The procedures for cleanup of leaks and spills of the toxic substance;

(h) The potential for flammability, explosion, and reactivity of the toxic substance; and

(i) The rights and duties of employees as set forth in this act.

(2) Employers shall provide their current employees with instruction as described in this section within 9 months of the effective date of this act and at least annually thereafter, and, for employees hired thereafter, within the first 30 days of employment and at least annually thereafter.

(3) Safety consultations provided pursuant to [1]s. 440.56(5) will serve to satisfy the requirements of the program if the training otherwise meets the criteria set forth in this section.

(4) Employers who only store toxic substances in sealed containers in the workplace and whose employees are not exposed to those substances in normal circumstances are only required to provide appropriate instruction to their employees concerning procedures for dealing with toxic substances under foreseeable emergency situations.

(5) For purposes of this section, a client of a help supply services company shall include employees of the help supply services company in the client's employee safety training program. A help supply services company may, by written contract, expressly assume its client's responsibility for compliance.

History.—s. 7, ch. 84-223; s. 5, ch. 86-45; s. 4, ch. 87-202; s. 27, ch. 89-289; s. 42, ch. 93-415.

[1]Note.—Repealed by s. 109, ch. 93-415.

442.116 Employee rights.—

(1) No person shall discharge or cause to be discharged, or otherwise discipline, or in any manner discriminate against any employee for any of the following reasons:

(a) The employee has requested information regarding toxic substances, filed a complaint or suit, or instituted or caused to be instituted a proceeding under this act;

(b) The employee has testified or is about to testify in any proceeding in his own behalf or on behalf of others; or

(c) The employee has exercised any other right afforded pursuant to the provisions of this act.

(2) No pay, position, seniority, or other benefit shall be lost for exercise of any right provided by this act.

(3) A violation of this section by an employer shall create in his employee a private cause of action cognizable in the circuit court. An employee who believes that he has been discharged, disciplined, or in any manner discriminated against by his employer for reasons of exercising rights under this act may, within 120 days of such violation or within 120 days after obtaining knowl-

edge that a violation did occur, file a cause of action. The court shall award to the prevailing party a reasonable attorney's fee and costs arising from a suit filed pursuant to this section.

History.—s. 8, ch. 84-223.

442.118 Presence of toxic substances; notice to fire departments, emergency medical service providers, law enforcement agencies, and local emergency management agencies; penalty.—

(1) An employer, unless specifically exempted pursuant to subsection (4), shall provide within 9 months after the effective date of this act to the person responsible for the administration and direction of a fire department in a county, municipality, or political subdivision, including a fire chief or fire administrator or that person's designee:

(a) A list of work areas, sufficiently identified by name and location, where toxic substances are present, which list contains the chemical and common name of each substance regularly present unless such information is protected pursuant to the trade secret provisions of this act; and

(b) Upon request, any material safety data sheet for each toxic substance regularly present.

Except as otherwise provided in this section, information maintained by the employer pursuant to this subsection is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with [1]s. 119.14.

(2) Whenever circumstances regarding the name and location of the substance change sufficiently to warrant an updated report, the employer shall update the information provided pursuant to subsection (1).

(3) Employers who become covered under this act after October 1, 1985, shall provide the information required by subsection (1) within 60 days after becoming covered.

(4) An employer operating a plant or facility which continues in operation, including maintenance periods, 24 hours a day, 7 days a week, 365 days a year, shall not be required to provide the information specified in subsection (1) with respect to any such plant or facility, provided such plant or facility is manned at all times by personnel qualified to provide such information.

(5) The person responsible for the administration and direction of a fire department in a county, municipality, or political subdivision, including a fire chief or fire administrator or that person's designee, shall maintain the information provided by the employer as required in subsection (1) for at least 4 years and shall provide copies of such information only to the following agencies located within the geographic jurisdiction of such fire department:

(a) Fire suppression and fire inspection divisions;

(b) Emergency medical service providers licensed under chapter 401; and

(c) Upon request, law enforcement agencies and local emergency management agencies.

Information obtained pursuant to this subsection is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with [1]s. 119.14.

(6) This section and any regulations adopted by the department for enforcement of this section shall have the same force and effect in each county and municipality as the ordinances of such county or municipality and are enforceable in the county courts in the same manner as such ordinances. The provisions of s. 442.123(1) apply to violations of this section and are enforceable in county court.

(7) The chief of a county, municipal, or special district fire department, other fire department personnel designated by such chief, and personnel designated by a local government having no organized fire department are authorized to enforce this section and any regulation adopted by the department for enforcement of this section. Such personnel acting under the authority of this section shall be considered agents of their respective jurisdictions and not agents of the department. Any penalties collected by such local personnel for violation of this section pursuant to s. 442.123 shall be retained by the respective fire department or local government.

(8) Notwithstanding the provisions of s. 442.123(1), if an employer fails to provide the information required by this section, the department shall assess a civil penalty in an amount not to exceed $100.

History.—s. 10, ch. 84-223; s. 5, ch. 87-202; s. 10, ch. 91-269.

[1]Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

442.1185 Rules.—The department shall adopt by rule a standard form for employers to use in complying with the requirements of s. 442.118.

History.—s. 6, ch. 87-202.

442.119 Liability and responsibility of independent contractor, general contractor, and subcontractor.—

(1) For purposes of compliance with this act, an independent contractor or subcontractor shall be responsible for his employees in the workplace of another employer.

(2) In case a general contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such general contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the general contractor shall be responsible for satisfying the provisions of ss. 442.106, 442.107, 442.108, 442.109, 442.115, 442.116, and 442.118, except with respect to employees of a subcontractor who has complied with such provisions.

(3) In those instances in which the general contractor carries out the provisions of ss. 442.106, 442.107, 442.108, 442.109, 442.115, 442.116, and 442.118 with respect to the employees of a subcontractor, his liability to such employees shall be limited solely to the provisions of this act and shall in no way absolve the liabilities imposed upon the subcontractor with respect to such employees by any other statute or common law.

History.—s. 3, ch. 84-223.

442.121 Records required to be maintained by employer.—An employer who is subject to the provisions of ss. 442.101–442.127 is required to maintain as records for a period of 30 years only the material safety data sheets that are required by s. 442.106.

History.—s. 11, ch. 84-223.

442.123 Civil penalty for, and judicial restraint of, violation of act.—

(1) Any employer who fails to comply with the provisions of ss. 442.101–442.127 is liable for a civil penalty not to exceed $1,000 per violation in addition to any other damages for which the employer may be liable pursuant to any other provision of law. This civil penalty shall be assessed by the secretary in accordance with the provisions of chapter 120.

(2) The department may bring an action in the circuit court in the county where the employer's workplace is situated against any person or persons alleged to have violated the provisions of ss. 442.101–442.127. In any such action, the circuit court shall have the jurisdiction to restrain violations of ss. 442.101–442.127.

(3) An employer shall not be considered to be in violation of ss. 442.101–442.127 when injury or death occurs as the result of contact with or exposure to a substance which a reasonably prudent adult would or should recognize to be hazardous as a matter of common knowledge.

History.—s. 13, ch. 84-223.

442.125 Annual evaluation report by secretary.—The secretary shall, not later than 45 days prior to the convening of the Legislature in regular session each year, submit an annual evaluation report on the program outlined in ss. 442.101–442.127 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and the House of Representatives, and any member of the Legislature who requests it. The report shall include a statement of the scope, status, and quality of the program and the costs associated with the program.

History.—s. 12, ch. 84-223; s. 6, ch. 86-45.

442.126 Local standards relating to toxic substances in the workplace prohibited.—Units of local government, as defined in chapter 165, are strictly prohibited from enacting or promulgating any rules, standards, or ordinances relating to toxic substances in the workplace.

History.—s. 14, ch. 84-223.

442.127 Comparable federal law prevails over less stringent state law.—Any federal statute, or rule or regulation adopted pursuant to federal statute, which statute, rule, or regulation is equal to or more stringent than the comparable provisions of ss. 442.101–442.127 shall prevail over the less stringent provisions of such sections.

History.—s. 16, ch. 84-223.

442.20 Workplace safety.—

(1) The Division of Safety within the Department of Labor and Employment Security shall assist in making the workplace a safer place to work and decreasing the frequency and severity of on-the-job injuries.

(2) The Division of Safety shall have the authority to adopt rules for the purpose of assuring safe working conditions for all workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe working conditions, and by providing for education and training in the field of safety.

(3) The provisions of chapter 440 which pertain to workplace safety shall be applicable to the Division of Safety.

(4) The administrative rules of the Department of Labor and Employment Security pertaining to the function of the Bureau of Industrial Safety and Health which are in effect immediately before July 1, 1990, continue in effect as rules of the Division of Safety until specifically amended by the Department of Labor and Employment Security.

History.—s. 5, ch. 90-201; s. 4, ch. 91-1.

442.21 Information identifying employees exercising rights; confidentiality.—

(1) Information held by the Department of Labor and Employment Security identifying an employee who has exercised any right granted under this chapter is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the identity of the employee is otherwise permissibly made public under the laws of this state or pursuant to proceedings under the laws of this state. This exemption is subject to the Open Government Sunset Review Act in accordance with [1]s. 119.14.

(2) The Legislature finds that it is a public necessity that information held by the Department of Labor and Employment Security identifying any employee who has exercised his or her rights granted under this chapter, such as reporting work-related health and safety hazards and violations, be held confidential and exempt from the public records law. This exemption is necessary because release of such information to the public could lead to discrimination against and harassment of the reporting employee by coworkers and others, and thus potentially jeopardize any ensuing investigation. Accordingly, disclosure could chill an employee's willingness to report potential health and safety violations.

History.—s. 1, ch. 93-422.

[1]Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."