

MAINE STATE LEGISLATURE

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MAJORITY
NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 963, L.D. 1309, Bill, "An Act To Protect Public Health by Reducing Human Exposure to Arsenic"

Amend the bill by striking everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 33 MRSA §173-A is enacted to read:

§173-A. Information provided

Beginning January 1, 2004, unless the transaction is exempt under section 172, the seller of residential real property shall provide to the purchaser information developed by the Director of the Bureau of Health within the Department of Human Services regarding what homeowners should know about arsenic in private water supplies and arsenic in treated wood. Copies of this information must be provided to sellers at cost.

Sec. 2. 38 MRSA c. 16-C is enacted to read:

CHAPTER 16-C

ARSENIC-TREATED WOOD PRODUCTS

§1681. Definitions

As used in this chapter, unless the context otherwise indicates, "arsenic-treated wood" means lumber, timber, piles, poles, posts, plywood, shakes, shingles or other wood or forest

2 products intended for outdoor use that have been pressure treated
3 to reduce decay with a wood preservative containing inorganic
4 arsenic or inorganic arsenic compounds, including, but not
5 limited to, chromated copper arsenate, commonly referred to as
6 "CCA," or similar arsenic-based wood-preserving chemical mixtures.

8 **§1682. Restriction on sale**

10 The following restrictions apply to the sale of
11 arsenic-treated wood or wood products for residential uses that
12 are not included as permitted uses in a notice of cancellation
13 order issued by the United States Environmental Protection Agency
14 as published in the Federal Register on April 9, 2003.

16 **1. Purchase of arsenic-treated wood by retail business.**

17 Retail businesses that sell wood for residential use may not
18 purchase arsenic-treated wood or wood products for residential
19 uses that are not included as permitted uses in a notice of
20 cancellation order issued by the United States Environmental
21 Protection Agency as published in the Federal Register on April
22 9, 2003.

24 **2. Sale of arsenic-treated wood.** Beginning April 1, 2004,

25 a person may not sell or offer for sale arsenic-treated wood or
26 wood products for residential uses that are not included as
27 permitted uses in a notice of cancellation order issued by the
28 United States Environmental Protection Agency as published in the
29 Federal Register on April 9, 2003. This prohibition does not
30 apply to structures already built containing arsenic-treated wood
31 that are included as part of a residential real estate
32 transaction.

34 **§1683. Statute not admissible in evidence**

35 This chapter may not be admitted in evidence or offered as
36 an exhibit for any purpose in any civil trial against any
37 wholesaler, retailer or installer of arsenic-treated wood. This
38 section does not apply in cases of enforcement actions brought by
39 the State.

40 **Sec. 3. Disposal plan.** By January 1, 2005, the Department of
41 Environmental Protection shall submit to the joint standing
42 committee of the Legislature having jurisdiction over natural
43 resources matters a plan for the safe management of
44 arsenic-treated wood waste. The plan must be developed in
45 consultation with interested parties. The plan must include, but
46 is not limited to, recommendations regarding:

- 48 1. The separation and segregation of arsenic-treated wood
49 at solid waste handling facilities;

2 2. Restrictions on the combustion of arsenic-treated wood
at incineration facilities, biomass boilers and other boilers; and

4
6 3. Restrictions on the disposal of arsenic-treated wood at
unlined landfills.

8 For purposes of this section, "arsenic-treated wood" has the
same meaning as in the Maine Revised Statutes, Title 38, section
10 1681.

12 **Sec. 4. Report on reducing arsenic exposure and ensuring safe**
drinking water from private wells. The Department of Human Services,
14 Bureau of Health shall submit a report no later than October 1,
2004 to the Joint Standing Committee on Natural Resources and the
16 Joint Standing Committee on Health and Human Services after
consultation with a diverse group of interested parties. The
18 report must contain an assessment of the need for a comprehensive
safe drinking water program for private wells to address arsenic
20 and other contaminants of human health concern and
recommendations to address identified needs.

22 **Sec. 5. Report on arsenic and real estate transactions.** The Real
24 Estate Commission, under the Maine Revised Statutes, Title 32,
chapter 114, subchapter 2, shall submit a report no later than
26 October 1, 2004 to the Joint Standing Committee on Natural
Resources and the Joint Standing Committee on Business, Research
28 and Economic Development after consultation with the Department
of Human Services, Bureau of Health and other interested
30 persons. The report must contain a description of efforts within
the real estate industry to increase awareness among real estate
32 licensees and buyers and sellers of residential real estate of
the hazards of arsenic in water supplies and treated wood, the
34 need to test for arsenic in private water supplies and the need
to identify and to regularly coat with a sealant arsenic-treated
36 wood structures, including decks, entryways and play sets. The
efforts may include, but are not limited to, information directly
38 used by home sellers and buyers, such as modifications to
purchase and sales agreements, modifications to hazardous
40 materials disclosures and educational brochures or other written
information.

42 **Sec. 6. Report on arsenic-treated wood uses.** The Department of
44 Environmental Protection shall submit a report no later than
January 1, 2004 to the Joint Standing Committee on Natural
46 Resources that contains a market evaluation of the sale of
"arsenic-treated wood," as defined in the Maine Revised Statutes,
48 Title 38, section 1681, in the State and the remaining uses of
arsenic-treated wood that are still allowed in the State. For
50 marine and other direct water contact uses of

2 arsenic-treated wood, the report must include information on the
market availability of alternatives to wood treated with a
3 preservative containing added copper. The joint standing
4 committee may report out legislation to the Second Regular
Session of the 121st Legislature to restrict the sale of
5 arsenic-treated wood for all remaining uses.'

8

SUMMARY

10

This amendment is the majority report of the Joint Standing
12 Committee on Natural Resources and replaces the bill. The
amendment requires the seller of residential real property to
14 provide to the purchaser information developed by the Department
of Human Services on arsenic in private water supplies and
16 treated wood. The amendment prohibits, as of the effective date
of the legislation, retail businesses from purchasing
18 arsenic-treated wood or wood products for residential uses that
are not included as permitted uses in a notice of cancellation
20 order issued by the United States Environmental Protection
Agency. The amendment also prohibits, as of April 1, 2004, the
22 sale of arsenic-treated wood or wood products for residential
uses that are not included as permitted uses in a notice of
24 cancellation order issued by the United States Environmental
Protection Agency. The amendment also prohibits the admission of
26 the statute pertaining to arsenic-treated wood into evidence in
any private-party civil proceeding against any wholesaler,
28 retailer or installer of arsenic-treated wood. The amendment
requires the Department of Environmental Protection to develop a
30 disposal plan for the safe management of arsenic-treated wood
waste. It requires the Department of Human Services to submit a
32 report on the need for a comprehensive safe drinking water
program for private wells to address arsenic. It requires the
34 Real Estate Commission to submit a report on the efforts within
the real estate industry to increase awareness among real estate
36 licensees and buyers and sellers of residential real estate of
the hazards of arsenic in water supplies and treated wood, the
38 need to test for arsenic in private water supplies and the need
to identify and regularly coat with a sealant arsenic-treated
40 wood structures. Finally, the amendment directs the Department
of Environmental Protection to submit a report that contains a
42 market evaluation of the sale and uses of arsenic-treated wood
that are not prohibited under this legislation.

FISCAL NOTE REQUIRED
(See attached)



**121st Maine Legislature
Office of Fiscal and Program Review**

LD 1309

**An Act to Protect Public Health by Reducing Human Exposure to
Arsenic**

LR 1495(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Natural Resources

Fiscal Note Required: Yes

Majority

Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional cost to the Real Estate Commission within the Department of Professional and Financial Regulation, Office of Licensing and Registration, the Department of Environmental Protection and the Department of Human Services associated with conducting the required reports can be absorbed by these agencies utilizing existing budgeted resources.