

LEGISLATIVE BILL 374

Approved by the Governor May 27, 1997

Introduced by Preister, 5; Beutler, 28; Bromm, 23; Cudaback, 36; Dierks, 40; Hartnett, 45; Hilgert, 7; Janssen, 15; Landis, 46; Robinson, 16; Schimek, 27; Schmitt, 41; Stuhr, 24; Tyson, 19; Vrtiska, 1; Wickersham, 49

AN ACT relating to hazardous substances; to adopt the Nebraska Emergency Planning and Community Right to Know Act; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 45 of this act shall be known and may be cited as the Nebraska Emergency Planning and Community Right to Know Act.

Sec. 2. (1) It is the intent of the Legislature to adopt the Nebraska Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

(2) The Legislature finds that the release of hazardous and toxic chemicals threatens the health and safety of the public and the environment. The Legislature further finds that increased public knowledge and access to information on the presence of hazardous and toxic chemicals in communities enables the public to work with facilities, communities, state and federal agencies, and governmental bodies to improve chemical safety and protect the health and safety of the public and the environment. The Legislature further finds that the community's right to know is essential in protecting the health and safety of the public and the environment. The Legislature further finds that emergency planning and notification requirements assist the state and local communities in planning for and responding to a release of extremely hazardous substances.

(3) It is the intent of the Legislature that all state agencies involved in emergency release notification, reporting, planning, training, response, and preparedness will coordinate and collaborate in carrying out the purposes of the Nebraska Emergency Planning and Community Right to Know Act and may, to the extent possible, share resources and funding.

(4) It is the intent of the Legislature that the reporting requirements of the Nebraska Emergency Planning and Community Right to Know Act are to be no more stringent than the reporting requirements of the Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

Sec. 3. For purposes of the Nebraska Emergency Planning and Community Right to Know Act, the definitions found in sections 4 to 19 of this act apply.

Sec. 4. Administrator means the Administrator of the United States Environmental Protection Agency.

Sec. 5. Commission means the State Emergency Response Commission.

Sec. 6. Director means the Director of Environmental Quality.

Sec. 7. Environment includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

Sec. 8. Extremely hazardous substance means a substance which meets the threshold requirements identified on the List of Extremely Hazardous Substances under 40 C.F.R. part 355, Appendices A and B.

Sec. 9. Facility means the buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person which controls, is controlled by, or is under common control with such person.

Sec. 10. Governing body means the governing body of a village, city, or county.

Sec. 11. Hazardous chemical has the same meaning as in 29 C.F.R. 1910.1200(c).

Sec. 12. Hazardous substance has the same meaning as in 40 C.F.R. part 302, Table 302.4.

Sec. 13. Inventory form means an emergency and hazardous chemical inventory form required to be prepared by an owner or operator of any facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq.

Sec. 14. List of chemicals includes each of the following:

(1) A list of the hazardous chemicals for which a material safety

data sheet is required under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act, grouped in categories of health and physical hazards as set forth under the act and regulations promulgated under the act or in such other categories as prescribed under section 311 of Title III;

(2) The chemical name or the common name of each such chemical as provided on the material safety data sheet; and

(3) Any hazardous component of each such chemical as provided on the material safety data sheet.

Sec. 15. Material safety data sheet means the sheet required to be developed under 29 C.F.R. 1910.1200(g).

Sec. 16. Release means to spill, leak, pump, pour, emit, empty, discharge, inject, escape, leach, dump, or dispose any hazardous chemical, extremely hazardous substance, or toxic chemical into the environment and includes the abandonment or discarding of barrels, containers, and other closed receptacles containing any such chemical or substance.

Sec. 17. State Administrator means the director of the Nebraska Emergency Management Agency.

Sec. 18. Title III means the Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

Sec. 19. Toxic chemical means a substance on the list in Committee Print Number 99-169, as amended, of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986", including any revised version as may be made pursuant to section 313 of Title III.

Sec. 20. (1) The director of the Nebraska Emergency Management Agency shall serve as the State Administrator of the Nebraska Emergency Planning and Community Right to Know Act. The State Emergency Response Commission is created and shall be a part of the Nebraska Emergency Management Agency for administrative purposes. The membership of the commission shall include the Director of Environmental Quality or his or her designee, the Director of Health and Human Services Regulation and Licensure or his or her designee, the Director-State Engineer or his or her designee, the Superintendent of Law Enforcement and Public Safety or his or her designee, the State Fire Marshal or his or her designee, the director of the Nebraska Emergency Management Agency or his or her designee, two elected officials or employees of municipal or county government, and one citizen member to represent each of the following interest groups: Firefighters, local emergency management, public or community health, environmental protection, labor, school district, small business, agricultural business, chemical industry, highway transportation, and rail transportation. The Governor shall appoint the municipal or county government officials or employees and the citizen members with the approval of the Legislature. The appointments shall be made to represent the three congressional districts as equally as possible.

(2) The members appointed by the Governor shall be appointed for terms of four years, except that of the first citizen members appointed, three members shall serve for one-year terms, three members shall serve for two-year terms, and two members shall serve for three-year terms, as designated at the time of appointment.

(3) A vacancy on the commission shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed by the Governor for the remainder of such term.

Sec. 21. (1) The commission shall annually elect a chairperson from among its citizen members. The commission shall meet at least twice each year and may meet more often at the call of the chairperson or at the request of any three members.

(2) All members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 22. (1) The commission shall:

(a) Appoint local emergency planning committees pursuant to section 25 of this act; and

(b) Supervise and coordinate the activities of the local emergency planning committees.

(2) The commission shall designate each county or, where appropriate, multiple counties as emergency planning districts in order to facilitate preparation and implementation of emergency plans.

Sec. 23. (1) The Nebraska Emergency Management Agency shall supervise and coordinate emergency planning and training under section 305 of Title III and shall oversee and distribute all funds received under section

305 of Title III and section 24 of this act.

(2) The Department of Environmental Quality shall receive emergency notification and facility reports and establish procedures for receiving and processing requests from the public for information as required to be provided under the Nebraska Emergency Planning and Community Right to Know Act. The director or his or her designee shall serve as commission coordinator for information.

Sec. 24. (1) There is hereby created the Nebraska Emergency Planning and Community Right to Know Cash Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Nebraska Emergency Planning and Community Right to Know Act, including:

(a) The funding of specific projects as approved by the commission; and

(b) The payment of expenses incurred by the commission to administer the fund. Payment from the fund for costs of administering the fund shall not exceed fifteen percent of the total receipts of the fund during the fiscal year. The commission shall adopt and promulgate rules and regulations governing allocations from the fund and shall publish guidelines regarding allocations from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Entities receiving allocations from the Nebraska Emergency Planning and Community Right to Know Cash Fund shall expend the allocation in a manner expressly approved by the commission. If allocations from the fund are used for purposes other than those approved by the commission, the commission may recover by appropriate legal means any funds spent inconsistent with the terms of the allocation. Any recovered funds shall be deposited in the fund.

Sec. 25. The commission shall appoint the members of each local emergency planning committee for each emergency planning district established after the effective date of this act. Only one local emergency planning committee shall be established in each district. To the extent possible, each committee established prior to, on, or after the effective date of this act shall include at a minimum a representative from each of the following interest groups: State and local elected officials, public health, local environmental protection, hospitals, firefighters, local emergency management, law enforcement, transportation, broadcast and print media, neighborhood and community organizations, and owners and operators of facilities which are subject to the requirements of the Nebraska Emergency Planning and Community Right to Know Act. The committee members shall be appointed for terms of two years, except that of the initial appointees, approximately one-half of the members shall serve for terms of one year as designated at the time of appointment. A vacancy on a committee shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

Sec. 26. Each local emergency planning committee shall annually elect a chairperson. Each committee shall meet at least annually and may meet more often at the call of the chairperson or at the request of any three members.

Sec. 27. (1) Each local emergency planning committee shall:

(a) Establish rules governing the functioning of the committee consistent with sections 84-712 to 84-712.09 and 84-1408 to 84-1414. The rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan required under subdivision (c) of this subsection, public comments, response to such comments by the committee, and distribution of the emergency plan;

(b) Establish procedures for receiving and processing requests from the public for information required to be provided under the Nebraska Emergency Planning and Community Right to Know Act. The procedures shall include provisions to inform members of the public of the right to bring an action under federal law to enforce the act. The procedures shall include the designation of an official to serve as coordinator for information;

(c) Complete preparation of an emergency plan in accordance with the act not later than January 1, 1998, unless a plan for the emergency planning district has previously been submitted and approved by the commission. The committee shall review and update the plan once a year beginning March 1, 1999, and each March 1 thereafter, or more frequently as changed circumstances in the community or at any facility may require;

(d) Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan and make recommendations with respect to

additional resources that may be required and the means for providing such additional resources; and

(e) Designate a public library in each county within its district as a depository for the emergency plan, deliver the plan to the designated library, and update the plan as necessary.

(2) Each local emergency planning committee may receive gifts, bequests, grants, or other contributions or donations from public or private sources to carry out its duties and the purposes of the act, including, but not limited to, administrative costs and reimbursement to committee members for their actual and necessary travel expenses. Any gifts, bequests, grants, or other contributions or donations received from public or private sources shall be accounted for in an annual report to the commission. The commission shall adopt and promulgate rules and regulations governing the receipt and use of any gifts, bequests, grants, or other contributions or donations from public or private sources.

Sec. 28. (1) The owner or operator of each facility in which an extremely hazardous substance exceeding threshold planning quantities is present shall notify the commission that such facility is subject to the Nebraska Emergency Planning and Community Right to Know Act within sixty days after the effective date of this act unless notification was made prior to the effective date of this act and shall notify the commission and the local emergency planning committee of the emergency planning district in which the facility is located that such facility is subject to the act within sixty days after an extremely hazardous substance first becomes present at such facility in excess of the threshold planning quantity established for such substance. If there is a revision of the definition of extremely hazardous substances and the facility has present a substance included in the revised definition in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the commission and the committee of the district in which the facility is located within sixty days after such revision that such facility is subject to the act.

(2) The commission shall notify the director and the State Administrator of facilities subject to the act. The notification shall include:

(a) Each notification received from a facility under subsection (1) of this section; and

(b) Each facility designated by the commission under subsection (3) of this section.

(3) For purposes of emergency planning, the commission may designate additional facilities which are subject to the act if such designation is made after public notice and opportunity for comment. The commission shall notify the facility concerned of any designation under this subsection.

Sec. 29. Within thirty days after the establishment of a committee for the emergency planning district in which a reporting facility is located, the owner or operator of the facility shall provide to the committee the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator. The owner or operator of the facility shall promptly inform the committee of any relevant changes occurring at the facility as changes occur or are expected to occur. Upon request from the committee, the owner or operator of the facility shall promptly provide information to the committee which is necessary for developing and implementing the emergency plan.

Sec. 30. Each emergency plan as required in subdivision (1)(c) of section 27 of this act shall include, but not be limited to, the following:

(1) Identification of facilities containing an extremely hazardous substance in an amount which exceeds the threshold planning quantity established for such substance that are within the emergency planning district, identification of routes likely to be used for the transportation of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this section;

(2) Methods and procedures to be followed by facility owners and operators and local emergency response and medical personnel to respond to any release of extremely hazardous substances;

(3) Designation of a community emergency coordinator and identification of facility emergency coordinators who will make determinations necessary to implement the plan;

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan and to the public that a release has occurred. Notification procedures shall be consistent with the notification requirements of section 32 of this act;

(5) Methods for determining the occurrence of a release and the area or population likely to be affected by the release;

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the Nebraska Emergency Planning and Community Right to Know Act and an identification of the persons responsible for the equipment and facilities;

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) Training programs, including schedules for training of local emergency response and medical personnel; and

(9) Methods and schedules for exercising the emergency plan.

Sec. 31. Each local emergency planning committee shall provide the emergency plan to the governing bodies having jurisdiction in the emergency planning district for review prior to submitting the plan to the commission. The commission shall review the plan and make recommendations to the committee on revisions to the plan that may be necessary to ensure coordination of the plan with emergency plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of the plan.

Sec. 32. (1) An owner or operator of a facility shall immediately provide notice as described in subsection (2) of this section if:

(a) A release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.;

(b) A release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored and such release is not subject to the notification requirements under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but only if the release:

(i) Is not a federally permitted release as defined in section 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;

(ii) Is in an amount in excess of a quantity which the administrator has determined by regulation requires notice; and

(iii) Occurs in a manner which would require notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; or

(c) A release of a substance which is not an extremely hazardous substance occurs at a facility at which a hazardous chemical is produced, used, or stored and such release requires notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(2) Notice shall be given immediately after the release by the owner or operator of the facility by such means as telephone or radio or in person to the commission coordinator for information and to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section or storage incident to such transportation, the notice shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(3) Notice required under this section shall include each of the following to the extent known at the time of the notice and so long as no delay in responding to the emergency results:

(a) The chemical name or identity of any substance involved in the release;

(b) An indication of whether the substance is an extremely hazardous substance;

(c) An estimate of the quantity of any such substance that was released into the environment;

(d) The time and duration of the release;

(e) The medium or media into which the release occurred;

(f) Any known or anticipated acute or chronic health risks associated with the emergency and, if appropriate, advice regarding medical attention necessary for exposed individuals;

(g) Proper precautions to take as a result of the release, including evacuation, unless such information is readily available to the community emergency coordinator pursuant to the emergency plan; and

(h) The name and telephone number of the person or persons to be contacted for further information.

(4) As soon as practicable after a release which requires notice and

as more information becomes available, such owner or operator shall provide a written followup emergency notice or notices setting forth and updating the information required under subsection (3) of this section and including additional information with respect to:

- (a) Actions taken to respond to and contain the release;
- (b) Any known or anticipated acute or chronic health risks associated with the release; and
- (c) If appropriate, advice regarding medical attention necessary for exposed individuals.

(5) This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located. The exemption provided in section 37 of this act relating to transportation does not apply to this section.

(6) For purposes of this section, facility also includes motor vehicles, rolling stock, and aircraft.

Sec. 33. (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act shall submit a material safety data sheet for each such chemical meeting threshold quantity requirements under regulations promulgated under Title III or shall submit a list of chemicals to:

- (a) The local emergency planning committee for the emergency planning district in which the facility is located;
- (b) The commission coordinator for information; and
- (c) The fire department with jurisdiction over the facility.

(2) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(a) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary; or

(b) Submitting a material safety data sheet for the mixture itself or identifying the mixture on a list of chemicals.

(3) Each owner or operator of a facility submitting a list of chemicals under subsection (1) of this section shall, upon request by the committee, submit the material safety data sheet for any chemical on the list to the committee.

(4) A committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 39 of this act. If the committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 39 of this act.

(5) Unless provided prior to the effective date of this act, the initial material safety data sheet or list of chemicals required under this section with respect to a hazardous chemical shall be provided before the later of:

(a) January 1, 1998; or

(b) Three months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act.

(6) Within three months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the committee under subsection (1) of this section, a revised sheet shall be provided to the committee.

(7) For purposes of this section, hazardous chemical does not include:

(a) Any food, food additive, color additive, drug, or cosmetic regulated by the federal Food and Drug Administration;

(b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(c) Any substance to the extent it is used for personal, family, or household purposes or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(d) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; or

(e) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

Sec. 34. (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical meeting threshold quantity requirements under regulations promulgated under Title III shall prepare and submit annually on or before March 1 beginning in 1998 a tier II inventory form on data for the preceding calendar year to:

(a) The local emergency planning committee for the emergency planning district in which the facility is located;

(b) The commission coordinator for information; and

(c) The fire department with jurisdiction over the facility.

(2) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(a) Providing information on the tier II inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the tier II inventory form for the element or compound at the facility is necessary; or

(b) Providing information on the tier II inventory form on the mixture itself.

(3) A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a list of chemicals is required under section 33 of this act.

(4) A tier II inventory form shall provide the following information for each hazardous chemical present at the facility:

(a) The chemical name or the common name of the chemical as provided on the material safety data sheet;

(b) An estimate in ranges of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year;

(c) An estimate in ranges of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year;

(d) A brief description of the manner of storage of the hazardous chemical;

(e) The location at the facility of the hazardous chemical; and

(f) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 39 of this act.

(5) Upon request by the commission, the director, a committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (4) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(6) A state or local official acting in his or her official capacity may have access to tier II information by submitting a request to the commission or a committee. Upon receipt of a request for tier II information, the commission or committee shall request such information from the facility owner or operator and make such information available to the official.

(7) Any person may make request to the commission, the director, or a committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(8) Any tier II information which the commission, the director, or a committee has in its possession shall be made available to a person making a request under this section in accordance with section 39 of this act. If the commission, director, or committee does not have the tier II information in its possession, upon a request for the information the commission, director, or committee shall request the facility owner or operator for the information with respect to a hazardous chemical which a facility has stored in an amount in excess of ten thousand pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 39 to the person making the request.

(9) In the case of tier II information which is not in the possession of the commission, the director, or a committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than ten thousand pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The commission, director, or committee may request the facility owner or operator for the tier II information on behalf of the person

making the request. Upon receipt of any information requested on behalf of such person, the commission, director, or committee shall make the information available to the person in accordance with section 39 of this act.

(10) The commission, the director, or a committee shall respond to a request for tier II information under this section no later than forty-five days after the date of receipt of the request.

(11) An owner or operator of a facility which files an inventory form under this section shall, upon request by the fire department with jurisdiction over the facility, allow the fire department to conduct an onsite inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

Sec. 35. (1) The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under section 313(g) of Title III for each toxic chemical that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (2) of this section during the preceding calendar year at such facility. The form shall be submitted to the director annually on July 1 and shall contain data reflecting releases during the preceding calendar year.

(2) The requirements of this section apply to owners and operators of facilities that are required to file reports under section 313 of Title III and rules and regulations promulgated thereunder.

Sec. 36. (1) An owner or operator of a facility which is subject to the requirements of section 33, 34, or 35 of this act and the requirements of Title III shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (5) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that:

(a) The information is needed for purposes of diagnosis or treatment of an individual;

(b) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned; and

(c) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III when such information is a trade secret shall not apply to information required to be provided under this subsection subject to subsection (5) of this section.

(2) An owner or operator of a facility which is subject to the requirements of section 33, 34, or 35 of this act and Title III shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines:

(a) A medical emergency exists;

(b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(c) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III regarding trade secrets from a material safety data sheet, an inventory form, or a toxic chemical release form shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (5) of this section and a statement setting forth the items listed in subdivisions (2)(a) through (2)(c) of this section as soon as circumstances permit.

(3) An owner or operator of a facility which is subject to the requirements of section 33, 34, or 35 of this act and Title III shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional:

(a) Who is a local or state government employee or a person under contract with the local or state government; and

(b) Who requests such information in writing and provides a written statement of need under subsection (4) of this section and a written confidentiality agreement under subsection (5) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local or state health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III when such information is a trade secret shall not apply to information required to be provided under this subsection subject to subsection (5) of this section.

(4) The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(a) To assess exposure of persons living in a local community to the hazards of the chemical concerned;

(b) To conduct or assess sampling to determine exposure levels of various population groups;

(c) To conduct periodic medical surveillance of exposed population groups;

(d) To provide medical treatment to exposed individuals or population groups;

(e) To conduct studies to determine the health effects of exposure; and

(f) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(5) Any person obtaining information under subsection (1) or (3) of this section shall be required to agree in a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs asserted in the statement of need except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

Sec. 37. Except as provided in section 32 of this act, the Nebraska Emergency Planning and Community Right to Know Act does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of the act, including the transportation and distribution of natural gas.

Sec. 38. (1) Nothing in the Nebraska Emergency Planning and Community Right to Know Act shall:

(a) Preempt any local law;

(b) Except as provided in subsection (2) of this section, otherwise affect any local law or the authority of any local government to adopt or enforce any local law; and

(c) Affect or modify in any way the obligations or liabilities of any person under other state or federal law.

(2) Any local law enacted after the effective date of this act which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under section 33 of this act. In addition, a locality may require the submission of information which is supplemental to the information required on the data sheet, including information on the location and quantity of hazardous chemicals present at the facility, through additional sheets attached to the data sheet or such other means as the locality considers appropriate.

Sec. 39. (1) Each emergency plan, material safety data sheet, list of chemicals, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322 of Title III, during normal working hours at the location or locations designated by the Department of Environmental Quality, the commission, or a local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 34 of this act, the Department of Environmental Quality, the commission, or the appropriate committee shall withhold from disclosure under this section the location of any specific chemical required by section 35 of this act to be contained in an inventory form as tier II information.

(2) Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any

such plan, sheet, form, or followup notice may do so at the location designated under subsection (1) of this section.

Sec. 40. (1) Any state or local government may commence a civil action against an owner or operator of a facility for failure to:

(a) Provide notification to the commission under subsection (1) of section 28 of this act;

(b) Submit a material safety data sheet or a list of chemicals under section 33 of this act;

(c) Make available information requested under subsections (3) and (4) of section 33 of this act; and

(d) Complete and submit a tier II inventory form under section 34 of this act.

(2) The commission, the director, or a local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 29 of this act or for failure to submit tier II information under subsection (5) of section 34 of this act.

(3) The state may commence a civil action against the administrator for failure to provide information to the state under section 322(g) of Title III.

Sec. 41. (1) Any action under section 40 of this act, except as provided in subsection (2) of this section, against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (3) of section 40 of this act against the administrator may be brought in the United States District Court for the District of Columbia.

(3) Except as provided in subsection (2) of this section, the district court shall have jurisdiction in actions brought under section 40 of this act against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under section 40 of this act against the commission and the director to order the commission and the director to perform the act or duty concerned.

Sec. 42. No action may be commenced under section 40 of this act against an owner or operator of a facility if the administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under Title III with respect to the violation of the requirement.

Sec. 43. (1) In issuing any final order in any action brought under the Nebraska Emergency Planning and Community Right to Know Act, the court may award costs of litigation, including reasonable attorney's fees and expert witness fees, to the prevailing or the substantially prevailing party if the court determines such an award is appropriate.

(2) Nothing in section 40 of this act shall restrict or expand any right which any person or class of persons may have under any federal or state statute or common law to seek enforcement of any requirement of the act.

Sec. 44. (1) In any action under the Nebraska Emergency Planning and Community Right to Know Act, the State of Nebraska, if not a party, may intervene as a matter of right.

(2) In any action under the act, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

Sec. 45. The Nebraska Emergency Management Agency shall as necessary adopt and promulgate rules and regulations to carry out its responsibilities under the Nebraska Emergency Planning and Community Right to Know Act. The Environmental Quality Council shall adopt and promulgate rules and regulations necessary for the Department of Environmental Quality to carry out its responsibilities under the act.

Sec. 46. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

LEGISLATIVE BILL 384
Approved by the Governor May 22, 1997,
with line-item vetoes. Figures have
been changed to reflect vetoes not overridden.

Introduced by Speaker Withem, 14; Wehrbein, 2; at the request of the Governor

AN ACT relating to appropriations; to appropriate funds for the payment of the salaries and benefits of certain state officers for FY1997-98 and FY1998-99; to define terms; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. APPROPRIATION LANGUAGE.

There is hereby appropriated out of any money in the General Fund, not otherwise appropriated, for FY1997-98 and FY1998-99, the sums specified in this act, or so much as may be necessary, for the salaries and benefits of officers of the Nebraska state government.

Sec. 2. DEFINITION OF APPROPRIATION PERIOD.

For purposes of this act, FY1997-98 means the period beginning July 1, 1997, and ending June 30, 1998, and FY1998-99 means the period beginning July 1, 1998, and ending June 30, 1999.

Sec. 3. REAPPROPRIATION OF BALANCE, FY1997-98 to FY1998-99.

In addition to the appropriations set forth in this act, there are hereby reappropriated all unexpended appropriation balances existing on June 30, 1998, for FY1998-99 to the respective agencies, programs, and funds in this act.

Sec. 4. NEBRASKA ACCOUNTING SYSTEM MANUAL DEFINITIONS.

The definitions contained in the Nebraska Accounting System Manual, and any amendments thereto, on file with the Clerk of the Legislature are hereby adopted by the Legislature as the definitions for this act, except as provided in section 21 of this act.

Sec. 5. DRAWING AND PAYING WARRANTS.

The Director of Administrative Services shall draw warrants upon the proper fund in the state treasury for an amount not to exceed the appropriations set forth in this act upon presentation of proper documentation. The State Treasurer shall pay the warrants out of the appropriate funds.

Sec. 6. AGENCY NO. 5 -- SUPREME COURT

Program No. 3 - Supreme Court Judges' Salaries

	FY1997-98	FY1998-99
GENERAL FUND	727,149	729,446
PROGRAM TOTAL	727,149	729,446
SALARY LIMIT	664,248	664,248

Sec. 7. AGENCY NO. 5 -- SUPREME COURT

Program No. 4 - Court of Appeals Judges' Salaries

	FY1997-98	FY1998-99
GENERAL FUND	600,238	602,474
PROGRAM TOTAL	600,238	602,474
SALARY LIMIT	540,888	540,888

Sec. 8. AGENCY NO. 5 -- SUPREME COURT

Program No. 5 - Retired Judges' Salaries

	FY1997-98	FY1998-99
GENERAL FUND	25,000	25,000
PROGRAM TOTAL	25,000	25,000
SALARY LIMIT	25,000	25,000

Sec. 9. AGENCY NO. 5 -- SUPREME COURT

Program No. 6 - District and Juvenile Court Judges' Salaries

	FY1997-98	FY1998-99
GENERAL FUND	5,727,894	5,748,668
PROGRAM TOTAL	5,727,894	5,748,668
SALARY LIMIT	5,178,784	5,178,784

Sec. 10. AGENCY NO. 5 -- SUPREME COURT

Program No. 7 - County Court Judges' Salaries

	FY1997-98	FY1998-99
GENERAL FUND	5,035,484	5,055,380
PROGRAM TOTAL	5,035,484	5,055,380
SALARY LIMIT	4,516,903	4,516,903

Sec. 11. AGENCY NO. 7 -- GOVERNOR

Program No. 2 - Salary - Governor

	FY1997-98	FY1998-99
GENERAL FUND	78,724	78,916

PROGRAM TOTAL	78,724	78,916
SALARY LIMIT	65,000	65,000
Sec. 12. AGENCY NO. 8 -- LIEUTENANT GOVERNOR		
Program No. 8 - Salary - Lieutenant Governor		
	FY1997-98	FY1998-99
GENERAL FUND	58,608	58,608
PROGRAM TOTAL	58,608	58,608
SALARY LIMIT	47,000	47,000
Sec. 13. AGENCY NO. 9 -- SECRETARY OF STATE		
Program No. 9 - Salary - Secretary of State		
	FY1997-98	FY1998-99
GENERAL FUND	63,886	64,066
PROGRAM TOTAL	63,886	64,066
SALARY LIMIT	52,000	52,000
Sec. 14. AGENCY NO. 10 -- AUDITOR OF PUBLIC ACCOUNTS		
Program No. 10 - Salary - Auditor		
	FY1997-98	FY1998-99
GENERAL FUND	56,575	56,575
PROGRAM TOTAL	56,575	56,575
SALARY LIMIT	49,500	49,500
Sec. 15. AGENCY NO. 11 -- ATTORNEY GENERAL		
Program No. 11 - Attorney General's Salary		
	FY1997-98	FY1998-99
GENERAL FUND	73,849	73,849
PROGRAM TOTAL	73,849	73,849
SALARY LIMIT	64,500	64,500
Sec. 16. AGENCY NO. 12 -- STATE TREASURER		
Program No. 12 - Salary - State Treasurer		
	FY1997-98	FY1998-99
GENERAL FUND	59,836	59,926
PROGRAM TOTAL	59,836	59,926
SALARY LIMIT	49,500	49,500
Sec. 17. AGENCY NO. 14 -- PUBLIC SERVICE COMMISSION		
Program No. 14 - Salaries of Public Service Commissioners		
	FY1997-98	FY1998-99
GENERAL FUND	252,528	254,658
PROGRAM TOTAL	252,528	254,658
SALARY LIMIT	210,000	210,000
Sec. 18. AGENCY NO. 15 -- BOARD OF PARDONS AND BOARD OF PAROLE		
Program No. 320 - Board of Parole Salaries		
	FY1997-98	FY1998-99
GENERAL FUND	315,774	324,725
PROGRAM TOTAL	315,774	324,725
SALARY LIMIT	259,871	267,025
Sec. 19. AGENCY NO. 16 -- DEPARTMENT OF REVENUE		
Program No. 13 - Tax Commissioner		
	FY1997-98	FY1998-99
GENERAL FUND	99,800	102,384
PROGRAM TOTAL	99,800	102,384
SALARY LIMIT	87,731	90,224

It is the intent of the Legislature that if the appropriation or the salary limit is insufficient in this program to meet anticipated expenditures, the Tax Commissioner shall request additional funds or a higher salary limit, or both, from the Legislature by the usual deficit process. The appropriation or the salary limit shall not be administratively increased solely by the Department of Administrative Services without legislative authorization.

Sec. 20. AGENCY NO. 37 -- NEBRASKA WORKERS' COMPENSATION COURT
Program No. 526 - Judges' Salaries

	FY1997-98	FY1998-99
CASH FUND	627,980	629,044
PROGRAM TOTAL	627,980	629,044
SALARY LIMIT	564,615	564,615

Sec. 21. LIMITATION ON SALARIES, WAGES, AND PER DIEMS.

(1) As used in this act:

(a) SALARY LIMIT means total expenditures for permanent and temporary salaries and per diems; and

(b) Total expenditures for permanent and temporary salaries and per diems means all remuneration paid to employees treated as taxable compensation by the Internal Revenue Service or subject to social security coverage, specifically including payments accounted for as vacation, holidays, sick leave, military leave, funeral leave, maternity leave, administrative leave, compensatory time, deferred compensation, or any other similar form, and

amounts withheld pursuant to law, but excluding state contributions for social security, retirement, and employee insurance plans.

(2) Total expenditures for permanent and temporary salaries and per diems are limited to the amount provided by law for constitutional officers.

(3) The limitation on expenditures for permanent and temporary salaries and per diems for FY1998-99 shall be increased by amounts encumbered from FY1997-98 for permanent and temporary salaries and per diems. Encumbered amounts shall be calculated in accordance with section 81-138.01.

Sec. 22. Since an emergency exists, this act takes effect when passed and approved according to law.