

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1165

H.P. 799

House of Representatives, March 31, 2015

An Act To Enact the Toxic Chemicals in the Workplace Act

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GOODE of Bangor.
Cosponsored by Senator PATRICK of Oxford and
Representatives: ALLEY of Beals, CAMPBELL of Newfield, CHIPMAN of Portland, DEVIN
of Newcastle, GILBERT of Jay, HERBIG of Belfast, MASTRACCIO of Sanford, Senator:
BREEN of Cumberland.

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

2 **Sec. 1. 26 MRSA c. 23** is enacted to read:

3 **CHAPTER 23**

4 **TOXIC CHEMICALS IN THE WORKPLACE ACT**

5 **§1731. Short title**

6 This chapter may be known and cited as "the Toxic Chemicals in the Workplace
7 Act."

8 **§1732. Definitions**

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

11 **1. Affected employee.** "Affected employee" means an employee who in the course
12 of employment works with, is in close contact with or otherwise has the potential to be
13 exposed to a highly toxic chemical.

14 **2. Alternative.** "Alternative" means a substitute process, product, material,
15 chemical, strategy or combination of these that serves a functionally equivalent purpose
16 to a chemical or chemicals used in the manufacture of a product.

17 **3. Alternative chemical work plan.** "Alternative chemical work plan" or "plan"
18 means a plan developed under section 1734.

19 **4. Chemical.** "Chemical" means a substance with a distinct molecular composition
20 or a group of structurally related substances and includes the breakdown products of the
21 substance or substances that form through decomposition, degradation, metabolism or
22 other chemical process.

23 **5. Credible scientific evidence.** "Credible scientific evidence" means the results of
24 a study, the experimental design and conduct of which have undergone independent
25 scientific peer review, that are published in a peer-reviewed journal or publication of an
26 authoritative federal or international governmental agency, including, but not limited to,
27 the United States Department of Health and Human Services, National Toxicology
28 Program, Food and Drug Administration and Centers for Disease Control and Prevention;
29 the United States Environmental Protection Agency; the World Health Organization; and
30 the European Union, European Chemicals Agency.

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

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

1 A. That is engaged in the manufacture within the State of products for sale or
2 distribution in the State, nationally or internationally; or

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 **8. Highly toxic chemical.** "Highly toxic chemical" means a chemical that, as based
6 on credible scientific evidence and any other criteria determined by the department by
7 rule, has a significant potential for harm to human health.

8 **9. Safer alternative.** "Safer alternative" means an alternative that, when compared
9 to a highly toxic chemical that it could replace, would reduce the potential for harm to
10 human health or that has not been shown to pose the same or greater potential harm to
11 human health as that highly toxic chemical.

12 **10. Toxic chemical.** "Toxic chemical" means a chemical that, as based on criteria
13 determined by the department by rule, has a potential for harm to human health.

14 **11. Transition team.** "Transition team" or "team" means the team designated by an
15 employer pursuant to section 1734.

16 **12. Workplace.** "Workplace" means any plant, yard, premises, room or other place
17 where an employee or employees are engaged in the performance of labor or service over
18 which the employer has the right of access or control.

19 **§1733. Department designation of chemicals**

20 The department shall by rule develop criteria for the identification of toxic chemicals
21 and highly toxic chemicals under this chapter and shall designate by rule all toxic
22 chemicals and highly toxic chemicals to be regulated under this chapter. The department
23 shall publish and periodically update on its publicly accessible website lists of all toxic
24 chemicals and highly toxic chemicals subject to regulation under this chapter.

25 **§1734. Alternative chemical work plan; transition team**

26 As described in this section, an employer shall develop and implement a written
27 alternative chemical work plan and designate a transition team.

28 **1. Plan contents.** The plan must include a general description of the process the
29 employer intends to implement in transitioning from highly toxic chemicals in the
30 workplace to safer alternatives, describe the responsibilities of and tasks to be completed
31 by each team member and include any additional information as required by the
32 department by rule. If multiple chemicals are considered by the employer for transition
33 to safer alternatives, the employer may develop a separate plan for each chemical or may
34 address all chemicals in a single plan. The employer shall update the plan as necessary to
35 include additional information as required by sections 1735, 1736, 1737, 1738, 1739,
36 1740 and 1743.

37 **2. Transition team.** The employer shall select individuals to serve as the transition
38 team to assist in the development and implementation of the plan. Team members must
39 include:

- 1 A. The employer or a representative of the employer;
2 B. An employee or an employee representative; and
3 C. At least one affected employee. If multiple chemicals are considered for
4 transition in a single plan, an affected employee for each chemical must be included
5 on the team.

6 Additional team members may include managers, supply chain partners, customers,
7 marketers, health and safety committee members, occupational health nurses or
8 physicians and occupational health consultants.

9 **§1735. Identification of toxic chemicals and highly toxic chemicals**

10 The transition team shall develop a written inventory of all chemicals, both toxic and
11 nontoxic, that are used by employees in the workplace or that are stored, located or
12 otherwise present in the workplace. For each identified chemical, the transition team
13 shall determine and record whether the chemical is presently designated a toxic chemical
14 or a highly toxic chemical by the department. Information developed and collected under
15 this section must be added to the alternative chemical work plan.

16 **§1736. Transition priorities**

17 The transition team shall develop a priority ranking of all highly toxic chemicals
18 identified under section 1735 for use in determining priority for transition to safer
19 alternatives. In developing a priority ranking, the transition team shall, at a minimum,
20 consider for each highly toxic chemical:

21 **1. Exposure potential.** The frequency with which employees are exposed to the
22 highly toxic chemical or the likelihood of potential employee exposure to the highly toxic
23 chemical;

24 **2. Associated harms.** The potential harms associated with the highly toxic chemical
25 as based on information available from the department; and

26 **3. Alternatives analysis.** An analysis of the anticipated difficulty of transitioning to
27 a safer alternative, both from a technical and a financial perspective, as determined under
28 section 1737.

29 Information developed and collected under this section must be added to the
30 alternative chemical work plan.

31 **§1737. Alternatives analysis**

32 For each highly toxic chemical identified under section 1735, the transition team shall
33 develop an alternatives analysis, which must:

34 **1. Alternatives.** Identify all alternatives that can potentially and reasonably be
35 substituted in place of the highly toxic chemical;

1 2. Impacts. Evaluate the potential impacts of transitioning to each alternative,
2 including, but not limited to, impacts on energy use, water use, the environment and
3 employee health and safety;

4 3. Harms. Describe any potential harms associated with the alternative as based on
5 information available from the department; and

6 4. Costs. Provide a detailed financial analysis of the potential short-term and long-
7 term costs of substituting each alternative.

8 The transition team shall review the analysis developed under this section and the
9 priority ranking developed under section 1736 and shall determine which highly toxic
10 chemicals identified under section 1735 will be tested and evaluated for transition to a
11 safer alternative under section 1738. Information developed and collected under this
12 section must be added to the alternative chemical work plan.

13 **§1738. Testing, evaluation and implementation of safer alternatives**

14 After review of all information generated or collected under sections 1736 and 1737,
15 the transition team shall, for each highly toxic chemical, determine whether to proceed
16 with testing and evaluation of an alternative that the transition team determines a safer
17 alternative. The transition team shall develop and implement a process for testing and
18 evaluating the feasibility of transition to a safer alternative.

19 If after testing and evaluation of the safer alternative pursuant to this section the
20 transition team elects to proceed with transition on a permanent basis, the transition team
21 shall develop and implement a process for permanent transition to the safer alternative. If
22 the transition team elects not to proceed with transition on a permanent basis, the
23 transition team shall record the basis for its decision and add that information, along with
24 any other information developed and collected under this section, to the alternative
25 chemical work plan.

26 **§1739. Discontinuation of safer alternatives**

27 At any time following completion of the permanent transition process to a safer
28 alternative under section 1738, the employer may determine that substitution of the safer
29 alternative is no longer technically, financially or otherwise feasible and elect to
30 discontinue use of the safer alternative. If the employer elects to discontinue use of the
31 safer alternative, the employer shall submit a report to the department detailing the basis
32 for discontinuation. Information developed and collected and reports submitted under
33 this section must be added to the alternative chemical work plan.

34 **§1740. Reporting requirements**

35 The employer shall annually submit to the department a report describing the
36 employer's progress with all ongoing or completed transitions to safer alternatives and
37 shall include in the report any additional information as determined by the department by
38 rule. Following completion of each permanent transition to a safer alternative, the
39 employer shall submit to the department a final report describing the transition process
40 and including any additional information as determined by the department by rule. The

1 employer shall, on request and within a reasonable period of time, provide to the
2 department a progress report on any ongoing transition to a safer alternative. Information
3 developed and collected and reports submitted under this section shall be added to the
4 alternative chemical work plan.

5 **§1741. Records retention**

6 An employer shall maintain information developed, collected or otherwise generated
7 by the employer or a transition team under this chapter regarding the transition to a safer
8 alternative for 5 years following the submission of the report to the department regarding
9 the completed transition to the safer alternative as required under section 1740.

10 An employer shall maintain information developed, collected or otherwise generated
11 by the employer or a transition team under this chapter regarding the discontinuation of a
12 safer alternative previously transitioned to for 3 years following the submission of the
13 report to the department regarding the discontinuation of the safer alternative as required
14 under section 1740.

15 **§1742. Access to information**

16 **1. Employee access.** Upon the written or oral request of an employee or an
17 employee representative for specific information developed, collected or otherwise
18 generated under this chapter, the employer shall, within 15 working days, provide any
19 information in its possession that is responsive to the request.

20 **2. State access.** Upon the written or oral request of the department or the
21 Department of Health and Human Services, Maine Center for Disease Control and
22 Prevention for specific information developed, collected or otherwise generated under
23 this chapter, the employer shall, within a reasonable period of time, provide any
24 information in its possession that is responsive to the request.

25 **§1743. Employee training and informational materials**

26 The transition team must develop, implement and annually revise employee training
27 and informational materials related to the alternative chemical work plan and any ongoing
28 or completed transitions to safer alternatives under this chapter. The materials must
29 include information advising employees on each toxic chemical or highly toxic chemical
30 currently in use or otherwise present in the workplace as identified under section 1735,
31 the health concerns associated with each toxic chemical or highly toxic chemical and
32 training or other guidance materials as to safe use of and exposure reduction measures
33 regarding each toxic chemical or highly toxic chemical. When relevant, materials
34 developed under this section must be added to an alternative chemical work plan.

35 **§1744. Enforcement and penalties**

36 The department shall enforce the provisions of this chapter and may impose penalties
37 for violations of this chapter.

38 **1. Inspections for compliance.** During normal business hours, the department may
39 conduct unannounced site inspections of an employer's workplace to determine employer

1 compliance with this chapter. If an inspection conducted by the department pursuant to
2 this subsection is based in whole or in part on an employee complaint previously filed
3 with the department, the department shall ensure that any information contained in the
4 complaint that might identify the employee or employees who filed the complaint is
5 afforded confidentiality protection.

6 **2. Penalties.** An employer who violates any provision of this chapter commits a
7 civil violation for which a fine of not more than \$1,000 for each violation may be
8 adjudged.

9 **§1745. Rulemaking**

10 The department shall adopt rules to implement the provisions of this chapter. Rules
11 adopted pursuant to this section are major substantive rules as defined in Title 5, chapter
12 375, subchapter 2-A.

13 **§1746. Effective date**

14 This chapter is effective September 1, 2016.

15 **Sec. 2. Department of Labor; major substantive rulemaking.** By January
16 1, 2016, the Department of Labor shall provisionally adopt and submit to the Legislature
17 for review rules related to the Toxic Chemicals in the Workplace Act established
18 pursuant to the Maine Revised Statutes, Title 26, chapter 23. Rules adopted pursuant to
19 this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.
20 The rules adopted by the department pursuant to this section must designate toxic
21 chemicals and highly toxic chemicals, as required by Title 26, section 1733, which must
22 include, but are not limited to, chemicals for which there is credible scientific evidence,
23 as defined in Title 26, section 1732 that the chemical is a carcinogen, a mutagen, a
24 reproductive or developmental toxin, an endocrine disruptor or a neurotoxicant.

25 **SUMMARY**

26 This bill enacts the Toxic Chemicals in the Workplace Act to create a statutory and
27 regulatory framework designed to prevent harm to employees by reducing exposure to
28 highly toxic chemicals in the workplace and thereby decrease the rates of cancer and
29 other chronic diseases in the State, improve workplace chemical management and safety
30 and ensure safer workplaces and healthier communities.

31 This bill specifically:

32 1. Directs the Department of Labor to develop criteria for identifying toxic and
33 highly toxic chemicals, designate all toxic and highly toxic chemicals to be regulated by
34 the Act and publish lists of all regulated toxic and highly toxic chemicals on its publicly
35 accessible website;

36 2. Requires employers subject to the provisions of the Act to develop and implement
37 a written alternative chemical work plan and designate a transition team to assist in
38 transitioning from highly toxic chemicals in the workplace to safer alternatives;

- 1 3. Directs the transition team to inventory all chemicals in the workplace, both toxic
2 and nontoxic, and determine which chemicals have been designated by the department as
3 toxic or highly toxic chemicals;
- 4 4. Requires the transition team to develop a priority ranking of all identified highly
5 toxic chemicals, based on a number of criteria, to assist in determining which chemicals
6 will be transitioned to safer alternatives;
- 7 5. Directs the transition team, as part of developing the priority ranking, to conduct
8 for each highly toxic chemical an alternatives analysis that includes, among other things,
9 a detailed financial analysis of the costs of substituting an alternative;
- 10 6. Requires the transition team to decide which alternatives to highly toxic chemicals
11 are safer alternatives and which safer alternatives should be tested and evaluated for
12 permanent transition. After testing and evaluation of selected safer alternatives, the
13 transition team may elect to transition to a safer alternative on a permanent basis;
- 14 7. Allows an employer, at any point after completing the transition to a safer
15 alternative, to discontinue use of the safer alternative and report the basis for
16 discontinuation to the department;
- 17 8. Stipulates reporting and records retention requirements for the employer, as well
18 as guidelines for access to information by employees and state agencies;
- 19 9. Directs the development by the employer of employee training and other
20 informational materials;
- 21 10. Authorizes the department to enforce the provisions of the Act and to issue
22 penalties for violations of the Act;
- 23 11. Requires the department to adopt all rules necessary to implement the provisions
24 of the Act;
- 25 12. Stipulates an effective date for the Act of September 1, 2016; and
- 26 13. Directs the department, by January 1, 2016, to submit for legislative review
27 major substantive rules related to the Act.