

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of S.P. 719, L.D. 1977)

3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 2463

8
9 S.P. 915

In Senate, April 11, 1984

10 Reported by Report A from the Committee on Energy and Natural
Resources and printed under Joint Rule 2.

11 Original bill presented by Senator Kany of Kennebec. Cosponsored by
12 Representative Hall of Sangerville.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-FOUR
18

19 AN ACT to Reduce Minimum Fees and Provide
20 for Implementation of the Chemical Substance
21 Identification Law.
22

23 Emergency preamble. Whereas, Acts of the Legis-
24 lature do not become effective until 90 days after
25 adjournment unless enacted as emergencies; and

26 Whereas, the Legislature recognizes the impor-
27 tance of protecting the occupational health and safe-
28 ty of the workers of this State; and

29 Whereas, the Legislature also recognizes that the
30 protection of workers' safety and health can and
31 should be accomplished without placing unnecessary
32 burdens on employers; and

33 Whereas, in the judgment of the Legislature,
34 these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following
2 legislation as immediately necessary for the preser-
3 vation of the public peace, health and safety; now,
4 therefore,

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

7 Sec. 1. 26 MRSA §§1701 to 1708, as amended, are
8 repealed.

9 Sec. 2. 26 MRSA §§1709 to 1725 are enacted to
10 read:

11 §1709. Purpose

12 The purpose of this chapter is to ensure that the
13 hazards of all chemicals produced or imported by
14 chemical manufacturers or importers are evaluated,
15 and that information concerning their hazards is
16 transmitted to affected employers and employees and
17 others in order to reduce the incidence of
18 chemically-related illnesses and injuries. This
19 transmittal of information is to be accomplished by
20 means of comprehensive hazard communication programs,
21 which are to include container labeling and other
22 forms of warning, material safety data sheets and em-
23 ployee training. Workers have a right to know about
24 chemical hazards to which they may be exposed.

25 This chapter is intended to address
26 comprehensively the issue of evaluating and communi-
27 cating chemical hazards to employees in the manufac-
28 turing and other designated sectors. This chapter is
29 intended to be consistent with the Hazard Communica-
30 tion Rule promulgated by the United States Department
31 of Labor, Occupational Safety and Health Administra-
32 tion, November 25, 1983, in order to reduce any bur-
33 den on interstate commerce and to facilitate compli-
34 ance. To the extent that Occupational Safety and
35 Health Administration enforces the federal rule be-
36 ginning in 1985-86, it is intended that there be no
37 duplication of enforcement. This chapter goes beyond
38 the Occupational Safety and Health Administration
39 standard primarily in 3 ways: Certain parts are ef-
40 fective earlier; additional industries are addressed;

1 and this chapter requires communication with health
2 officials, not just employees.

3 §1710. Scope and application

4 1. Information. This chapter requires that in-
5 formation be provided to employees by the employer
6 about the identities and hazards of chemicals in the
7 work area by means of chemical identification lists,
8 labels, material safety data sheets, education and
9 training and access to written records.

10 2. Applicable chemicals. This chapter applies
11 to any chemical in the work area which is a hazardous
12 chemical, present in the workplace in such a manner
13 that employees may be exposed under normal conditions
14 of use or in a foreseeable emergency, except as spe-
15 cifically provided in this chapter.

16 3. Nonapplicable chemicals. This chapter does
17 not apply to chemicals which are: Hazardous waste
18 when subject to regulations issued by the Department
19 of Environmental Protection or the United States En-
20 vironmental Protection Agency; tobacco or tobacco
21 products; wood or wood products; articles; compressed
22 air; and foods, drugs or cosmetics intended for per-
23 sonal consumption by employees while in the
24 workplace.

25 The following substances are exempt from all require-
26 ments of this chapter:

27 A. Consumer products and foodstuffs packaged for
28 distribution to, and intended for use by, the
29 general public. This includes any labeled
30 product used or stored in a workplace in the same
31 form approximate volume or amount, concentration
32 and manner as it is sold to and used by the gen-
33 eral public, provided that it remains labeled in
34 the workplace, and to which, in the employer's
35 knowledge, employee exposure is not significantly
36 different from that of the general public during
37 foreseeable use of the substance;

38 B. Substances sold by retail stores, for person-
39 al or domestic consumption, which are prepack-
40 aged, sealed, canned or otherwise contained so as
41 to prevent worker exposure;

1 C. Common substances found in the workplace in
2 small quantities that do not present a signifi-
3 cant hazard to workers. Common substances in-
4 clude, but are not limited to, office desk top
5 supplies, such as correction fluid, thinner or
6 typewriter cleaning fluid, glues and cleaning
7 solvents;

8 D. Petroleum distillates used as motor fuel or
9 heating fuel;

10 E. Fire extinguishers in the workplace; and

11 F. Propane gas stored out-of-doors and used for
12 commercial heating or cooking.

13 4. Nonapplicable employers. This chapter ap-
14 plies to all employers within the State with hazard-
15 ous chemicals within the workplace, except as specif-
16 ically provided. Agricultural employers regulated by
17 the Department of Agriculture, Food and Rural Re-
18 sources are exempt from this chapter.

19 5. Laboratories and health professionals. This
20 chapter applies to laboratories and offices of health
21 professionals only as follows. Employers shall en-
22 sure that labels on incoming containers of hazardous
23 chemicals are not defaced or removed. Employers
24 shall maintain material safety data sheets on each
25 hazardous chemical they handle and ensure that they
26 are readily accessible. Employers shall ensure that
27 laboratory employees are apprised of the hazards of
28 the chemicals in their workplace and provided proper
29 training in their use.

30 6. Labeling exemptions. Labeling of the follow-
31 ing chemicals is not required under this chapter when
32 they are labeled in accordance with the indicated
33 federal statute and regulations under that statute:

34 A. Pesticides, as defined in the Federal Insec-
35 ticide, Fungicide and Rodenticide Act, United
36 States Code, Title 7, Section 136 et seq.;

37 B. Foods, food additives, color additives, drugs
38 or cosmetics, as defined in the Federal Food,
39 Drug and Cosmetics Act, United States Code, Title
40 21, Section 301 et seq.;

1 C. Distilled spirits, wine or malt beverages in-
2 tended for nonindustrial use, as defined in the
3 Federal Alcohol Administration Act, United States
4 Code, Title 27, Section 201 et seq.; and

5 D. Any consumer product or hazardous substance,
6 as defined in the Consumer Product Safety Act,
7 United States Code, Title 15, Section 2051 et
8 seq. and the Federal Hazardous Substance Act,
9 United States Code, Title 15, Section 1261 et
10 seq.

11 7. Waiver by rule. If the director determines
12 that, with regard to certain amounts, concentrations,
13 types or containers of specific hazardous chemicals,
14 strict compliance with the requirements of this chap-
15 ter will not contribute to the health and safety of
16 employees, the director may waive those requirements
17 by rule. In addition, for any specific category of
18 employers, the director may by rule waive fee, list-
19 ing or training program requirements, following the
20 submission by an employer of a written application
21 for a waiver, for persons with specific training in
22 handling those hazardous chemicals present in their
23 workplace if the director finds that strict compli-
24 ance with those requirements will not contribute to
25 the health and safety of employees.

26 §1711. Definitions

27 As used in this chapter, unless the context oth-
28 erwise indicates, the following terms have the fol-
29 lowing meanings.

30 1. Article. "Article" means a manufactured item
31 which is formed to a specific shape or design during
32 manufacture, which has end use functions dependent in
33 whole or in part upon its shape or design during end
34 use, and which does not release or otherwise result
35 in exposure to a hazardous chemical under normal con-
36 ditions of use.

37 2. Chemical. "Chemical" means any element,
38 chemical compound or mixture of elements or com-
39 pounds, or both.

1 3. Chemical name. "Chemical name" means the
2 name of a substance established by the Chemical Ab-
3 stracts Services in the most recent edition of the
4 Collective Index of Chemical Abstracts.

5 4. Common name. "Common name" means any desig-
6 nation or identification, such as code name, number,
7 trade or brand name, used by the employer to identify
8 a substance other than by its chemical name.

9 5. Container. "Container" means any open or
10 closed bag, barrel, bottle, box, can, cylinder, drum,
11 reaction vessel, storage tank, carton, flask, pack-
12 age, tank, vat, vessel or the like into which chemi-
13 cals are placed.

14 6. Director. "Director" means the Director of
15 the Bureau of Labor Standards, Department of Labor,
16 or a designee.

17 7. Hazardous chemical. "Hazardous chemical"
18 means a chemical which is a physical hazard or a
19 health hazard, as listed by the Bureau of Labor Stan-
20 dards.

21 8. Health hazard. "Health hazard" means a chem-
22 ical which is:

23 A. Listed in the Toxic and Hazardous Substances
24 section of the regulations of the Occupational
25 Health and Safety Act labeling standard in the
26 United States Code of Federal Regulations 29,
27 Part 1910, Subpart Z;

28 B. Listed in threshold Limit Values for Chemical
29 Substances and Physical Agents in the Work Envi-
30 ronment, American Conference of Governmental In-
31 dustrial Hygienists (ACGIH), latest edition;

32 C. A carcinogen or potential carcinogen, listed
33 in The Registry of Toxic Effects of Chemical Sub-
34 stances, published by the National Institute for
35 Occupational Safety and Health (NIOSH), latest
36 edition based upon the National Toxicology Pro-
37 gram (NTP) Annual Report on Carcinogens or the
38 International Agency for Research on Cancer
39 (IARC) Monographs;

1 D. Listed as radioactive material in regulations
2 promulgated by the United States Nuclear Regula-
3 tory Commission;

4 E. Contained on a list established by the direc-
5 tor by rule after consultation with the Bureau of
6 Health and which meets any of the following cri-
7 teria:

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

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

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

20 (4) Has been found by the director, based
21 on established scientific principles, to
22 have significant potential to cause adverse
23 acute or chronic health effects; or

24 F. A mixture which is a health hazard based on
25 application of the criteria of paragraphs A to E
26 to the mixture as a whole, or which contains more
27 than 1% by weight or volume of a chemical which
28 is a health hazard or which contains more than
29 0.1% by weight or volume of a carcinogen or po-
30 tential carcinogen identified in accordance with
31 paragraph C.

32 9. Laboratory. "Laboratory" means a work area
33 devoted to experimental study in any science, or to
34 testing and analysis by scientific means, under the
35 supervision of persons trained in the handling of
36 hazardous chemicals.

37 10. Material safety data sheet. "Material safe-
38 ty data sheet" means a form containing information
39 concerning a hazardous chemical substantially equiva-

1 lent in content to form 20 of the United States Occu-
2 ptional Safety and Health Administration, but which
3 includes both acute and chronic health hazard infor-
4 mation.

5 11. Physical hazard. "Physical hazard" means a
6 chemical which is:

7 A. Listed in the United States Department of
8 Transportation Hazardous Materials Table, 49 Code
9 of Federal Regulations 172.101;

10 B. Contained on a list established by the direc-
11 tor by rule after consultation with the State
12 Fire Marshal and which meets any of the following
13 criteria:

14 (1) Is a combustible liquid. For purposes
15 of this section, a combustible liquid is any
16 liquid with a flash point above 100° Fahren-
17 heit and below 200 ° Fahrenheit;

18 (2) Is a compressed gas. For purposes of
19 this section, a compressed gas is any chemi-
20 cal having in the container an absolute
21 pressure exceeding 40 PSI at 70° Fahrenheit
22 or having an absolute pressure exceeding 104
23 PSI at 130° Fahrenheit or any liquid having
24 a vapor pressure exceeding 40 PSI absolute
25 pressure at 100° Fahrenheit;

26 (3) Is an explosive. For purposes of this
27 section, an explosive is any chemical that
28 causes a sudden, almost instantaneous re-
29 lease of pressure, gas and heat when sub-
30 jected to sudden shock, pressure or high
31 temperatures;

32 (4) Is a flammable substance. For purposes
33 of this section, a flammable substance is
34 any liquid with a flash point of below 100°
35 Fahrenheit, solid that is liable to cause
36 fire through friction, absorption of mois-
37 ture, spontaneous chemical change or re-
38 tained heat from manufacturing or processing
39 or which can be ignited readily and when ig-
40 nited burns so vigorously and persistently

1 as to create a serious hazard, or gas which
2 at atmospheric temperature and pressure
3 forms a flammable mixture with air when
4 present at a concentration of 13% or less by
5 volume or that forms a range of flammable
6 mixtures with air wider than 12% by volume
7 regardless of the lower limit;

8 (5) Is an organic peroxide. For purposes
9 of this section, an organic peroxide is an
10 organic compound that contains the bivalent
11 -O-O- structure and which is a derivative of
12 hydrogen peroxide where one or more hydrogen
13 atoms have been replaced by organic radi-
14 icals;

15 (6) Is an oxidizer. For purposes of this
16 section, an oxidizer is a chemical that ini-
17 tiates or promotes combustion in other mate-
18 rials, thereby causing fire;

19 (7) Is pyrophoric. For purposes of this
20 section, pyrophoric means a chemical that
21 will ignite spontaneously in air at a tem-
22 perature of 130° Fahrenheit or below;

23 (8) Is unstable (reactive). For purposes
24 of this section, unstable (reactive) means a
25 chemical which will vigorously react under
26 conditions of shock, pressure or tempera-
27 ture; or

28 (9) Is water reactive. For purposes of
29 this section, water reactive means a chemi-
30 cal that reacts with water to release a gas
31 that is either flammable or presents a
32 health hazard; or

33 C. A mixture which is a physical hazard based on
34 application of the criteria of paragraphs A and B
35 to the mixture as a whole.

36 12. Trade secret. "Trade secret" means any con-
37 fidential formula, pattern, process, device, informa-
38 tion or compilation of information, including chemi-
39 cal name, that is used in any employer's business
40 that gives the employer an opportunity to obtain any

1 advantage over competitors who do not know or use it.

2 13. Work area. "Work area" means a room or de-
3 defined space, including any plant, yard, premises,
4 room or other place in a workplace where hazardous
5 chemicals are produced or used and where employees
6 are present.

7 14. Workplace. "Workplace" means an establish-
8 ment or business at one geographic location contain-
9 ing one or more work areas, but does not include a
10 private residence which is not used for business pur-
11 poses.

12 §1712. Written hazard communications program;
13 records

14 Employers shall develop and implement a written
15 hazard communication program which describes how the
16 requirements of this chapter for labeling, material
17 safety data sheets and for employee education and
18 training will be met, and which also includes a list
19 of the hazardous chemicals known to be present in the
20 workplace, the methods the employer will use to in-
21 form employees of the hazards of routine and
22 nonroutine tasks and the methods the employer will
23 use to inform contractor employees of the hazardous
24 chemicals to which they may be exposed and of appro-
25 priate protective measures.

26 Each employer subject to this chapter shall main-
27 tain a list of employees by name and job title or
28 classification who have received training, the type
29 of training provided and the dates it was provided.

30 §1713. Labels

31 1. Containers to be labeled, tagged or marked.
32 Each container present in the work areas shall be la-
33 beled, tagged or marked with the common or chemical
34 names of the hazardous chemicals contained and with
35 appropriate hazard warnings.

36 Portable containers into which hazardous chemicals
37 are transferred from labeled containers for the imme-
38 diate use of the employee who performs the transfer
39 are exempt from this requirement. The department

1 shall specify by rule the extent to which labels
2 shall be required for pipes and piping.

3 2. Label requirements of the Occupational Health
4 and Safety Act. Each container of chemicals subject
5 to a substance-specific Occupational Health and Safe-
6 ty Act labeling standard in the United States Code of
7 Federal Regulations 29, Part 1910, Subpart Z, or
8 United States Code of Federal Regulations 29, Part
9 1990, shall meet the specific labeling requirements
10 of that standard in lieu of the requirements of this
11 section.

12 3. Label of chemical containers sold or distrib-
13 uted. The chemical manufacturer, importer or dis-
14 tributor shall ensure that each container of hazard-
15 ous chemicals leaving the workplace is labeled,
16 tagged or marked with the common or chemical names of
17 the hazardous chemicals, appropriate hazard warnings
18 and the name and address of the chemical manufactur-
19 er, importer or other responsible party.

20 §1714. Material safety data sheets

21 1. Manufacturers, importers, suppliers or dis-
22 tributors to provide. Manufacturers, importers, sup-
23 pliers or distributors of hazardous chemicals doing
24 business in this State shall obtain or develop a ma-
25 terial safety data sheet for each hazardous chemical
26 they produce, import, supply or distribute in this
27 State and provide the current material safety data
28 sheet for any hazardous chemical to their direct pur-
29 chasers of that chemical.

30 2. Employers to maintain. Each employer shall
31 maintain in each workplace a material safety data
32 sheet for each hazardous chemical which they use.
33 All material safety data sheets maintained by employ-
34 ers shall be available to their employees for exami-
35 nation during all hours of operation, and shall be
36 made readily available, upon request, to the direc-
37 tor. Employers are not required to evaluate the po-
38 tential hazards of chemicals, unless they choose not
39 to rely on the evaluation performed by the chemical
40 manufacturer or importer. If the employer does not
41 receive the data sheet from the manufacturer, import-
42 er, supplier or distributor, he shall so inform the

1 director and the director shall assist him in obtain-
2 ing the information.

3 3. Copies to local fire chiefs. Employers
4 shall, upon request, provide a list of hazardous
5 chemicals and shall make available upon request to
6 local fire chiefs copies of the material safety data
7 sheets maintained in the workplace.

8 §1715. Employee information and training

9 1. Educational and training program required.
10 Employers shall provide information and training on
11 hazardous chemicals to all employees who are exposed
12 to hazardous chemicals in their work areas.

13 2. Schedule for information and training pro-
14 gram. The information and training shall commence
15 prior to an employee's initial assignment. Addition-
16 al instruction shall be provided whenever chemicals
17 or processes change or newly acquired information in-
18 dicates the need for additional protective measures.
19 Programs shall be conducted during the employee's
20 regular working hours.

21 3. Information and training contents. The in-
22 formation and training program shall include the fol-
23 lowing:

24 A. The provisions of this chapter;

25 B. Any operations in the work area where hazard-
26 ous chemicals are present;

27 C. Methods of detecting the presence or release
28 of a hazardous chemical in the work area;

29 D. The physical and health hazards of the chemi-
30 cals in the work area;

31 E. The location and availability of the written
32 hazard communication program and related docu-
33 ments;

34 F. The measures employees can take to protect
35 themselves from these hazards, including the pur-
36 pose, proper use and limitation of personal pro-
37 protective equipment;

1 G. An explanation of the labeling system and the
2 material safety data sheets; and

3 H. Emergency procedures.

4 4. Materials furnished at no cost. The employer
5 shall assure that all the educational and training
6 materials and information are provided at no cost to
7 the employee.

8 5. Materials available at request to the direc-
9 tor. All materials relating to information and
10 training and required by this standard shall be made
11 available upon request to the director.

12 6. Rules; minimum training programs. The direc-
13 tor may by rule establish minimum training programs,
14 including refresher training where necessary, to be
15 provided to employees who are exposed to specific
16 hazardous chemicals.

17 §1716. Access to written records; confidentiality

18 1. Lists and sheets; availability. Chemical
19 identification lists and material safety data sheets
20 required by this chapter shall be made available upon
21 request for examination and copying to any affected
22 employee or former employee, authorized employee rep-
23 resentative, designated physician or representative,
24 the director or the Director of the Bureau of Health
25 or his designee. The chemical identification lists
26 shall be kept for 20 years.

27 2. Exposure measurements; availability. Any ex-
28 posure measurements taken to monitor employee expo-
29 sure to chemicals in the work area shall be made
30 available upon request for examination and copying to
31 any affected employee or former employee, designated
32 physician or representative, the director or the Di-
33 rector of the Bureau of Health or his designee.

34 3. Trade secret information. A manufacturer,
35 importer, supplier, distributor or employer may with-
36 hold the specific chemical identity of a hazardous
37 chemical on a material safety data sheet if disclo-
38 sure would reveal a trade secret and if that claim
39 can be supported. In addition, the material safety

1 data sheet shall state that the name is withheld as a
2 trade secret. All other information, including the
3 routes of exposure, effects of exposure, type and de-
4 gree of hazard, emergency treatment and response pro-
5 cedures, shall be provided.

6 4. Trade secret determination. If the director
7 believes a manufacturer, importer, supplier, distrib-
8 utor or employer has improperly designated a hazard-
9 ous chemical or its use in a particular process as a
10 trade secret, the director may challenge the designa-
11 tion in Superior Court. Pending final determination,
12 the director may also seek injunctive relief. If the
13 director prevails, and the chemical or its use in a
14 particular process is determined not to be a trade
15 secret, as defined in this chapter, the other party
16 shall pay all costs and reasonable attorneys' fees.

17 5. Provision of trade secret information to
18 health professionals. Trade secrets information
19 shall be provided to health professionals as follows.

20 A. When a treating physician or nurse determines
21 that a medical emergency exists and the specific
22 identity of a hazardous chemical is necessary for
23 treatment, the manufacturer, importer or employer
24 shall immediately disclose that information to
25 the treating physician or nurse. A suitable
26 statement of need and confidentiality may be re-
27 quired later, as soon as circumstances permit.

28 B. In nonemergency situations, a chemical manu-
29 facturer, importer or employer shall, upon re-
30 quest, disclose any specific chemical identity to
31 a health professional providing medical or other
32 health services, including the Director of the
33 Bureau of Health or his designated representa-
34 tive. A suitable statement of need and confiden-
35 tiality agreement shall be required before dis-
36 closure.

37 6. Confidentiality. The confidentiality agree-
38 ment referred to in this section may restrict the use
39 of the information to the health purposes indicated
40 in the written statement of need, may provide for ap-
41 propriate legal remedies in the event of a breach of
42 the agreement, including a reasonable preestimate of

1 likely damages, shall authorize sharing the informa-
2 tion with the Bureau of Health, subject to the same
3 confidentiality stipulations, and shall not include
4 requirements for posting of a penalty bond.

5 §1717. Reports

6 1. Publication. The director shall make availa-
7 ble an annually updated list of hazardous chemicals
8 as established pursuant to this chapter.

9 2. Listing. The director may by rule require
10 that employers submit a list of hazardous chemicals
11 in the workplace, with changes reported annually. In
12 order to facilitate compliance, the director shall
13 provide assistance to employers with a list of haz-
14 ardous chemicals which may be found in a workplace of
15 their particular kind, and make available without
16 charge the full list published in accordance with
17 subsection 1.

18 §1718. Effective Date.

19 Except for section 1722, this chapter shall be-
20 come effective on January 1, 1980, except that sec-
21 tion 1714, material safety data sheets, shall be ef-
22 fective for manufacturers, importers, suppliers and
23 distributors as the required information becomes
24 available, but not later than November 25, 1985, and
25 for employers as the information becomes available,
26 but not later than May 25, 1986. The initial dead-
27 line for employers filing of hazardous chemicals with
28 the Bureau of Labor Standards shall be set by rule no
29 earlier than the effective date of this chapter.
30 Section 1722 shall become effective November 25,
31 1985, except that section 1722 shall become effective
32 immediately for the purposes of section 1720.

33 §1719. Administration and enforcement

34 1. Enforcement. The Bureau of Labor Standards
35 shall administer and enforce this chapter, except
36 that the Board of Pesticides Control shall have pri-
37 mary responsibility for inspection and training pro-
38 grams in workplaces subject to this chapter solely
39 because of the presence of a limited or restricted
40 use pesticide within the meaning of the Maine Pesti-

1 icide Control Act of 1975, Title 7, chapter 103, sub-
2 chapter II-A.

3 2. Inspections. For the purposes of this chap-
4 ter, the director or the Director of the Bureau of
5 Health or his designee may, at any reasonable time
6 and upon presentation of appropriate identification,
7 enter, inspect and collect samples from a workplace
8 accompanied by the employer representative.

9 3. Cooperation with other agencies. The direc-
10 tor shall obtain the assistance of the Bureau of
11 Health and other state agencies in the administration
12 of 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 §1720. Chemical Information and Training Assistance
17 Fund; fees

18 1. Assistance to employers. The director shall,
19 upon request, provide assistance to employers in the
20 development and conduct of training programs for em-
21 ployees and local public safety personnel.

22 2. Chemical Information and Training Assistance
23 Fund. The director shall establish by rule a segre-
24 gated, nonlapsing Chemical Information and Training
25 Assistance Fund which shall be financed by fees
26 levied on employers subject to this chapter. Reven-
27 ues paid into the fund, including interest, shall be
28 used exclusively for carrying out the purposes of
29 this chapter, including, but not limited to, informa-
30 tion and communication with employers, provision of
31 copies of the law, rules, listing of hazardous chemi-
32 cals and the likelihood of the presence of certain
33 hazardous chemicals in the various industry
34 workplaces. Expenditures from the fund shall be al-
35 located and approved by the Legislature.

36 3. Fees. Each employer not exempt under this
37 chapter shall be assessed an annual fee of \$10. The
38 fee is payable prior to July 1st of each calendar
39 year. This fee structure shall be for a transitional
40 period and shall only remain in effect until a perma-
41 nent fee structure takes effect following the report

1 on fee structure to the Legislature pursuant to sec-
2 tion 1724.

3 4. Waivers and exemptions from fees. The direc-
4 tor shall waive fees under this chapter under the
5 conditions established in section 1724. Employers
6 who have no applicable chemicals in the workplace,
7 employers employing 3 or fewer employees, and state,
8 municipal or quasi-municipal governmental organiza-
9 tions are exempt from fees under this chapter. Any
10 employer who pays a fee and is found to be exempt
11 from that fee shall receive a prompt refund.

12 §1721. Confidentiality of information

13 All information and reports obtained by the di-
14 rector, the Director of the Bureau of Health or any
15 other agency under this chapter shall be confiden-
16 tial, except that the Director of the Bureau of
17 Health shall provide the public with relevant infor-
18 mation relating to any chemical in a particular
19 workplace when the Director of the Bureau of Health
20 has reason to believe that the chemical is present in
21 that workplace under circumstances which represent an
22 immediate or long-term threat to the health or safety
23 of the general public. Review of the director's ac-
24 tions or failure to act under this section shall be
25 in Superior Court.

26 §1722. Penalty

27 Any person, partnership, corporation or other le-
28 gal entity who refuses to comply, in whole or in
29 part, with this chapter after notice of noncompliance
30 and a 60-day period to comply commits a civil viola-
31 tion for which a forfeiture not to exceed \$500 for
32 the first violation and not to exceed \$1,000 for any
33 subsequent violation may be adjudged.

34 No employer may be held in noncompliance for
35 failure to supply a material safety data sheet if the
36 Bureau of Labor Standards is unable to supply the em-
37 ployer with the necessary information.

38 §1723. Prohibited practices; remedy

1 It is unlawful for any employer to discharge,
2 discipline or otherwise discriminate against any of
3 its employees who have assisted in the enforcement of
4 this chapter. The director may, after investigation
5 and hearing, bring an action in Superior Court on be-
6 half of any employee to enforce this section. In ad-
7 dition to the civil penalties set forth in section
8 1722, the director may seek all other appropriate re-
9 lief, including payment of compensation actually lost
10 as a result of a violation. If the court finds that
11 there has been no violation of this section, the
12 court may award costs and reasonable attorney's fees
13 to the employer.

14 §1724. Report to Legislature; excess fees

15 Each year the director shall report to the Legis-
16 lature on the Bureau of Labor Standard's experience
17 under this chapter, including any recommendation on
18 fee structure. Any amount of these fees collected in
19 a year that exceeds the allocation from the Training
20 Assistance Fund for that year shall be applied so as
21 to reduce fees levied on employers under this chapter
22 in the succeeding year.

23 §1725. Legislative review

24 Standards and regulations adopted under this
25 chapter shall remain in effect until 90 days after
26 the date of adjournment of the next regular session
27 of the Legislature unless approved by the Legislature
28 by resolve.

29 Sec. 3. Allocation of Chemical Information and
30 Training Assistance Fund. The following funds are
31 allocated from the Training Assistance Fund to carry
32 out the purposes of Title 26, chapter 22.

	<u>1983-84</u>	<u>1984-85</u>
33		
34	<u>LABOR, DEPARTMENT OF</u>	
35	<u>Bureau of Labor Standards</u>	
36	Positions	(2) (5 1/2)
37	Personal Services	\$10,000 \$100,000
38	All Other	10,000 60,000

1	Capital Expenditures	<u>20,000</u>	<u> </u>
2	Total	\$40,000	\$160,000

3 Sec. 4. PL 1983, c. 591, as amended by PL 1983,
 4 c. 622, and as further amended by PL 1983, c. 708, is
 5 repealed.

6 Emergency clause. In view of the emergency cited
 7 in the preamble, this Act shall take effect when ap-
 8 proved.

9 STATEMENT OF FACT

10 This new draft addresses some problems that have
 11 been identified with implementation of the 1983
 12 amendments to the chemical substance identification
 13 laws. There has been some confusion over who and what
 14 substances are covered, and how employers can get the
 15 necessary information, including material safety data
 16 sheets. In addition, since the passage of the 1983
 17 Maine law, the Occupational Safety and Health Admin-
 18 istration has promulgated a federal hazard communica-
 19 tion rule which is scheduled to take effect in
 20 1985-86, although the rule is under court challenge.
 21 Also, the existing law did not take full advantage of
 22 the expertise in toxicology in the Bureau of Health.
 23 Finally, the fees of \$30 to \$300 were seen as exces-
 24 sive, at least for small businesses.

25 The new draft reduces fees to a flat \$10 per em-
 26 ployer, until more information is available about the
 27 use of hazardous chemicals, and employers who have no
 28 applicable chemicals, or employ 3 or fewer employees
 29 and governmental organizations are made exempt from
 30 fees.

31 The new draft also narrows the application of the
 32 chemical substance identification law where it was
 33 excessively broad. Certain exemptions are added where
 34 application of that law is unnecessary to protect
 35 worker health: Agricultural employers already regu-
 36 lated by the Department of Agriculture, Food and Ru-
 37 ral Resources; consumer products and foodstuffs pack-
 38 aged for distribution to the general public; prepack-
 39 aged substances sold by retail stores for domestic
 40 consumption; common substances found in small quanti-

1 ties that do not present a significant hazard; motor
2 fuel; heating oil; fire extinguishers; and propane
3 stored outside for heating and cooking. Modified pro-
4 cedures are provided for laboratories and health pro-
5 fessionals who have training in hazardous substances.

6 The new draft modifies most definitions and pro-
7 cedures to conform to the hazard communication rule
8 promulgated by the Occupational Safety and Health Ad-
9 ministration. That will minimize confusion when the
10 federal rules are finally implemented. It should be
11 noted that the Maine program goes significantly be-
12 yond the federal rules in several important ways. Un-
13 der existing Maine law, certain parts of the program
14 are effective earlier and many additional industries
15 are addressed. Under this new draft, communication is
16 required with health officials, not just employees.
17 There will continue to be an important role for the
18 State even after OSHA begins enforcing the federal
19 rule.

20 This new draft modifies the effective dates to
21 allow a phased implementation of the program. Re-
22 quirements for labeling and training, which have ex-
23 isted since 1980, continue to remain in effect, but
24 the requirements for material safety data sheets,
25 added in 1983, are delayed until those sheets are
26 available, but no later than May 25, 1986. Meanwhile,
27 the Bureau of Labor Standards will prepare a list of
28 hazardous chemicals and help employers identify which
29 ones they handle. Employers will then submit to the
30 bureau a list of those hazardous chemicals in their
31 workplace. Thus, it will be clear just what chemicals
32 are hazardous and where they are used.

33 There are confidentiality provisions to protect
34 trade secrets and other information, but information
35 must be disclosed to health professionals providing
36 medical or other health services to exposed employ-
37 ees. The Director of the Bureau of Health shall pro-
38 vide the public with relevant information when there
39 is reason to believe that certain chemicals in the
40 workplace present an immediate or long-term threat to
41 the public health or safety.

42 The penalty provision of present law is retained,
43 but, except for the annual fee requirement, its ef-

1 fective date is delayed until November 25, 1985, when
2 the necessary information will be available. This
3 will allow continuation of the Chemical Information
4 and Training Assistance Fund established in 1983.

5 There is also an allocation section to allow the
6 necessary expenditures to implement the full Chemical
7 Substance Identification Program. First, it will be
8 clearly identified just which chemicals are hazardous
9 and where they are used. Then, assistance from the
10 Bureau of Labor Standards will be available to help
11 employers as they develop training programs to pro-
12 tect their employees from those hazardous chemicals.
13 The bureau will have the necessary enforcement tools
14 to make sure that employers do carry out their re-
15 sponsibilities under the Act.

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