

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

CHAPTER 823

S.P. 915 - L.D. 2463

AN ACT to Reduce Minimum Fees and Provide
for Implementation of the Chemical Substance
Identification Law.

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

Whereas, the Legislature recognizes the importance of protecting the occupational health and safety of the workers of this State; and

Whereas, the Legislature also recognizes that the protection of workers' safety and health can and should be accomplished without placing unnecessary burdens on employers; 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Sec. 1. 26 MRSA §§1701 to 1708, as amended, are repealed.

Sec. 2. 26 MRSA §§1709 to 1725 are enacted to read:

§1709. Purpose

The purpose of this chapter is to ensure that the hazards of all chemicals produced or imported by chemical manufacturers or importers are evaluated, and that information concerning their hazards is transmitted to affected employers and employees and others in order to reduce the incidence of chemically-related illnesses and injuries. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training. Workers have a right to know about chemical hazards to which they may be exposed.

This chapter is intended to address comprehensively the issue of evaluating and communicating chemical hazards to employees in the manufacturing and other designated sectors. This chapter is intended to be consistent with the Hazard Communication Rule promulgated by the United States Department of Labor, Occupational Safety and Health Administration, November 25, 1983, in order to reduce any burden on interstate commerce and to facilitate compliance. To the extent that Occupational Safety and Health Administration enforces the federal rule beginning in 1985-86, it is intended that there be no duplication of enforcement. This chapter goes beyond the Occupational Safety and Health Administration standard primarily in 3 ways: Certain parts are effective earlier; additional industries are addressed; and this chapter requires communication with health officials, not just employees.

§1710. Scope and application

1. Information. This chapter requires that information be provided to employees by the employer about the identities and hazards of chemicals in the work area by means of chemical identification lists, labels, material safety data sheets, education and training and access to written records.

2. Applicable chemicals. This chapter applies to any chemical in the work area which is a hazardous chemical, present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency, except as specifically provided in this chapter.

3. Nonapplicable chemicals. This chapter does not apply to chemicals which are: Hazardous waste when subject to regulations issued by the Department of Environmental Protection or the United States Environmental Protection Agency; tobacco or tobacco products; wood or wood products; articles; compressed air; and foods, drugs or cosmetics intended for personal consumption by employees while in the workplace.

The following substances are exempt from all requirements of this chapter:

A. Consumer products and foodstuffs packaged for distribution to, and intended for use by, the general public. This includes any labeled product used or stored in a workplace in the same form approximate volume or amount, concentration and manner as it is sold to and used by the general public, provided that it remains labeled in the workplace, and to which, in the employer's

knowledge, employee exposure is not significantly different from that of the general public during foreseeable use of the substance;

B. Substances sold by retail stores, for personal or domestic consumption, which are prepackaged, sealed, canned or otherwise contained so as to prevent worker exposure;

C. Common substances found in the workplace in small quantities that do not present a significant hazard to workers. Common substances include, but are not limited to, office desk top supplies, such as correction fluid, thinner or typewriter cleaning fluid, glues and cleaning solvents;

D. Petroleum distillates used as motor fuel or heating fuel;

E. Fire extinguishers in the workplace; and

F. Propane gas stored out-of-doors and used for commercial heating or cooking.

4. Nonapplicable employers. This chapter applies to all employers within the State with hazardous chemicals within the workplace, except as specifically provided. Agricultural employers regulated by the Department of Agriculture, Food and Rural Resources are exempt from this chapter.

5. Laboratories and health professionals. This chapter applies to laboratories and offices of health professionals only as follows. Employers shall ensure that labels on incoming containers of hazardous chemicals are not defaced or removed. Employers shall maintain material safety data sheets on each hazardous chemical they handle and ensure that they are readily accessible. Employers shall ensure that laboratory employees are apprised of the hazards of the chemicals in their workplace and provided proper training in their use.

6. Labeling exemptions. Labeling of the following chemicals is not required under this chapter when they are labeled in accordance with the indicated federal statute and regulations under that statute:

A. Pesticides, as defined in the Federal Insecticide, Fungicide and Rodenticide Act, United States Code, Title 7, Section 136 et seq.;

B. Foods, food additives, color additives, drugs or cosmetics, as defined in the Federal Food, Drug and Cosmetics Act, United States Code, Title 21, Section 301 et seq.;

C. Distilled spirits, wine or malt beverages intended for nonindustrial use, as defined in the Federal Alcohol Administration Act, United States Code, Title 27, Section 201 et seq.; and

D. Any consumer product or hazardous substance, as defined in the Consumer Product Safety Act, United States Code, Title 15, Section 2051 et seq. and the Federal Hazardous Substance Act, United States Code, Title 15, Section 1261 et seq.

7. Waiver by rule. If the director determines that, with regard to certain amounts, concentrations, types or containers of specific hazardous chemicals, strict compliance with the requirements of this chapter will not contribute to the health and safety of employees, the director may waive those requirements by rule. In addition, for any specific category of employers, the director may by rule waive fee, listing or training program requirements, following the submission by an employer of a written application for a waiver, for persons with specific training in handling those hazardous chemicals present in their workplace if the director finds that strict compliance with those requirements will not contribute to the health and safety of employees.

§1711. Definitions

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

1. Article. "Article" means a manufactured item which is formed to a specific shape or design during manufacture, which has end use functions dependent in whole or in part upon its shape or design during end use, and which does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use.

2. Chemical. "Chemical" means any element, chemical compound or mixture of elements or compounds, or both.

3. Chemical name. "Chemical name" means the name of a substance established by the Chemical Abstracts Services in the most recent edition of the Collective Index of Chemical Abstracts.

4. Common name. "Common name" means any designation or identification, such as code name, number, trade or brand name, used by the employer to identify a substance other than by its chemical name.

5. Container. "Container" means any open or closed bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, carton, flask, package, tank, vat, vessel or the like into which chemicals are placed.

6. Director. "Director" means the Director of the Bureau of Labor Standards, Department of Labor, or a designee.

7. Hazardous chemical. "Hazardous chemical" means a chemical which is a physical hazard or a health hazard, as listed by the Bureau of Labor Standards.

8. Health hazard. "Health hazard" means a chemical which is:

A. Listed in the Toxic and Hazardous Substances section of the regulations of the Occupational Health and Safety Act labeling standard in the United States Code of Federal Regulations 29, Part 1910, Subpart Z;

B. Listed in threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH), latest edition;

C. A carcinogen or potential carcinogen, listed in The Registry of Toxic Effects of Chemical Substances, published by the National Institute for Occupational Safety and Health (NIOSH), latest edition based upon the National Toxicology Program (NTP) Annual Report on Carcinogens or the International Agency for Research on Cancer (IARC) Monographs;

D. Listed as radioactive material in regulations promulgated by the United States Nuclear Regulatory Commission;

E. Contained on a list established by the director by rule after consultation with the Bureau of Health and which meets any of the following criteria:

(1) Has a median lethal oral dose of not more than 500 milligrams per kilogram of body weight;

(2) Has a median lethal dermal dose of not more than 1,000 milligrams per kilogram of body weight;

(3) Has a median inhalation lethal concentration in air of not more than 2,000 parts per million by volume of gas or vapor, or more than 2 milligrams per liter but not more than 20 milligrams per liter of mist, fume or dust; or

(4) Has been found by the director, based on established scientific principles, to have significant potential to cause adverse acute or chronic health effects; or

F. A mixture which is a health hazard based on application of the criteria of paragraphs A to E to the mixture as a whole, or which contains more than 1% by weight or volume of a chemical which is a health hazard or which contains more than 0.1% by weight or volume of a carcinogen or potential carcinogen identified in accordance with paragraph C.

9. Laboratory. "Laboratory" means a work area devoted to experimental study in any science, or to testing and analysis by scientific means, under the supervision of persons trained in the handling of hazardous chemicals.

10. Material safety data sheet. "Material safety data sheet" means a form containing information concerning a hazardous chemical substantially equivalent in content to form 20 of the United States Occupational Safety and Health Administration, but which includes both acute and chronic health hazard information.

11. Physical hazard. "Physical hazard" means a chemical which is:

A. Listed in the United States Department of Transportation Hazardous Materials Table, 49 Code of Federal Regulations 172.101;

B. Contained on a list established by the director by rule after consultation with the State Fire Marshal and which meets any of the following criteria:

(1) Is a combustible liquid. For purposes of this section, a combustible liquid is any liquid with a flash point above 100° Fahrenheit and below 200 ° Fahrenheit;

(2) Is a compressed gas. For purposes of this section, a compressed gas is any chemical having in the container an absolute pressure exceeding 40 PSI at 70° Fahrenheit

or having an absolute pressure exceeding 104 PSI at 130° Fahrenheit or any liquid having a vapor pressure exceeding 40 PSI absolute pressure at 100° Fahrenheit;

(3) Is an explosive. For purposes of this section, an explosive is any chemical that causes a sudden, almost instantaneous release of pressure, gas and heat when subjected to sudden shock, pressure or high temperatures;

(4) Is a flammable substance. For purposes of this section, a flammable substance is any liquid with a flash point of below 100° Fahrenheit, solid that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change or retained heat from manufacturing or processing or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard, or gas which at atmospheric temperature and pressure forms a flammable mixture with air when present at a concentration of 13% or less by volume or that forms a range of flammable mixtures with air wider than 12% by volume regardless of the lower limit;

(5) Is an organic peroxide. For purposes of this section, an organic peroxide is an organic compound that contains the bivalent -O-O- structure and which is a derivative of hydrogen peroxide where one or more hydrogen atoms have been replaced by organic radicals;

(6) Is an oxidizer. For purposes of this section, an oxidizer is a chemical that initiates or promotes combustion in other materials, thereby causing fire;

(7) Is pyrophoric. For purposes of this section, pyrophoric means a chemical that will ignite spontaneously in air at a temperature of 130° Fahrenheit or below;

(8) Is unstable (reactive). For purposes of this section, unstable (reactive) means a chemical which will vigorously react under conditions of shock, pressure or temperature; or

(9) Is water reactive. For purposes of this section, water reactive means a chemical that reacts with water to release a gas

that is either flammable or presents a health hazard; or

C. A mixture which is a physical hazard based on application of the criteria of paragraphs A and B to the mixture as a whole.

12. Trade secret. "Trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.

13. Work area. "Work area" means a room or defined space, including any plant, yard, premises, room or other place in a workplace where hazardous chemicals are produced or used and where employees are present.

14. Workplace. "Workplace" means an establishment or business at one geographic location containing one or more work areas, but does not include a private residence which is not used for business purposes.

§1712. Written hazard communications program; records

Employers shall develop and implement a written hazard communication program which describes how the requirements of this chapter for labeling, material safety data sheets and for employee education and training will be met, and which also includes a list of the hazardous chemicals known to be present in the workplace, the methods the employer will use to inform employees of the hazards of routine and nonroutine tasks and the methods the employer will use to inform contractor employees of the hazardous chemicals to which they may be exposed and of appropriate protective measures.

Each employer subject to this chapter shall maintain a list of employees by name and job title or classification who have received training, the type of training provided and the dates it was provided.

§1713. Labels

1. Containers to be labeled, tagged or marked. Each container present in the work areas shall be labeled, tagged or marked with the common or chemical names of the hazardous chemicals contained and with appropriate hazard warnings.

Portable containers into which hazardous chemicals are transferred from labeled containers for the immediate use of the employee who performs the transfer are exempt from this requirement. The department shall specify by rule the extent to which labels shall be required for pipes and piping.

2. Label requirements of the Occupational Health and Safety Act. Each container of chemicals subject to a substance-specific Occupational Health and Safety Act labeling standard in the United States Code of Federal Regulations 29, Part 1910, Subpart Z, or United States Code of Federal Regulations 29, Part 1990, shall meet the specific labeling requirements of that standard in lieu of the requirements of this section.

3. Label of chemical containers sold or distributed. The chemical manufacturer, importer or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the common or chemical names of the hazardous chemicals, appropriate hazard warnings and the name and address of the chemical manufacturer, importer or other responsible party.

§1714. Material safety data sheets

1. Manufacturers, importers, suppliers or distributors to provide. Manufacturers, importers, suppliers or distributors of hazardous chemicals doing business in this State shall obtain or develop a material safety data sheet for each hazardous chemical they produce, import, supply or distribute in this State and provide the current material safety data sheet for any hazardous chemical to their direct purchasers of that chemical.

2. Employers to maintain. Each employer shall maintain in each workplace a material safety data sheet for each hazardous chemical which they use. All material safety data sheets maintained by employers shall be available to their employees for examination during all hours of operation, and shall be made readily available, upon request, to the director. Employers are not required to evaluate the potential hazards of chemicals, unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer. If the employer does not receive the data sheet from the manufacturer, importer, supplier or distributor, he shall so inform the director and the director shall assist him in obtaining the information.

3. Copies to local fire chiefs. Employers shall, upon request, provide a list of hazardous

chemicals and shall make available upon request to local fire chiefs copies of the material safety data sheets maintained in the workplace.

§1715. Employee information and training

1. Educational and training program required. Employers shall provide information and training on hazardous chemicals to all employees who are exposed to hazardous chemicals in their work areas.

2. Schedule for information and training program. The information and training shall commence prior to an employee's initial assignment. Additional instruction shall be provided whenever chemicals or processes change or newly acquired information indicates the need for additional protective measures. Programs shall be conducted during the employee's regular working hours.

3. Information and training contents. The information and training program shall include the following:

A. The provisions of this chapter;

B. Any operations in the work area where hazardous chemicals are present;

C. Methods of detecting the presence or release of a hazardous chemical in the work area;

D. The physical and health hazards of the chemicals in the work area;

E. The location and availability of the written hazard communication program and related documents;

F. The measures employees can take to protect themselves from these hazards, including the purpose, proper use and limitation of personal protective equipment;

G. An explanation of the labeling system and the material safety data sheets; and

H. Emergency procedures.

4. Materials furnished at no cost. The employer shall assure that all the educational and training materials and information are provided at no cost to the employee.

5. Materials available at request to the director. All materials relating to information and

training and required by this standard shall be made available upon request to the director.

6. Rules; minimum training programs. The director may by rule establish minimum training programs, including refresher training where necessary, to be provided to employees who are exposed to specific hazardous chemicals.

§1716. Access to written records; confidentiality

1. Lists and sheets; availability. Chemical identification lists and material safety data sheets required by this chapter shall be made available upon request for examination and copying to any affected employee or former employee, authorized employee representative, designated physician or representative, the director or the Director of the Bureau of Health or his designee. The chemical identification lists shall be kept for 20 years.

2. Exposure measurements; availability. Any exposure measurements taken to monitor employee exposure to chemicals in the work area shall be made available upon request for examination and copying to any affected employee or former employee, designated physician or representative, the director or the Director of the Bureau of Health or his designee.

3. Trade secret information. A manufacturer, importer, supplier, distributor or employer may withhold the specific chemical identity of a hazardous chemical on a material safety data sheet if disclosure would reveal a trade secret and if that claim can be supported. In addition, the material safety data sheet shall state that the name is withheld as a trade secret. All other information, including the routes of exposure, effects of exposure, type and degree of hazard, emergency treatment and response procedures, shall be provided.

4. Trade secret determination. If the director believes a manufacturer, importer, supplier, distributor or employer has improperly designated a hazardous chemical or its use in a particular process as a trade secret, the director may challenge the designation in Superior Court. Pending final determination, the director may also seek injunctive relief. If the director prevails, and the chemical or its use in a particular process is determined not to be a trade secret, as defined in this chapter, the other party shall pay all costs and reasonable attorneys' fees.

5. Provision of trade secret information to health professionals. Trade secrets information shall be provided to health professionals as follows.

A. When a treating physician or nurse determines that a medical emergency exists and the specific identity of a hazardous chemical is necessary for treatment, the manufacturer, importer or employer shall immediately disclose that information to the treating physician or nurse. A suitable statement of need and confidentiality may be required later, as soon as circumstances permit.

B. In nonemergency situations, a chemical manufacturer, importer or employer shall, upon request, disclose any specific chemical identity to a health professional providing medical or other health services, including the Director of the Bureau of Health or his designated representative. A suitable statement of need and confidentiality agreement shall be required before disclosure.

6. Confidentiality. The confidentiality agreement referred to in this section may restrict the use of the information to the health purposes indicated in the written statement of need, may provide for appropriate legal remedies in the event of a breach of the agreement, including a reasonable preestimate of likely damages, shall authorize sharing the information with the Bureau of Health, subject to the same confidentiality stipulations, and shall not include requirements for posting of a penalty bond.

§1717. Reports.

1. Publication. The director shall make available an annually updated list of hazardous chemicals as established pursuant to this chapter.

2. Listing. The director may by rule require that employers submit a list of hazardous chemicals in the workplace, with changes reported annually. In order to facilitate compliance, the director shall provide assistance to employers with a list of hazardous chemicals which may be found in a workplace of their particular kind, and make available without charge the full list published in accordance with subsection 1.

§1718. Effective date

Except for section 1722, this chapter shall become effective on January 1, 1980, except that section 1714, material safety data sheets, shall be effective for manufacturers, importers, suppliers and distributors as the required information becomes available, but not later than November 25, 1985, and for employers as the information becomes available, but not later than May 25, 1986. The initial dead-

line for employers filing of hazardous chemicals with the Bureau of Labor Standards shall be set by rule no earlier than the effective date of this chapter. Section 1722 shall become effective November 25, 1985, except that section 1722 shall become effective immediately for the purposes of section 1720.

§1719. Administration and enforcement

1. Enforcement. The Bureau of Labor Standards shall administer and enforce this chapter, except that the Board of Pesticides Control shall have primary responsibility for inspection and training programs in workplaces subject to this chapter solely because of the presence of a limited or restricted use pesticide within the meaning of the Maine Pesticide Control Act of 1975, Title 7, chapter 103, subchapter II-A.

2. Inspections. For the purposes of this chapter, the director or the Director of the Bureau of Health or his designee may, at any reasonable time and upon presentation of appropriate identification, enter, inspect and collect samples from a workplace accompanied by the employer representative.

3. Cooperation with other agencies. The director shall obtain the assistance of the Bureau of Health and other state agencies in the administration of this chapter. The director shall provide by rule appropriate procedures for transferring to other state agencies information provided by employers which is subject to confidential treatment.

§1720. Chemical Information and Training Assistance Fund; fees

1. Assistance to employers. The director shall, upon request, provide assistance to employers in the development and conduct of training programs for employees and local public safety personnel.

2. Chemical Information and Training Assistance Fund. The director shall establish by rule a segregated, nonlapsing Chemical Information and Training Assistance Fund which shall be financed by fees levied on employers subject to this chapter. Revenues paid into the fund, including interest, shall be used exclusively for carrying out the purposes of this chapter, including, but not limited to, information and communication with employers, provision of copies of the law, rules, listing of hazardous chemicals and the likelihood of the presence of certain hazardous chemicals in the various industry workplaces. Expenditures from the fund shall be allocated and approved by the Legislature.

3. Fees. Each employer not exempt under this chapter shall be assessed an annual fee of \$10. The fee is payable prior to July 1st of each calendar year. This fee structure shall be for a transitional period and shall only remain in effect until a permanent fee structure takes effect following the report on fee structure to the Legislature pursuant to section 1724.

4. Waivers and exemptions from fees. The director shall waive fees under this chapter under the conditions established in section 1724. Employers who have no applicable chemicals in the workplace, employers employing 3 or fewer employees, and state, municipal or quasi-municipal governmental organizations are exempt from fees under this chapter. Any employer who pays a fee and is found to be exempt from that fee shall receive a prompt refund.

§1721. Confidentiality of information

All information and reports obtained by the director, the Director of the Bureau of Health or any other agency under this chapter shall be confidential, except that the Director of the Bureau of Health shall provide the public with relevant information relating to any chemical in a particular workplace when the Director of the Bureau of Health has reason to believe that the chemical is present in that workplace under circumstances which represent an immediate or long-term threat to the health or safety of the general public. Review of the director's actions or failure to act under this section shall be in Superior Court.

§1722. Penalty

Any person, partnership, corporation or other legal entity who refuses to comply, in whole or in part, with this chapter after notice of noncompliance and a 60-day period to comply commits a civil violation for which a forfeiture not to exceed \$500 for the first violation and not to exceed \$1,000 for any subsequent violation may be adjudged.

No employer may be held in noncompliance for failure to supply a material safety data sheet if the Bureau of Labor Standards is unable to supply the employer with the necessary information.

§1723. Prohibited practices; remedy

It is unlawful for any employer to discharge, discipline or otherwise discriminate against any of its employees who have assisted in the enforcement of this chapter. The director may, after investigation

and hearing, bring an action in Superior Court on behalf of any employee to enforce this section. In addition to the civil penalties set forth in section 1722, the director may seek all other appropriate relief, including payment of compensation actually lost as a result of a violation. If the court finds that there has been no violation of this section, the court may award costs and reasonable attorney's fees to the employer.

§1724. Report to Legislature; excess fees

Each year the director shall report to the Legislature on the Bureau of Labor Standard's experience under this chapter, including any recommendation on fee structure. Any amount of these fees collected in a year that exceeds the allocation from the Training Assistance Fund for that year shall be applied so as to reduce fees levied on employers under this chapter in the succeeding year.

§1725. Legislative review

Standards and regulations adopted under this chapter shall remain in effect until 90 days after the date of adjournment of the next regular session of the Legislature unless approved by the Legislature by resolve.

Sec. 3. Allocation of Chemical Information and Training Assistance Fund. The following funds are allocated from the Training Assistance Fund to carry out the purposes of Title 26, chapter 22.

| | <u>1983-84</u> | <u>1984-85</u> |
|-----------------------------|----------------|-------------------|
| <u>LABOR, DEPARTMENT OF</u> | | |
| Bureau of Labor Standards | | |
| Positions | (2) | (5 1/2) |
| Personal Services | \$10,000 | \$100,000 |
| All Other | 10,000 | 60,000 |
| Capital Expenditures | <u>20,000</u> | <u> </u> |
| Total | \$40,000 | \$160,000 |

Sec. 4. PL 1983, c. 591, as amended by PL 1983, c. 622, and as further amended by PL 1983, c. 708, is repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 25, 1984.