

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2451

H.P. 1790 House of Representatives, March 4, 1988

Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative CONLEY of Portland.

Cosponsored by Representative MAHANY of Easton, Senators
GAUVREAU of Androscoggin and BRANNIGAN of Cumberland.

STATE OF MAINE

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

1 AN ACT to Establish a System of Corporate
2 Governance to Protect Employees and the
3 Public from Corporate Lawbreakers and to
4 Improve Compliance with Existing Civil and
5 Criminal Laws.
6

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

9 Sec. 1. 13 MRSA c. 10 is enacted to read:

1 As used in this Act, unless the context otherwise
2 indicates, the following terms have the following
3 meanings.

4 1. Corporate entity. "Corporate entity" means
5 any corporation organized in this State or a foreign
6 corporation authorized to do business in this State in
7 accordance with Title 13-A, section 1212, but does not
8 include any corporation having 15 or fewer employees..

9 2. Corporate official. "Corporate official"
10 means a person with management authority with respect
11 to a product, service or practice, a corporate
12 officer, a member of the board of directors or an
13 agent of the corporate entity.

14 3. Government standards. "Government standards"
15 means federal law or regulation or state law or rule
16 concerning worker or consumer health and safety
17 standards and environmental protection.

18 4. Person. "Person" means any individual,
19 governmental entity, including any state or political
20 subdivision or department or public agency or
21 corporate entity as defined in this section.

22 §344. Prohibited activities.

23 1. Corporate homicide. It is unlawful for any
24 corporate entity or corporate official to engage in
25 conduct which results in death, when that corporate
26 entity or corporate official knew or should have known
27 that such conduct would result in death, or when such
28 conduct was in violation of government standards.

29 2. Endangerment. It is unlawful for any
30 corporate entity or corporate official to endanger the
31 public knowingly, recklessly or in violation of
32 government standards. For purposes of this Act,
33 "endanger the public" includes an act or failure to
34 act that places the public at risk of imminent bodily
35 harm.

1 3. Falsification and destruction of
2 documents. It is unlawful for any corporate official
3 to destroy or falsify documents or to negligently
4 allow the destruction of documents pertaining to
5 hazards to the public, or to the corporate entity's
6 employees or agents.

7 4. Employee retaliation. It is unlawful for any
8 corporate official to discriminate against, retaliate
9 against or deprive an employee of employment,
10 employment benefits, employment opportunities or any
11 rights secured under the laws of this State for
12 assisting or participating, or being about to assist
13 or participate in any manner, in any proceeding or
14 action to carry out the purposes of this Act.

15 §345. Reporting requirements

16 1. State reporting requirements. State reporting
17 requirements shall be as follows.

18 A. Every corporate entity shall provide the
19 Secretary of State, by December 31st of each year,
20 all of the following. Each corporate entity shall
21 in its annual report:

22 (1) Indicate the total of all occupational
23 injuries and illnesses incurred by it in
24 Maine, and the same information aggregated
25 for all plants owned and operated by the
26 corporate entity. This total shall be based
27 on data recorded on the plant-wide federal
28 Occupational Safety and Health Administration
29 Form 200 or its equivalent;

30 (2) List the status of its compliance with
31 government standards concerning protection of
32 the environment, including, but not limited
33 to:

34 (i) Any pending legal actions of which
35 it is or will be made a party;

36 (ii) Any consent decrees entered into
37 or of which it is found to be in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

violation; and

(iii) Any notices of suit served on it, which concern any of the facilities it operates, during the preceding calendar year.

This information shall be provided for the corporate entity's plants in the State, and aggregated for all plants owned and operated by the corporate entity;

(3) Report the distribution of the work force by age, physical or mental handicap, gender, race and job classification in the same format as that required to be reported to the federal Equal Employment Opportunity Commission in the EEO-1 Consolidated Report or its equivalent. The information shall be provided for the corporate entity's plants in Maine, and aggregated for all plants owned and operated by the corporate entity;

(4) List all criminal convictions and pleas of nolo contendere; and

(5) List all civil infractions and verdicts against the corporate entity and all of the violations of federal, state and local laws, rules and regulations or executive orders.

B. Any corporate entity that settles a case involving health and safety information shall make available to the Secretary of State any material contained in sealed records that may be useful in preventing the endangerment of the public at large.

2. Reporting requirements for public offering. In addition to the registration requirements under the Revised Maine Securities Act, Title 32, chapter 105, subchapter IV, a corporate entity making a public offering must include in any prospectus, notice or advertisement to be furnished to an investor all of the information contained in subsection 1.

1 §346. Civil remedies and sanctions

2 1. Corporate homicide. In addition to
3 prosecution pursuant to Title 17-A, chapter 9, a
4 corporate entity or corporate official engaging in
5 conduct that results in death, whether the corporate
6 entity knew or should have known that death could
7 result, or was reckless, or was in violation of
8 government standards, commits a civil violation for
9 which a penalty not to exceed \$500,000 may be adjudged.

10 2. Endangerment. In addition to any penalties
11 pursuant to Title 17-A, a corporate official who
12 knowingly conceals a dangerous product or business
13 practice commits a civil violation for which a penalty
14 not to exceed \$250,000 may be adjudged.

15 3. Additional civil penalties and remedies. Any
16 corporate entity that violates any part of this Act
17 may be subject to the following sanctions.

18 A. Any corporate entity violating any provision
19 of this Act may be required to publicize the
20 details of its offense in a full-page
21 advertisement in the newspaper with the largest
22 circulation in this State and in the newspaper
23 with the largest circulation in any appropriate
24 community.

25 B. Any corporate entity violating any provision
26 of this Act may be required to undertake a
27 socially useful project using its own skills and
28 expertise.

29 C. Any corporate entity or corporate official
30 violating any provision of this Act may be
31 prohibited from engaging in specified business
32 practices or required to modify its practices,
33 including, without limitation, by introducing
34 state-of-the-art equipment or procedures,
35 reporting to the Secretary of State or state
36 enforcement agencies at periodic intervals and
37 having those reports verified by an independent
38 monitor.

1 D. A corporate entity violating any provision of
2 this Act may be required to pay restitution or
3 treble damages, or both, to any victim of the
4 offense.

5 4. Priority of claims. The payment of any money
6 judgment recovered in a negligence action brought
7 against a corporate entity shall have priority, upon
8 execution of the judgment, over the payment by a
9 corporate entity of any penalty under this section
10 when the negligence action and civil violation involve
11 substantially the same subject matter, issues and
12 defenses.

13 §347. Liability standards

14 1. Enterprise liability. For the purposes of
15 this Act, affiliated corporate entities involved in a
16 common enterprise shall be treated as one entity, if
17 they are in reality an integrated economic entity.

18 2. Libel and defamation. Corporate entities and
19 corporate executives shall be considered public
20 officials in any action for libel or defamatory
21 speech, when the speech concerns the actions of the
22 corporation or the corporate executive acting within
23 an official capacity.

24 §348. Bonding

25 The Secretary of State may require a corporate
26 entity to post such bond or pay such amount of money
27 into an escrow account as will ensure compliance with
28 any order made under this Act or in the event the
29 corporate entity becomes insolvent or files for
30 bankruptcy.

31 §349. Rule-making authority

32 The Secretary of State may promulgate such rules
33 pursuant to the Maine Administration Procedure Act,
34 Title 5, chapter 375, as are necessary to implement
35 this Act.

1 §350. Enforcement

2 1. Jurisdiction. Any affected person may
3 commence a civil action on that person's own behalf
4 against any person for a violation of or to restrain
5 the violation of this Act. Any action under this
6 section shall be brought in the county where the
7 alleged violation occurred, the county where the
8 plaintiff resides or the county where the person
9 against whom the civil complaint is filed resides or
10 has the principal place of business. The Superior
11 Court shall have jurisdiction over any action under
12 this section to grant injunctive or other equitable
13 relief and apply any appropriate civil penalties
14 authorized under section 346.

15 2. Attorneys' fees. The court may award,
16 whenever it deems appropriate, costs of litigation,
17 including reasonable attorneys' and expert witness
18 fees to plaintiffs.

19 §351. Common law and statutory rights

20 The rights and remedies provided for in this Act
21 shall be in addition to and not in lieu of any other
22 rights and remedies provided by the common law or any
23 statute of this State.

24 STATEMENT OF FACT

25 The purpose of this bill is to protect employees
26 and the public at large from corporate lawbreakers.
27 The bill creates additional civil penalties to deter
28 corporations from violating worker health and safety
29 and environmental laws and rules, concealing
30 information about products or processes which may
31 cause death or serious injury or endangering workers
32 or the public by engaging in practices which violate
33 government standards. On an annual basis,
34 corporations are required to file information with the



1 Secretary of State relating to their worker safety,
2 equal employment and environmental compliance records.

3

4189030288

