

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 699

H.P. 490

House of Representatives, February 28, 2017

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 "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COLLINGS of Portland.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: ALLEY of Beals, BATES of Westbrook, FECTION of Biddeford, HERBIG
of Belfast, MASTRACCIO of Sanford, Senators: CARSON of Cumberland, CHIPMAN 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 workplace.

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

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

24 **5. Chemical.** "Chemical" means any substance or mixture of substances and may be
25 a substance with a distinct molecular composition or a group of structurally related
26 substances and includes the breakdown products of the substance or substances that form
27 through decomposition, degradation, metabolism or other chemical process.

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

33 **7. Department.** "Department" means the Department of Labor.

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

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

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

9 B. That is engaged in any employment activities within the State involving the use or
10 storage in the workplace of methylene chloride or perchloroethylene;

11 C. That is engaged in any employment activities within the State involving the use or
12 handling of chemicals by employees in the workplace or involving chemicals that are
13 stored, generated, located or otherwise present in the workplace; or

14 D. That is engaged in any employment activities within the State that include a
15 workplace constructed of materials, and equipment in and around the workplace, that
16 under normal conditions of use, construction or repair release a highly toxic chemical
17 that poses a health risk to employees.

18 **10. Highly toxic chemical.** "Highly toxic chemical" means a chemical that, as based
19 on credible scientific evidence, has a significant potential for harm to human health.

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

24 **12. Transition team.** "Transition team" or "team" means the team designated by an
25 employer pursuant to section 1734.

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

29 **§1733. Designation of chemicals**

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

34 **1. Consult material safety data sheets.** The employer shall consult material safety
35 data sheets under the United States Occupational Safety and Health Act of 1970 for a
36 chemical in the workplace to determine if the chemical is classified as a carcinogen, a
37 mutagen, a reproductive toxin, a developmental toxin, an endocrine disruptor or a
38 neurotoxicant and is a candidate for transitioning to a safer alternative.

1 **2. Consult databases of authoritative bodies.** The employer shall consult the
2 databases of authoritative bodies to determine if a chemical in the workplace is classified
3 as a carcinogen, a mutagen, a reproductive toxin, a developmental toxin, an endocrine
4 disruptor or a neurotoxicant and is a candidate for transitioning to a safer alternative.

5 **3. Department website.** The department shall publish and periodically update on its
6 publicly accessible website lists of online databases that identify highly toxic chemicals
7 subject to regulation under this chapter.

8 **§1734. Alternative chemical work plan; transition team**

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

11 **1. Plan contents.** The plan must include a general description of the process the
12 employer intends to implement in transitioning from highly toxic chemicals in the
13 workplace to safer alternatives, describe the responsibilities of and tasks to be completed
14 by each team member and include any additional information as required by the
15 department by rule. If multiple chemicals are considered by the employer for transition
16 to safer alternatives, the employer may develop a separate plan for each chemical or may
17 address all chemicals in a single plan. The employer shall update the plan as necessary to
18 include additional information as required by sections 1735, 1736, 1737, 1738, 1739,
19 1741 and 1744.

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

23 A. The employer or a representative of the employer;

24 B. An employee or an employee representative; and

25 C. At least one affected employee. If multiple chemicals are considered for
26 transition in a single plan, an affected employee for each chemical must be included
27 on the team.

28 Additional team members may include managers, supply chain partners, customers,
29 marketers, health and safety committee members, safety engineers, industrial hygienists,
30 occupational health nurses or physicians and occupational health consultants.

31 **§1735. Identification of highly toxic chemicals**

32 The transition team described in section 1734, subsection 2 shall develop a written
33 inventory of all chemicals, both toxic and nontoxic, that are used by employees in the
34 workplace or that are stored, located or otherwise present in the workplace. For each
35 identified chemical, the transition team shall determine and record whether the chemical
36 is presently designated a highly toxic chemical as described in section 1733. Information
37 developed and collected under this section must be added to the alternative chemical
38 work plan.

1 **§1736. Transition priorities**

2 The transition team described in section 1734, subsection 2 shall develop a priority
3 ranking of all highly toxic chemicals identified under section 1735 for use in determining
4 priority for transition to safer alternatives. The transition team may consider other
5 chemicals, both toxic and nontoxic, in a separate priority ranking. In developing a
6 priority ranking, the transition team shall, at a minimum, consider for each highly toxic
7 chemical:

8 **1. Exposure potential.** The frequency with which employees are exposed to the
9 highly toxic chemical or the likelihood of potential employee exposure to the highly toxic
10 chemical;

11 **2. Associated harms.** The potential harms associated with the highly toxic chemical
12 as based on information available to the employer; and

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

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

18 **§1737. Alternatives analysis**

19 For each highly toxic chemical identified under section 1735, the transition team shall
20 develop an alternatives analysis that must:

21 **1. Alternatives.** Identify all alternatives that can potentially and reasonably be
22 substituted in place of the highly toxic chemical. The employer shall contact chemical
23 suppliers and manufacturers for possible safer alternatives;

24 **2. Effects.** Evaluate the potential effects of transitioning to each alternative,
25 including, but not limited to, effects on energy use, water use, the environment and
26 employee health and safety;

27 **3. Harms.** Describe any potential harms associated with the alternative; and

28 **4. Costs.** Provide a detailed financial analysis of the potential short-term and long-
29 term costs of substituting each alternative for a highly toxic chemical.

30 The transition team shall review the analysis developed under this section and the
31 priority ranking developed under section 1736 and shall determine the highly toxic
32 chemicals identified under section 1735 for which safer alternatives will be tested and
33 evaluated for transition under section 1738. Information developed and collected under
34 this section must be added to the alternative chemical work plan.

35 **§1738. Testing, evaluation and implementation of safer alternative**

36 **1. Develop testing process.** After review of all information generated or collected
37 under sections 1736 and 1737, the transition team shall, for each highly toxic chemical,

1 determine whether to proceed with testing and evaluation of an alternative that the
2 transition team determines to be a safer alternative. The transition team shall develop and
3 implement a process for testing and evaluating the feasibility of transition to a safer
4 alternative.

5 **2. Transition.** If, after testing and evaluation of the safer alternative pursuant to
6 subsection 1, the transition team elects to proceed with transition on a permanent basis,
7 the transition team shall develop and recommend a process for implementing a permanent
8 transition to the safer alternative.

9 **3. Permanent transition.** If the transition team recommends permanent transition
10 pursuant to subsection 2 to the safer alternative and the safer alternative analysis under
11 sections 1736 and 1737 and the testing and evaluation under subsection 1 are favorable,
12 the employer shall, with the transition team, develop and implement a process for
13 permanent transition to the safer alternative.

14 **4. Process for decision of no transition.** If the employer elects not to proceed with
15 permanent transition pursuant to subsection 3, the employer shall record the basis for its
16 decision. The employer may not elect not to proceed with permanent transition without
17 proper justification. If the results of the safer alternative analysis under sections 1736 and
18 1737 and the testing and evaluation under subsection 1 are favorable, the employer's
19 decision not to proceed with the safer alternative is not justified.

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

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

24 **§1739. Discontinuance of safer alternative**

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

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

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

1 **§1740. Self-audit by employer**

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

10 **§1741. Reporting requirements**

11 The employer shall annually submit to the department a report describing the
12 employer's progress with identifying highly toxic chemicals, priorities for transition and
13 all ongoing or completed transitions to safer alternatives and shall include in the report
14 any additional information as determined by the department by rule. Following
15 completion of each permanent transition to a safer alternative, the employer shall submit
16 to the department a final report describing the transition process and including any
17 additional information as determined by the department by rule. The employer shall, on
18 request and within a reasonable period of time not to exceed 30 days, provide to the
19 department a progress report on any activities related to this chapter and any ongoing
20 transition to a safer alternative. Information developed and collected and reports
21 submitted under this section must be added to the alternative chemical work plan.

22 **§1742. Records retention**

23 An employer shall maintain information developed, collected or otherwise generated
24 by the employer or a transition team under this chapter regarding the transition to a safer
25 alternative for 5 years following the submission of the report to the department regarding
26 the completed transition to the safer alternative as required under section 1741.

27 An employer shall maintain information developed, collected or otherwise generated
28 by the employer or a transition team under this chapter regarding the election not to
29 proceed with a permanent transition and the discontinuance of a safer alternative
30 previously transitioned to for 3 years following the submission of the report to the
31 department regarding the election not to proceed as required under section 1738 or the
32 discontinuance of the safer alternative as required under section 1741.

33 **§1743. Access to information**

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

38 **2. State access.** Upon the written or oral request of the department or the
39 Department of Health and Human Services, Maine Center for Disease Control and
40 Prevention for specific information developed, collected or otherwise generated under

1 this chapter, the employer shall, within 15 working days, provide any information in its
2 possession that is responsive to the request.

3 **§1744. Annual employee training and informational materials**

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

8 An employer shall conduct annual employee training following the employee
9 information and training section of the United States Department of Labor, Occupational
10 Safety and Health Administration's globally harmonized system of classification and
11 labeling of chemicals as found in 29 Code of Federal Regulations, Section 1910.1200(h).

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

14 **§1745. Enforcement and penalties**

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

17 **1. Inspections for compliance.** During normal business hours, the department may
18 conduct unannounced site inspections of an employer's workplace to determine employer
19 compliance with this chapter. If an inspection conducted by the department pursuant to
20 this subsection is based in whole or in part on an employee complaint previously filed
21 with the department, the department shall ensure that any information contained in the
22 complaint that might identify the employee or employees who filed the complaint is
23 afforded confidentiality protection.

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

27 **§1746. Rulemaking**

28 The department shall adopt rules to implement the provisions of this chapter. Rules
29 adopted pursuant to this section are major substantive rules as defined in Title 5, chapter
30 375, subchapter 2-A.

31 **§1747. Effective date**

32 This chapter is effective September 1, 2018.

33 **Sec. 2. Department of Labor; major substantive rulemaking.** By January
34 1, 2018, the Department of Labor shall provisionally adopt and submit to the Legislature
35 for review rules related to the Toxic Chemicals in the Workplace Act established
36 pursuant to the Maine Revised Statutes, Title 26, chapter 23. Rules adopted pursuant to
37 this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

1
2 This bill enacts the Toxic Chemicals in the Workplace Act to create a statutory and
3 regulatory framework designed to prevent harm to employees by reducing exposure to
4 highly toxic chemicals in the workplace and thereby decrease the rates of cancer and
5 other chronic diseases in the State, improve workplace chemical management and safety
6 and ensure safer workplaces and healthier communities.

7 This bill specifically:

8 1. Directs employers to identify highly toxic chemicals and directs the Department of
9 Labor to publish lists of online resources that identify highly toxic chemicals;

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

13 3. Directs the transition team to inventory all chemicals in the workplace, both toxic
14 and nontoxic, and determine which chemicals have been designated as highly toxic
15 chemicals;

16 4. Requires the transition team to develop a priority ranking of all identified highly
17 toxic chemicals, based on a number of criteria, to assist in determining which chemicals
18 will be transitioned to safer alternatives;

19 5. Directs the transition team, as part of developing the priority ranking, to conduct
20 for each highly toxic chemical an alternatives analysis that includes, among other things,
21 a detailed financial analysis of the costs of substituting an alternative;

22 6. Requires the transition team to decide which alternatives to highly toxic chemicals
23 are safer alternatives and which safer alternatives should be tested and evaluated for
24 permanent transition. After testing and evaluation of selected safer alternatives, the
25 employer, with the transition team, may elect to transition to a safer alternative on a
26 permanent basis;

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

32 8. Requires employers to complete self-audits for compliance with this Act;

33 9. Stipulates reporting and records retention requirements for the employer, as well
34 as guidelines for access to information by employees and state agencies;

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

1 11. Requires the Department of Labor to enforce the provisions of the Act and
2 authorizes the department to issue penalties for violations of the Act;

3 12. Requires the Department of Labor to adopt all rules necessary to implement the
4 provisions of the Act;

5 13. Stipulates an effective date for the Act of September 1, 2018; and

6 14. Directs the Department of Labor, by January 1, 2018, to submit for legislative
7 review major substantive rules related to the Act.