

MAINE STATE LEGISLATURE

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Date: 6/5/15

Majority

(Filing No. H-328)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 799, L.D. 1165, Bill, "An Act To Enact the Toxic Chemicals in the Workplace Act"

Amend the bill in section 1 in §1732 in subsection 2 in the 3rd line (page 1, line 16 in L.D.) by striking out the following: "manufacture of a product" and inserting the following: 'workplace'

Amend the bill in section 1 in §1732 by inserting after subsection 3 the following:

4. Authoritative bodies. "Authoritative bodies" means the United States Department of Health and Human Services, National Toxicology Program, Food and Drug Administration and Centers for Disease Control and Prevention; the United States Environmental Protection Agency; the World Health Organization; and the European Union, European Chemicals Agency.'

Amend the bill in section 1 in §1732 in subsection 4 in the first line (page 1, line 19 in L.D.) by inserting after the following: "means" the following: 'any substance or mixture of substances and may be'

Amend the bill in section 1 in §1732 by striking out all of subsections 5, 6 and 7 (page 1, lines 23 to 36 and page 2, lines 1 to 4 in L.D.) and inserting the following:

5. Credible scientific evidence. "Credible scientific evidence" means the results of a study, the experimental design and conduct of which have undergone independent scientific peer review, that are published in a peer-reviewed journal or publication of an authoritative federal or international governmental agency, including, but not limited to, the authoritative bodies.

6. Employee. "Employee" means a current employee, a former employee or a person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment activities.

7. Employer. "Employer" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy or any common carrier by rail, motor, water or air or express company doing business or operating within the State:

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COMMITTEE AMENDMENT "A" to H.P. 799, L.D. 1165

- 1 A. That is engaged in the manufacture within the State of products for sale or
- 2 distribution in the State, nationally or internationally;
- 3 B. That is engaged in any employment activities within the State involving the use or
- 4 storage in the workplace of methylene chloride or perchloroethylene;
- 5 C. That is engaged in any employment activities within the State involving the use or
- 6 handling of chemicals by employees in the workplace or involving chemicals that are
- 7 stored, generated, located or otherwise present in the workplace; or
- 8 D. That is engaged in any employment activities within the State that include a
- 9 workplace constructed of materials, and equipment in and around the workplace, that
- 10 under normal conditions of use, construction or repair release a highly toxic chemical
- 11 that poses a health risk to employees.'

12 Amend the bill in section 1 in §1732 in subsection 8 in the 2nd and 3rd lines (page 2,
13 lines 6 and 7 in L.D.) by striking out the following: "and any other criteria determined by
14 the department by rule"

15 Amend the bill in section 1 in §1732 by striking out all of subsection 10 (page 2, lines
16 12 and 13 in L.D.)

17 Amend the bill in section 1 in §1732 by renumbering the subsections to read
18 consecutively.

19 Amend the bill in section 1 by striking out all of §1733 (page 2, lines 19 to 24 in
20 L.D.) and inserting the following:

21 '**§1733. Designation of chemicals**

22 A highly toxic chemical designated and regulated by this chapter is a chemical for
23 which there is credible scientific evidence that the chemical is a carcinogen, a mutagen, a
24 reproductive toxin, a developmental toxin, an endocrine disruptor or a neurotoxicant.

25 1. Consultation safety data sheets. The employer shall consult material safety data
26 sheets for a chemical in the workplace to determine if the chemical is classified as a
27 carcinogen, a mutagen, a reproductive toxin, a developmental toxin, an endocrine
28 disruptor or a neurotoxicant.

29 2. Consultation databases of authoritative bodies. The employer shall consult the
30 databases of authoritative bodies to determine if a chemical in the workplace is classified
31 as a carcinogen, a mutagen, a reproductive toxin, a developmental toxin, an endocrine
32 disruptor or a neurotoxicant and is a candidate for transitioning to a safer alternative.

33 3. Department website. The department shall publish and periodically update on its
34 publicly accessible website lists of online databases that identify highly toxic chemicals
35 subject to regulation under this chapter.'

36 Amend the bill in section 1 in §1734 in subsection 1 in the last line (page 2, line 36 in
37 L.D.) by striking out the following: "1740 and 1743" and inserting the following: '1741
38 and 1744'

39 Amend the bill in section 1 in §1734 in subsection 2 in the blocked paragraph in the
40 2nd line (page 3, line 7 in L.D.) by inserting after the following: "members," the
41 following: 'safety engineers, industrial hygienists,'

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1 Amend the bill in section 1 in §1735 in the headnote (page 3, line 9 in L.D.) by
2 striking out the following: "toxic chemicals and"

3 Amend the bill in section 1 in §1735 in the first paragraph in the 4th and 5th lines
4 (page 3, lines 13 and 14 in L.D.) by striking out the following: "toxic chemical or a
5 highly toxic chemical by the department" and inserting the following: 'highly toxic
6 chemical'

7 Amend the bill in section 1 in §1736 in the first paragraph in the 3rd line (page 3, line
8 19 in L.D.) by inserting after the following: "alternatives." the following: 'The transition
9 team may consider other chemicals, both toxic and nontoxic, in a separate priority
10 ranking.'

11 Amend the bill in section 1 in §1736 in subsection 2 in the 2nd line (page 3, line 25 in
12 L.D.) by striking out the following: "from the department" and inserting the following: 'to
13 the employer'

14 Amend the bill in section 1 in §1737 in subsection 1 in the last line (page 3, line 35 in
15 L.D.) by inserting after the following: "chemical" the following: 'The employer shall
16 contact chemical suppliers and manufacturers for possible safer alternatives'

17 Amend the bill in section 1 in §1737 in subsection 3 in the first and 2nd lines (page 4,
18 lines 4 and 5 in L.D.) by striking out the following: "as based on information available
19 from the department"

20 Amend the bill in section 1 by striking out all of §§1738 and 1739 and inserting the
21 following:

22 **§1738. Testing, evaluation and implementation of safer alternative**

23 **1. Develop testing process.** After review of all information generated or collected
24 under sections 1736 and 1737, the transition team shall, for each highly toxic chemical,
25 determine whether to proceed with testing and evaluation of an alternative that the
26 transition team determines to be a safer alternative. The transition team shall develop and
27 implement a process for testing and evaluating the feasibility of transition to a safer
28 alternative.

29 **2. Transition.** If, after testing and evaluation of the safer alternative pursuant to this
30 section, the transition team elects to proceed with transition on a permanent basis, the
31 transition team shall develop and implement a process for permanent transition to the
32 safer alternative.

33 **3. Permanent transition.** If the results of the safer alternative analysis under
34 sections 1736 and 1737 and the testing and evaluation under subsection 1 are favorable,
35 the employer shall, with the transition team, develop and implement a process for
36 permanent transition to the safer alternative.

37 **4. Process for decision of no transition.** If, with proper justification, the transition
38 team elects not to proceed with permanent transition pursuant to subsection 3, the
39 transition team shall record the basis for its decision. If the results of the safer alternative
40 analysis under sections 1736 and 1737 and the testing and evaluation under subsection 1
41 are favorable, the employer has not justified a decision not to proceed with the safer
42 alternative.

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If the employer elects not to proceed with the use of the safer alternative, the employer shall submit a report to the department detailing the basis for not proceeding.

5. Additional information for work plan. Information developed and collected under this section must be added to the alternative chemical work plan.

§1739. Discontinuance of safer alternative

1. Discontinuance of safer alternative. At any time following completion of the permanent transition process to a safer alternative under section 1738, subsection 3, the employer may determine that substitution of the safer alternative is no longer technically, financially or otherwise feasible and elect to discontinue use of the safer alternative only if the provisions of subsections 2 and 3 are met.

2. Justification of discontinuance. The employer may not discontinue use of a safer alternative following completion of the permanent transition process under section 1738, subsection 3 without proper justification. To justify a decision to discontinue use of the safer alternative, the employer shall, with the transition team, conduct another safer alternative analysis under sections 1736 and 1737 and review the testing and evaluation under section 1738, subsection 1. If the results of the safer alternative analysis and testing and evaluation continue to be favorable, the employer has not justified a decision to discontinue use of the safer alternative.

3. Report of discontinuance. If the employer elects to discontinue use of a safer alternative under subsection 1, the employer shall submit a report to the department detailing the basis for discontinuation. Information developed and collected and reports submitted under this section must be added to the alternative chemical work plan.

§1740. Self-audit by employer

Every 3 years, an employer shall certify that the employer has audited the employer's compliance with this chapter. The audit must include review of the highly toxic chemicals previously identified in the alternative chemical work plan and review of whether there are new highly toxic chemicals to be evaluated for transitioning to safer alternatives. The employer shall develop a report of the audit findings and the response to the findings and shall also document that any deficiencies have been corrected. The audit report under this section must be added to the alternative chemical work plan, and the employer shall retain on file pursuant to section 1742 the 2 most recent audit reports.'

Amend the bill in section 1 in §1740 in the first paragraph in the 2nd line (page 4, line 36 in L.D.) by inserting after the following: "with" the following: 'identifying highly toxic chemicals, priorities for transition and'

Amend the bill in section 1 in §1740 in the first paragraph in the 4th line from the end (page 5, line 1 in L.D.) by inserting after the following: "time" the following: 'not to exceed 30 days'

Amend the bill in section 1 in §1740 in the first paragraph in the 3rd line from the end (page 5, line 2 in L.D.) by inserting after the following: "report on any" the following: 'activities related to this chapter and any'

Amend the bill in section 1 in §1741 in the first paragraph in the last line (page 5, line 9 in L.D.) by striking out the following: "1740" and inserting the following: '1741'

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COMMITTEE AMENDMENT "A" to H.P. 799, L.D. 1165

1 Amend the bill in section 1 in §1741 in the 2nd paragraph in the last line (page 5, line
2 14 in L.D.) by striking out the following: "1740" and inserting the following: '1741'

3 Amend the bill in section 1 in §1742 in subsection 2 in the 4th line (page 5, line 23 in
4 L.D.) by striking out the following: "a reasonable period of time" and inserting the
5 following: '15 working days'

6 Amend the bill in section 1 by striking out all of §1743 (page 5, lines 25 to 34 in
7 L.D.) and inserting the following:

8 **§1743. Annual employee training and informational materials**

9 The transition team must develop, implement and annually revise employee training
10 and informational materials related to the alternative chemical work plan, including
11 identifying highly toxic chemicals and priorities for transition, and any ongoing or
12 completed transitions to safer alternatives under this chapter.

13 Annual employee training must be conducted following the employee information
14 and training section of the United States Department of Labor, Occupational Safety and
15 Health Administration's globally harmonized system of classification and labeling of
16 chemicals as found in 29 Code of Federal Regulations, Section 1910.1200(h).

17 When relevant, training and informational materials developed under this section
18 must be added to an alternative chemical work plan.'

19 Amend the bill in section 1 by renumbering the section numbers to read
20 consecutively.

21 Amend the bill in section 2 by striking out all of the last sentence (page 6, lines 20 to
22 24 in L.D.)

23 Amend the bill by inserting after section 2 the following:

24 **'Sec. 3. Appropriations and allocations.** The following appropriations and
25 allocations are made.

26 **LABOR, DEPARTMENT OF**

27 **Regulation and Enforcement 0159**

28 Initiative: Provides funds for 10 Occupational Health Specialist positions, one Office
29 Associate II position and one Occupational Health/Safety Program Supervisor position
30 and related All Other to implement and enforce the laws regarding toxic chemicals in the
31 workplace.

32	GENERAL FUND	2015-16	2016-17
33	POSITIONS - LEGISLATIVE COUNT	0.000	12.000
34	Personal Services	\$0	\$702,085
35	All Other	\$0	\$101,160
36			
37	GENERAL FUND TOTAL	\$0	\$803,245
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COMMITTEE AMENDMENT

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SUMMARY

The bill enacts the Toxic Chemicals in the Workplace Act. This amendment, which is the minority report of the Joint Standing Committee on Labor, Commerce, Research and Economic Development, makes a number of changes to the bill, including the following:

1. Expands the definition of "employer" to include employers engaged in employment activities involving the use, handling or storage of chemicals and employers with workplaces constructed of materials or including equipment that release highly toxic chemicals that pose a health risk to employees;

2. Removes the requirement for the Department of Labor to designate toxic and highly toxic chemicals to be regulated by the Act, and instead further defines highly toxic chemicals and directs employers to identify them. The department is required to publish on its publicly accessible website lists of online resources that identify highly toxic chemicals;

3. Requires an employer to contact chemical suppliers and manufacturers for possible safer chemical alternatives and to implement a process for permanent transition to the safer alternative chemicals. If the employer elects not to use safer alternative chemicals, the employer must submit a report to the Department of Labor detailing the basis for not proceeding with the transition to the safer alternative;

4. Requires employers to complete a self-audit for compliance with this Act; and

5. Requires annual employee training that follows the United States Department of Labor, Occupational Safety and Health Administration's globally harmonized system of classification and labeling of chemicals.

FISCAL NOTE REQUIRED

(See attached)



127th MAINE LEGISLATURE

LD 1165

LR 1526(02)

An Act To Enact the Toxic Chemicals in the Workplace Act

Fiscal Note for Bill as Amended by Committee Amendment *A(CH-328)*
 Committee: Labor, Commerce, Research and Economic Development
 Fiscal Note Required: Yes

Fiscal Note

	FY 2015-16	FY 2016-17	Projections FY 2017-18	Projections FY 2018-19
Net Cost (Savings)				
General Fund	\$0	\$803,245	\$920,966	\$955,073
Appropriations/Allocations				
General Fund	\$0	\$803,245	\$920,966	\$955,073

Correctional and Judicial Impact Statements

The collection of additional fines may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

This bill includes a General Fund appropriation of \$803,245 in fiscal year 2016-17 to the Regulation and Enforcement program within the Department of Labor for 10 Occupational Health Specialist positions, one Office Associate II position, one Occupational Health/Safety Program Supervisor position and related all other costs associated with implementing and enforcing the laws regarding toxic waste in the workplace. This fiscal note assumes a position start date of September 1, 2016.