

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2368

H.P. 1715

House of Representatives, February 27, 1990

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CURRAN of Westbrook.

Cosponsored by Senator KANY of Kennebec, Representative GARLAND of Bangor and Representative HUTCHINS of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Reduce Toxics in Packaging.

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

Whereas, the amount and level of toxics in the packaging of
consumer products is an increasing concern; and

Whereas, the amount of packaging including toxic materials
is increasing and adding to the waste stream; and

Whereas, the most effective point at which to reduce toxics
is the source; and

Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

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

Sec. 1. 32 MRSA c. 26-A is enacted to read:

CHAPTER 26-A

REDUCTION OF TOXICS IN PACKAGING

§1731. Purpose

The purpose of this chapter is to reduce toxicity of
packaging waste, which is a significant percentage of the overall
waste stream, without impeding or discouraging the expanded use
of post-consumer materials in the production of packaging and its
components. Under this chapter, reduction of the toxicity in
packaging is accomplished by reducing or eliminating the addition
of heavy metals, such as lead, mercury, cadmium and hexavalent
chromium, in packaging and packaging components.

§1732. Definitions

As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

1. Agency. "Agency" means the Maine Waste Management
Agency.

2. Distributor. "Distributor" means any person, firm or
corporation that takes title to goods purchased for resale.

3. Manufacturer. "Manufacturer" means any person who
manufactures a package or packaging component.

2 4. Package. "Package" means a container used in marketing,
protecting or handling a product and includes a unit package and
4 a shipping container defined by the American Society for Testing
and Materials in their annual book of standards as ASTM, D996.
6 "Package" also includes such unsealed receptacles as carrying
cases, crates, cups, pails, rigid foil and other trays, wrappers
and wrapping films, bags and tubs.

8
10 5. Packaging component. "Packaging component" means any
individual part of an assembled package such as, but not limited
12 to, any interior or exterior blocking, bracing, cushioning,
weatherproofing, exterior strapping, coatings, closures, inks and
labels.

14 **§1733. Prohibition; schedule for removal of incidental amounts**

16
18 1. Prohibition of sale of packaging. As soon as feasible,
but not later than 2 years after the effective date of this
20 section, a manufacturer or distributor may not offer for sale or
for promotional purposes a package or packaging component that
22 includes inks, dyes, pigments, adhesives, stabilizers or any
other additives to which any lead, cadmium, mercury or hexavalent
24 chromium has been intentionally introduced during manufacturing
or distribution. This prohibition does not apply to the
incidental presence of any of these elements.

26
28 2. Prohibition of sale of product in packaging. As soon as
feasible, but not later than 2 years after the effective date of
30 this section, a manufacturer or distributor may not offer for
sale or for promotional purposes any product in a package that
32 includes, in the package itself or any packaging components,
inks, dyes, pigments, adhesives, stabilizers or any other
34 additives to which any lead, cadmium, mercury or hexavalent
chromium has been intentionally introduced during manufacturing
or distribution. This prohibition does not apply to the
36 incidental presence of any of these elements.

38 3. Concentration levels. The sum of the concentration
levels of lead, cadmium, mercury and hexavalent chromium present
40 in any package or packaging component may not exceed:

42 A. Two years after the effective date of this section, 600
parts per million by weight, or 0.06%;

44
46 B. Three years after the effective date of this section,
250 parts per million by weight, or 0.025%; and

48 C. Four years after the effective date of this section, 100
parts per million by weight, or 0.01%.

50 **§1734. Exemptions**

2 All packages and packaging components are subject to this
chapter except:

4 1. Manufactured prior to effective date. Packages or
6 packaging components with a code indicating a date of manufacture
prior to the effective date of this section;

8 2. Health and safety requirements; feasibility. Packages
10 or packaging components to which lead, cadmium, mercury or
hexavalent chromium have been added in the manufacturing,
12 forming, printing or distribution process in order to comply with
health or safety requirements of federal law or for which there
14 is no feasible alternative, if the manufacturer petitions the
agency for any exemption from the provisions of section 1733 for
16 a particular package or packaging component based on either
criterion and is granted an exemption according to this
18 subsection. The agency may grant a 2-year exemption if warranted
by the circumstances, and that exemption may, on meeting either
20 criterion of this subsection, be renewed for 2 years. For the
purposes of this subsection, "a use for which there is no
22 feasible alternative" means one in which the regulated substance
is essential to the protection, safe handling or function of the
24 package's contents; or

26 3. Recycled content. Packages and packaging components
that would not exceed the maximum concentration levels set forth
28 in section 1733, subsection 3 but for the addition of
post-consumer materials. An exemption under this subsection
30 expires 6 years after the effective date of this subsection.

32 **§1735. Certificate of compliance**

34 As soon as feasible, but not later than 2 years after the
effective date of this section, each manufacturer or distributor
36 shall furnish a certificate of compliance to the purchaser of a
package or packaging component stating that the package or
38 packaging component is in compliance with the requirements of
this chapter. If compliance is achieved under the exemptions
40 provided in section 1734, subsections 2 and 3, the certificate
must state the specific basis upon which the exemption is
42 claimed. The certificate of compliance must be signed by an
authorized official of the manufacturing or supplying company.
44 The purchaser shall retain the certificate of compliance for as
long as the package or packaging component is in use. A copy of
46 the certificate of compliance must be kept on file by the
manufacturer or supplier of the package or packaging component.
48 Certificates of compliance, or copies of those certificates, must
be furnished to the agency upon its request and to members of the
50 public in accordance with section 1738.

52 If the manufacturer or distributor of the package or
packaging component reformulates or creates a new package or

2 packaging component, the manufacturer or distributor shall
3 provide an amended or new certificate of compliance for the
4 reformulated or new package or packaging component.

6 **§1736. Enforcement and penalties**

8 1. Enforcement. The Department of Agriculture, Food and
9 Rural Resources shall enforce the provisions of this chapter and
10 may inspect places, buildings or premises to accomplish the
11 objectives of this chapter.

12 2. Violation. Any person who violates this chapter commits
13 a civil violation for which a forfeiture of not more than \$100
14 may be adjudged. Each package or packaging component in
15 violation constitutes the basis of a separate offense.

16 **§1737. Rules.**

18 The agency shall adopt rules implementing the provisions of
19 this chapter in consultation with the Department of Agriculture,
20 Food and Rural Resources. Rules must be adopted in accordance
21 with the Maine Administrative Procedure Act.

24 **§1738. Public access**

26 Any request from a member of the public for any certificate
27 of compliance from the manufacturer or supplier of a package or
28 packaging component must be:

30 1. Written request. In writing with a copy to the agency;

32 2. Information specified. Specific as to the package or
33 packaging component information requested; and

34 3. Response required. Fulfilled by the manufacturer or
35 distributor within 60 days.

38 **Sec. 2. State review.** The Maine Waste Management Agency shall,
39 in consultation with the Source Reduction Council of the
40 Coalition of Northeast Governors, review the effectiveness of the
41 Maine Revised Statutes, Title 32, chapter 26-A, no later than 3
42 1/2 years after the effective date of this Act, and shall provide
43 a report based on that review to the Governor and Legislature.
44 The report may contain recommendations to add other toxic
45 substances contained in packaging to the list set forth in that
46 chapter in order to further reduce the toxicity of packaging
47 waste, and must contain recommendations whether to continue the
48 recycling exemption as it is provided for in Title 32, section
49 1734, subsection 3 and a description of the nature of the
50 elements used in lieu of lead, mercury, cadmium and hexavalent
51 chromium. The agency shall issue its recommendations in a report
52

2 submitted to the Governor and the Joint Standing Committee on
Energy and Natural Resources by December 1, 1992.

4 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.
6
8

10 **STATEMENT OF FACT**

12 This bill provides for the reduction of lead, mercury,
cadmium and hexavalent chromium in packaging or packaging
14 materials used or sold within the State.

16 Manufacturers and distributors of packaging or packaging
materials are required to reduce the sum of the concentration
18 levels of lead, cadmium, mercury and hexavalent chromium to 600
parts per million 2 years after the effective date of the law;
20 250 parts per million 3 years after the effective date of the
law; and 100 parts per million 4 effective date of the law.
22

24 An exemption process is provided for packaging made from
recycled materials and for packaging that is essential to the
protection, safe handling or function of the package's contents.
26

28 Public access to packaging information is assured. The
Department of Agriculture, Food and Rural Resources will enforce
the provisions of the law.
30

32 The bill also provides for a review process by the Maine
Waste Management Agency to determine the effectiveness of the
law. A report recommending the need to continue the recycling
34 exemption and the inclusion of other toxic substances is due to
the Governor and the Legislature in 1993.
36

38 The bill is a cooperative enterprise of the Source Reduction
Council of the Coalition of Northeast Governors, an organization
of the 9 northeastern states and representatives of industry and
40 nonprofit organizations concerned with packaging.