

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 297

S. P. 77

In Senate, January 19, 1965

Referred to Committee on Agriculture. Sent down for concurrence and ordered printed.

EDWIN H. PERT, Secretary

Presented by Senator Hilton of Somerset.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Creating the Uniform Hazardous Substances Labeling Act.

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

R. S., T. 7, c. 101, sub-c. IV, additional. Chapter 101 of Title 7 of the Revised Statutes is amended by adding a new subchapter IV, to read as follows:

‘SUBCHAPTER IV

HAZARDOUS SUBSTANCES LABELING ACT

Sec. 501. Title. This subchapter shall be known and may be cited as the “Uniform Hazardous Substances Labeling Act.”

Sec. 502. Definitions. The following words and phrases shall have the meaning ascribed to them in this subchapter.

1. **Commissioner.** “Commissioner” means the Commissioner of Agriculture and his agents.

2. **Corrosive.** “Corrosive” means any substance which in contact with living tissue causes destruction of tissue by chemical action; but does not refer to action on inanimate surfaces.

3. **Department.** “Department” means the Department of Agriculture.

4. **Flammable.** “Flammable” means any substance which has a flashpoint of above 20 degrees to and including 80 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, except that the flammability of solids and of the contents of self-pressurized containers is determined by methods generally applicable to such containers and established by regulations issued by the commissioner and “extremely flammable” means any substance which has a flash-

point at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester.

5. Hazardous substance. "Hazardous substance" means any substance or mixture of substances which is toxic, corrosive, an irritant, strong sensitizer, flammable, or which generates pressure through decomposition, heat or other means and which may cause substantial personal injury or illness during any customary or reasonable anticipated handling or use including reasonably foreseeable ingestion by children and also means any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the commissioner determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this subchapter in order to protect the public health.

6. Highly toxic. "Highly toxic" means any substance which produces death within 14 days in at least half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when a single dose of 50 milligrams or less per kilogram of body weight, is orally administered or when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas, vapor, mist or dust, or which produces death within 14 days in at least half of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.

If the commissioner finds that available data on human experience with any substance indicate results different from those on animals in the above-named dosages or concentrations, the human data shall take precedence.

7. Household use. "Household use" means any use, or intended use of an article in or about the living area or living quarters of a house, apartment house or other place of abode.

8. Immediate container. "Immediate container" does not include package liners.

9. Irritant. "Irritant" means any substance, not corrosive, which on immediate, prolonged or repeated contact with normal living tissue will induce inflammatory reaction.

10. Label. "Label" means a display of written, printed or graphic matter upon or attached to the immediate package or container of any substance; and a requirement made by or under authority of this subchapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

11. Misbranded package. "Misbranded package" or "misbranded package of a hazardous substance" means a hazardous substance in a container intended or suitable for household use unless the product bears a label with the information specified in section 507, except as otherwise provided by or pursuant to this subchapter.

12. Person. "Person" means and includes any corporation, association, co-partnership or one or more individuals.

13. Radioactive substance. "Radioactive substance" means any substance which emits ionizing radiation.

14. Strong sensitizer. "Strong sensitizer" means any substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the commissioner. Before designating any substance as a strong sensitizer, the commissioner shall find that the frequency of occurrence and severity of the reaction indicate a significant potential for causing hypersensitivity.

15. "Toxic" means any substance other than a radioactive substance, which has the inherent capacity to produce bodily injury or illness to man through ingestion, inhalation or absorption through any body surface.

Sec. 503. Submission of names and amounts. The commissioner, when he deems it necessary in the administration of this subchapter, may require the submission of the names and amount of any hazardous ingredients in any hazardous substance.

Sec. 504. Duties. The department is authorized:

1. Investigate and examine. To investigate and examine hazardous substances subject to this subchapter.

2. Collection. To effect the collection and examination of samples of hazardous substances to determine the compliance with the requirements of this subchapter and the officers and employees of the department have authority at all reasonable hours to enter into any motor vehicle, warehouse, store, building, boat, vessel, aircraft or place supposed to contain hazardous substances, for the purpose of inspection or sampling, and to procure samples for analysis or examination from any lot, package or parcel or hazardous substance.

3. Rules and regulations. To make and enforce such reasonable rules and regulations necessary to carry out this subchapter. The rules and regulations so promulgated shall conform so far as practicable to rules and regulations promulgated under authority of the Federal Act.

Sec. 505. Access to carriers. Carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such substances so received, shall upon the request of an officer or employee duly designated by the department permit such officer or employee, at reasonable times, to have access to and to copy all records showing movement in commerce of any hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof. It is unlawful for any such carrier or person to fail to permit access to and copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of hazardous substance to which the request relates. Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained and carriers shall not be subject to the other provi-

sions of this subchapter by reason of their receipt, carriage, holding or delivery of hazardous substances in the usual course of business as carriers.

Sec. 506. Withdrawal from sale; condemnation and confiscation.

1. "Withdrawal from sale" orders. When the commissioner finds by inspection or examination of a hazardous substance that it is being sold or distributed in violation of any of the provisions of this subchapter, he may issue and enforce a written or printed "withdrawal from sale" order warning the distributor not to dispose of the hazardous substance in any manner until written permission is given by the commissioner or the court. The commissioner shall release the hazardous substance so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within 30 days, the commissioner may begin proceedings for condemnation.

2. Condemnation and confiscation. Any hazardous substance not in compliance with this subchapter shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said hazardous substance is located. In the event the court finds the said hazardous substance to be in violation of this subchapter, and orders the condemnation of said hazardous substance, it shall be disposed of in any manner consistent with the quality of the hazardous substance and the laws of the State. In no instance shall the disposition of said hazardous substance be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said hazardous substance or for permission to process or relabel said hazardous substance to bring it into compliance with this subchapter.

Sec. 507. Labeling provisions. It is unlawful for any person to distribute, sell or offer for sale within the State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

1. Household use. Any hazardous substance intended or suitable for household use, unless there is affixed to the container, a label bearing:

A. The name and address of the manufacturer, packer or distributor;

B. The common or usual name, or the chemical name or the recognized generic name, not trade name only, of the hazardous substance or of each component which contributes substantially to its hazard;

C. One of the following words: "Danger," "Warning" or "Caution." The word "Danger" shall be used for substances which are highly toxic, extremely flammable or corrosive. The word "Warning" or "Caution" shall be used on all other hazardous substances;

D. An affirmative statement of the principal hazard, such as "flammable," "vapor harmful," "causes burns," "absorbed through skin," or similar wording descriptive of the hazard;

E. Precautionary measures describing the action to be followed or avoided;

F. Instructions, when necessary, for the first aid treatment in case of con-

tact or exposure, if the substance is hazardous through contact or exposure;

G. Instructions for handling and storage of packages which require special care in handling or storage;

H. A statement, "Keep out of reach of children," or its practical equivalent;

I. The word "Poison" for any hazardous substance which is highly toxic; and

J. A hazardous substance upon which a stop-sale order has been placed by the commissioner.

2. Statement. Any statements required under this subchapter shall be located prominently and shall be in the English language in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

If the commissioner finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this subchapter is impracticable or is not necessary for the adequate protection of the public health and safety, the commissioner shall promulgate regulations exempting such substance from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety, or if the commissioner finds that the requirements of this section are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be a misbranded package of a hazardous substance.

Whenever in the judgment of the commissioner, such action will promote the objectives of this subchapter by avoiding or resolving uncertainty as to its application, the commissioner may by regulation declare to be a hazardous substance, for the purposes of this subchapter, any substance or mixture of substances which he finds meets the requirements of section 502, subsection 5.

Sec. 508. Unlawful acts. It is unlawful:

1. Alteration. For any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this subchapter or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from a hazardous substance in a manner that may defeat the purposes of this subchapter;

2. Use of information. For any person to use for his own advantage or to reveal, other than to the commissioner, or officials or employees of the commissioner or officials or employees of the United States Department of Agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons for

use in the preparation of antidotes, in accordance with such directions as the commissioner may prescribe, any information relative to formulas of products acquired by authority of this subchapter;

3. Interference. For any person to oppose or interfere in any way with the commissioner or his duly authorized agents in carrying out the duties imposed by this subchapter;

4. False guaranty. The giving of a guaranty which is false;

5. Manufacture. The manufacture of a misbranded package of a hazardous substance within this State;

6. Delivery. The introduction or delivery for introduction into commerce of any misbranded package of a hazardous substance;

7. Reused food or drugs. The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container is identifiable as a food, drug or cosmetic container by its labeling or other identification. The reuse of a food, drug or cosmetic container as a container for hazardous substance is an act which results in the hazardous substance being a misbranded package.

Sec. 509. Application. This subchapter shall not apply to:

1. Carrier. Any carrier, while lawfully engaged in transporting a hazardous substance within this State, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movements of the articles;

2. Public officials. Public officials of this State and of the Federal Government engaged in the performance of their official duties;

3. Experimental use. The manufacturer or shipper of a hazardous substance for experimental use only:

A. By or under the supervision of an agency of this State or of the Federal Government authorized by law to conduct research in the field of hazardous substances; or

B. By others if the hazardous substance is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address. If a written permit has been obtained from the commissioner, hazardous substances may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

4. Federal and state law. Any preparation, drug or chemical subject to the laws of the United States relating to drugs, devices or cosmetics, the Uniform Drug Device and Cosmetic Act, or to preparations, drugs and chemicals which are dispensed by pharmacists authorized by and pursuant to the pharmacy laws of this State;

5. Certain poisons. Any economic poison registered with the United States Department of Agriculture pursuant to the Federal Insecticide, Fungicide and Rodenticide Act and subject thereto;

6. Fuel. Fuel used primarily for cooking, heating or refrigeration when stored in containers and used in the heating, cooking or refrigeration system of a household.

The commissioner may exempt from the requirements established by or pursuant to this subchapter any container of a hazardous substance with respect to which he finds adequate requirements satisfying the purposes of this subchapter have been established by or pursuant to and in compliance with any other federal or state law.

Sec. 510. Injunction. The department may, by application to any court having jurisdiction, obtain an injunction restraining any person who engages in acts which violate this subchapter or the rules and regulations adopted pursuant thereto. Upon refusal or neglect to obey the order of court, the court may compel obedience thereof by proceedings for contempt.

Sec. 511. Enforcement. It is the duty of the department, its officers, agents, inspectors and employees to enforce this subchapter.

Sec. 512. Penalties. Any person violating any of the provisions of this subchapter is guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 11 months, or by both. No person shall be subject to the penalties provided in this section if such person establishes a written guarantee or undertaking in which is furnished the name and address of the manufacturer or distributor, and the statement that he received such products in good faith in reliance upon the manufacturer or distributor to the effect that such products were manufactured and labeled in compliance with this subchapter or with such Federal Acts which may relate to the regulations of the distribution of hazardous substances covered by this subchapter.

Sec. 513. Exception. No person shall be prosecuted for violation of any provision of this subchapter if such person has been acquitted or convicted under the Federal Hazardous Substances Labeling Act of the same act or omission which, it is alleged, constitutes a violation of this subchapter.'