

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2074

H.P. 1521 House of Representatives, January 15, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Labor suggested and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative JOSEPH of Waterville.

Cosponsored by President PRAY of Penobscot,
Representative MICHAUD of East Millinocket and Senator KANY of
Kennebec.

STATE OF MAINE

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

1 AN ACT to Protect Workers from
2 Unreasonable Exposure to Toxic Substances
3 in the Workplace.
4

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

7 Sec. 1. 26 MRSA c. 22, first 2 lines, are
8 repealed and the following enacted in their place:

9 CHAPTER 22

1 CHEMICAL SUBSTANCE IDENTIFICATION

2 SUBCHAPTER I

3 EVALUATION AND DISCLOSURE

4 Sec. 2. 26 MRSA c. 22, sub-c. II is enacted to
5 read:

6 SUBCHAPTER II

7 WORKPLACE TOXIC POLLUTION LIABILITY

8 §1731. Definition

9 As used in this subchapter, unless the context
10 otherwise indicates, the following terms have the
11 following meanings.

12 1. Date of injury. "Date of injury" means the
13 date upon which an injured or diseased employee's
14 condition, caused by an unreasonable exposure to a
15 toxic substance in the workplace, manifests itself to
16 a degree sufficient to give reasonable notice that a
17 cause of action may exist.

18 §1732. Unreasonable exposure to toxic substance

19 1. General rule. It is unlawful to unreasonably
20 expose an employee to any toxic substance in the
21 workplace.

22 2. Per se violation. Exposure to levels of
23 toxicity beyond that considered safe by either the
24 Department of Environmental Protection Agency of the
25 United States or the Occupational Safety and Health
26 Administration is a per se violation of this section.

27 §1733. Cause of action

28 1. General rule. An employee who is unreasonably

1 exposed to a toxic substance in the workplace and who
2 suffers injury or disease caused in whole or in part
3 by that exposure may bring an action for damages
4 against the possessor of the workplace.

5 2. Burden of proof. In an action under
6 subsection 1, the employee has the burden of proving
7 that the possessor knew or should have known of the
8 existence of the toxic substance at unreasonably
9 dangerous levels.

10 3. Evidence of knowledge or complicity. In an
11 action for damages under this section, the following
12 rules of evidence shall apply.

13 A. Evidence that the employee knew of the
14 existence of unreasonably dangerous levels of a
15 toxic substance is not admissible.

16 B. Evidence that the employee was responsible for
17 bringing the toxic substance into the workplace is
18 admissible unless the trial court determines that
19 the employee's actions were undertaken at the
20 direction of the possessor.

21 C. When toxic exposure is claimed to have caused
22 disease, the opinion of a qualified expert that
23 the condition is more probable than not causally
24 related to the exposure is admissible as proof of
25 causation.

26 §1734. Alternative remedies

27 1. Alternatives. When the employer of the
28 injured person is the possessor of the premises where
29 the unreasonable exposure to toxic substance occurs,
30 the injured employee has the option of either pursuing
31 such remedies as are available under Title 39 or
32 bringing an action at law for full damages without
33 regard to the limitations and immunities of the
34 Workers' Compensation Act.

35 2. Limitation on time. An injured employee has 2
36 years from the date of injury to exercise this option.

