

# MAINE STATE LEGISLATURE

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(New Draft of H. P. 549, L.D. 770)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1735

H.P. 1306

House of Representatives, June 7, 1983

Reported by Representative McGowan from the Committee on Energy and Natural Resources and printed under Joint Rule 2.

Original bill presented by Representative Michael of Auburn.

Cosponsored by Representative Gauvreau of Lewiston, Senator Bustin of Kennebec and Senator Pearson of Penobscot.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT Relating to the Identification  
and the Hazards of Exposure to Toxic and  
Hazardous Substances.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 7 MRSA §607, sub-§4, as enacted by PL 1975, c. 382, §3, is amended to read:

4. Test results. The commissioner may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide not registered pursuant to ~~of FIFRA~~ the Federal Insecticide, Fungicide and Rodenticide Act, Section 3, or on any pesticide on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregis-

1 tered. Notwithstanding Title 1, section 402, data  
2 submitted under this subsection and subsections 3 and  
3 5 are confidential and shall not be available for  
4 public inspection.

5 Sec. 2. 22 MRSA §1471-M, sub-§3 is enacted to  
6 read:

7 3. Enforcement of chemical substance identifi-  
8 cation. The board shall have primary enforcement  
9 responsibility for inspection of any workplace sub-  
10 ject to the provisions of Title 26, chapter 22,  
11 solely because of the presence of a pesticide. The  
12 board shall have primary enforcement responsibility  
13 for training programs to be provided by employers  
14 under Title 26, chapter 22, in those instances where  
15 the employer is subject to the provisions of that law  
16 solely because of the presence or use of a pesticide.

17 Sec. 3. 26 MRSA §1702, sub-§6, as enacted by PL  
18 1979, c. 500, is amended to read:

19 6. Hazardous substance. "Hazardous substance"  
20 means a chemical which:

21 A. Is listed in the Department of Transportation  
22 Hazardous Materials Table, 49 CFR 172.101; and

23 B. Meets one or more of the following criteria  
24 for hazard class:

25 (1) Is a combustible substance. For pur-  
26 poses of this section, a combustible sub-  
27 stance is any liquid with a flash point  
28 above 100° F. and below 200° F.;

29 (2) Is a compressed gas. For purposes of  
30 this section, a compressed gas is any chemi-  
31 cal having in the container an absolute  
32 pressure exceeding 40 PSI at 70° F. or hav-  
33 ing an absolute pressure exceeding 104 PSI  
34 at 130° F., or any flammable liquid having a  
35 vapor pressure exceeding 40 PSI absolute  
36 pressure at 100° F.;

37 (3) Is an explosive. For purposes of this  
38 section, an explosive is any chemical which

1 is capable of producing an instantaneous  
2 release of gas and heat;

3 (4) Is a flammable substance. For purposes  
4 of this section, a flammable substance is  
5 any liquid with a flash point of below 100°  
6 F., solid heat from manufacturing or pro-  
7 cessing or gas which at atmospheric tempera-  
8 ture and pressure forms a flammable mixture  
9 with air when present at a concentration of  
10 13% or less by volume or that forms a range  
11 of flammable mixtures with air wider than  
12 12% regardless of the lower limit;

13 (5) Is an organic peroxide. For purposes  
14 of this section, an organic peroxide is an  
15 organic compound that contains the bivalent  
16 - O- O- structure and which is a derivative  
17 of hydrogen peroxide where one or more  
18 hydrogen atoms have been replaced by organic  
19 radicals; or

20 (6) Is an oxidizer. For purposes of this  
21 section, an oxidizer is a chemical that  
22 readily yields oxygen and can stimulate the  
23 combustion of organic matter; or

24 C. Is listed as a radioactive material in regu-  
25 lations promulgated by the United States Nuclear  
26 Regulatory Commission.

27 Sec. 4. 26 MRSA §1702, sub-§6-A is enacted to  
28 read:

29 6-A. Material safety data sheet. "Material  
30 safety data sheet" means a form containing informa-  
31 tion concerning a hazardous or toxic substance sub-  
32 stantially equivalent in content to form 20 of the  
33 United States Occupational Safety and Health Adminis-  
34 tration and which includes acute and chronic health  
35 hazard information.

36 Sec. 5. 26 MRSA §1702, sub-§7, as enacted by PL  
37 1979, c. 500, is amended to read:

38 7. Toxic substance. "Toxic substance" means a  
39 chemical which is:

1 A. Listed in the Toxic and Hazardous Substances  
2 section of the regulations of the Occupational  
3 Health and Safety Act labeling standard in the  
4 United States Code of Federal Regulations 29,  
5 Part 1910, Subpart Z; or

6 B. Contained on a list established by the direc-  
7 tor by rule and which meets any of the following  
8 criteria:

9 (1) Has a median lethal oral dose of not  
10 more than 500 milligrams per kilogram of  
11 body weight;

12 (2) Has a median lethal dermal dose of not  
13 more than 1,000 milligrams per kilogram of  
14 body weight;

15 (3) Has a median inhalation lethal concen-  
16 tration in air of not more than 2,000 parts  
17 per million by volume of gas or vapor, or  
18 more than 2 milligrams per liter but not  
19 more than 20 milligrams per liter of mist,  
20 fume or dust; or

21 (4) Has been found by the director, based  
22 on established scientific evidence, to have  
23 significant potential to cause adverse  
24 health effects because it is carcinogenic,  
25 mutagenic, teratogenic, neurotoxic or  
26 bioaccumulative.

27 The director shall make a written record of any rule-  
28 making proceeding under this section which shall  
29 include his specific findings and the basis for those  
30 findings. The findings shall be supported by sub-  
31 stantial evidence in the record.

32 Sec. 6. 26 MRSa §1702, sub-§7-A is enacted to  
33 read:

34 7-A. Trade secret. "Trade secret" means any  
35 formula, pattern, process, device, information or  
36 compilation of information, including chemical name,  
37 that is used in any employer's business that gives  
38 the employer an opportunity to obtain any advantage  
39 over competitors who do not know or use it.

1       Sec. 7. 26 MRSA §1702, sub-§9 is enacted to  
2 read:

3       9. Workplace. "Workplace" means an establish-  
4 ment or business at one geographic location contain-  
5 ing one or more work areas.

6       Sec. 8. 26 MRSA §1703-A is enacted to read:

7       §1703-A. Material safety data sheets

8       1. Manufacturers, suppliers or distributors to  
9 provide. Manufacturers, suppliers or distributors of  
10 hazardous or toxic substances shall provide their  
11 direct purchasers with the current material safety  
12 data sheet for each substance subject to this chapter  
13 that they manufacture or sell in this State.

14       2. Employers to maintain. Each employer shall  
15 maintain in each workplace a material safety data  
16 sheet for each hazardous or toxic substance to which  
17 employees may be exposed. All material safety data  
18 sheets maintained by employers shall be available to  
19 their employees for examination during all hours of  
20 operation.

21       3. Trade secret information. An employer may  
22 withhold the identity of a toxic or hazardous sub-  
23 stance on a material safety data sheet if disclosure  
24 would reveal a trade secret. All other information,  
25 including the routes of exposure, effects of expo-  
26 sure, type and degree of hazard and emergency treat-  
27 ment and response procedures, shall be provided. An  
28 employer shall, upon request, provide the identity  
29 of any hazardous or toxic substance that is a trade  
30 secret to the director or to the authorized physician  
31 of an employee for medical treatment under an appro-  
32 priate confidentiality agreement by the physician.

33       4. Copies to local fire chiefs. Employers  
34 shall, upon request, provide to local fire chiefs  
35 copies of the material safety data sheets maintained  
36 in the workplace.

37       5. Trade secret determination. If the director  
38 believes a manufacturer, supplier, distributor or  
39 employer has improperly designated a chemical sub-

1     stance or its use in a particular process as a trade  
2     secret, the director may challenge the designation in  
3     Superior Court. Pending final determination, the  
4     director may also seek injunctive relief. If the  
5     director prevails, and the chemical or its use in a  
6     particular process is determined not to be a trade  
7     secret, as defined in this chapter, the other party  
8     shall pay all costs and reasonable attorneys' fees.

9             Sec. 9. 26 MRSA §1704, sub-§1, as enacted by PL  
10            1979, c. 500, is amended to read:

11            1. Educational and training program required.  
12     The employer shall institute an ~~education~~ educational  
13     and training program for all employees who are  
14     ~~reutinely~~ exposed to hazardous or toxic ~~chemieals~~  
15     substances.

16            Sec. 10. 26 MRSA §1704, sub-§2, as enacted by PL  
17            1979, c. 500, is amended to read:

18            2. Schedule for educational and training pro-  
19     gram. The education and training shall commence prior  
20     to initial assignment and shall be repeated at least  
21     annually thereafter. Additional instruction shall be  
22     provided whenever chemicals or processes change, or  
23     newly acquired information indicates the need for ad-  
24     ditional protective measures. Programs shall be con-  
25     ducted during the employee's regular working hours.

26            Sec. 11. 26 MRSA §1704, sub-§3, as enacted by PL  
27            1979, c. 500, is amended to read:

28            3. Educational and training contents. The ~~educa-~~  
29     ~~tion~~ educational and training program shall include  
30     the following:

31            A. The location, properties and acute and  
32     chronic health effects of the chemicals to which  
33     the employees are ~~reutinely~~ exposed in the work  
34     area;

35            B. The nature of the operations which could  
36     result in exposure to these chemicals as well as  
37     any necessary handling or hygienic practices or  
38     precautions;

1 C. The purpose, proper use and limitation of  
2 personal protective equipment required by any  
3 other Occupational Health and Safety Act standard  
4 or otherwise used in the work area; and

5 D. An explanation of the information contained  
6 on the labels; and the appropriate material  
7 safety data sheets; and

8 E. The provisions of this chapter.

9 Sec. 12. 26 MRSA §1704, sub-§4-A is enacted to  
10 read:

11 4-A. Employer to maintain records. Each  
12 employer subject to this chapter shall maintain an  
13 outline of its training programs and a list of  
14 employees by name and job title or classification who  
15 have received training, the type of training provided  
16 and the dates it was provided.

17 Sec. 13. 26 MRSA §1704, sub-§6 is enacted to  
18 read:

19 6. Rules; minimum training programs. The direc-  
20 tor may by rule establish minimum training programs  
21 to be provided to employees who are exposed to spe-  
22 cific hazardous or toxic substances.

23 Sec. 14. 26 MRSA §1705, sub-§3 is enacted to  
24 read:

25 3. Reports. The director may by rule require  
26 that employers send copies of material safety data  
27 sheets maintained by them and annual updates to the  
28 bureau.

29 Sec. 15. 26 MRSA §1706-A is enacted to read:

30 §1706-A. Administration and enforcement

31 1. Enforcement. The Bureau of Labor Standards  
32 shall administer and enforce the provisions of this  
33 chapter, except that the Board of Pesticides Control  
34 shall have primary responsibility for inspection and  
35 training programs in workplaces subject to the provi-  
36 sions of this chapter solely because of the presence



1 of a limited or restricted use pesticide within the  
2 meaning of the Maine Pesticides Control Act of 1975,  
3 Title 7, sections 601, subchapter II-A.

4 2. Inspections. For the purposes of enforcing  
5 this chapter, the director may, at any reasonable  
6 time and upon presentation of appropriate identifi-  
7 cation, enter and inspect a workplace accompanied by  
8 the employer representative.

9 3. Cooperation with other agencies. The direc-  
10 tor may obtain the assistance of the Bureau of Health  
11 and other state agencies in the administration of  
12 this chapter. The director shall provide by rule  
13 appropriate procedures for transferring to other  
14 state agencies information provided by employers  
15 which is subject to confidential treatment.

16 4. Assistance to employers. The director may  
17 provide assistance to employers in the development  
18 and conduct of training programs for employees and  
19 local public safety personnel and the completion of  
20 material safety data sheets. The director may estab-  
21 lish by rule a segregated, nonlapsing Training Assis-  
22 tance Fund which shall be financed by fees levied on  
23 employers subject to this chapter. The fees shall be  
24 graduated based on the number of material safety data  
25 sheets maintained by an employer and shall not be  
26 less than \$30 nor more than \$300 a year for each  
27 employer. Revenues paid into the fund, including  
28 interest, shall be used exclusively for carrying out  
29 the purposes of this subsection. Expenditures from  
30 the fund shall be allocated and approved by the  
31 Legislature.

32 The director may not assess fees for materials sub-  
33 ject to fees under Title 7, chapter 103.

34 5. Waiver by rule. If the director determines  
35 that, with respect to certain amounts or concentra-  
36 tions of specific hazardous or toxic substances,  
37 strict compliance with the requirements of this chap-  
38 ter will not contribute to the health and safety of  
39 employees, the director may by rule waive those re-  
40 quirements.

41 Sec. 16. 26 MRSA §1707, as enacted by PL 1981,  
42 c. 261, is amended to read:

1     §1707.   Penalty

2           Any person, partnership, corporation or other  
3     legal entity who refuses to comply, in whole or in  
4     part, with this chapter commits a civil violation for  
5     which a forfeiture not to exceed \$500 for the first  
6     violation and not to exceed \$1,000 for any subsequent  
7     violation may be adjudged.

8           Sec. 17.   26 MRSA §1708 is enacted to read:

9     §1708.   Prohibited practices; remedy

10           It is unlawful for any employer to discharge,  
11     discipline or otherwise discriminate against any of  
12     its employees who have assisted in the enforcement of  
13     this chapter. The director may, after investigation  
14     and hearing, bring an action in Superior Court on  
15     behalf of any employee to enforce this section. In  
16     addition to the civil penalties set forth in section  
17     1707, the director may seek all other appropriate  
18     relief, including payment of compensation actually  
19     lost as a result of a violation. If the court finds  
20     that there has been no violation of this section, the  
21     court may award costs and reasonable attorneys' fees  
22     to the employer.

23           Sec. 18.   Allocation of Training Assistance Fund.  
24     There is allocated from the Training Assistance Fund  
25     the following funds to carry out the purposes of this  
26     Act.

27	<u>LABOR, DEPARTMENT OF</u>	<u>1983-84</u>	<u>1984-85</u>
28	Bureau of Labor Standards		
29	Positions	(1 1/2)	(2)
30	Personal Services	\$28,000	\$38,800
31	All Other	7,500	9,900
32	Capital Expenditures	<u>1,900</u>	<u>          </u>
33	Total	\$37,400	\$48,700

1 STATEMENT OF FACT

2 This new draft amends the existing statutes deal-  
3 ing with chemical substance identification in the  
4 workplace. The bill authorized the Bureau of Labor  
5 Standards to adopt rules identifying hazardous sub-  
6 stances and other rules implementing the chapter.

7 The new draft requires manufacturers of hazardous  
8 substances to provide purchasers with material safety  
9 data sheets describing the health hazards of the sub-  
10 stances. Employers are required to post these safety  
11 sheets in the workplace, conduct training programs  
12 during regular working hours on these hazardous sub-  
13 stances and to maintain records of the training pro-  
14 grams. There are provisions in the new draft for  
15 protection of trade secrets.

16 The Bureau of Labor Standards will administer the  
17 chemical substance identification program. The Board  
18 of Pesticides Control is given primary administrative  
19 and enforcement authority under the Act for sub-  
20 stances it currently regulates.

21 4113052583