

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

3. Examination of witnesses. The State Tax Assessor may summon ~~before him~~ and examine under oath any person whose testimony ~~he deems~~ is deemed necessary to the proper discharge of ~~his~~ the State Tax Assessor's duties and may require the production of all books or other documents in the custody or control of that person which relate to any matter which the State Tax Assessor has authority to investigate or determine. This examination may be conducted by an agent designated by the State Tax Assessor and ~~shall be deemed~~ is considered an "official proceeding" within the meaning of that term in Title 17-A, section 451. The State Tax Assessor or that agent may administer all oaths required under this Title and may, in ~~his~~ the State Tax Assessor's discretion, reduce any examination under oath to writing. Any person summoned under this section is entitled to receive at the same time a copy of the Taxpayer Bill of Rights statement required to be prepared under subsection 7-A.

Any justice of the Superior Court and, with respect to the taxes imposed under Part 6, any judge of probate, upon application of the State Tax Assessor, may compel the attendance of witnesses and the giving of testimony before the State Tax Assessor in the same manner, to the same extent and subject to the same penalties as if before the court over which that justice or judge presides.

Sec. 2. 36 MRSA §112, sub-§7-A is enacted to read:

7-A. Taxpayer Bill of Rights. The State Tax Assessor shall prepare a statement describing in simple and nontechnical terms the rights of a taxpayer and the obligations of the Bureau of Taxation during an audit. The statement must also explain the procedures by which a taxpayer may appeal any adverse decision of the State Tax Assessor, including the informal conference and judicial appeals. This statement must be distributed by the Bureau of Taxation to any taxpayer contacted with respect to the determination or collection of any tax, excluding the normal mailing of tax forms.

Sec. 3. 36 MRSA §151, first and 2nd ¶¶, as amended by PL 1981, c. 364, §9, are further amended to read:

Any person who is entitled by law to receive notice of a determination of the State Tax Assessor and who is aggrieved by that determination may petition in writing, within ~~45~~ 30 days after receipt of notice of that determination, for reconsideration by the State Tax Assessor of that determination.

If a petition for reconsideration is filed within the specified time period, the State Tax Assessor shall reconsider ~~his~~ the determination. If the petitioner has so requested in ~~his~~ the petition, the State Tax Assessor shall hold an informal conference with the petitioner to receive additional information and to hear argument regarding the protested determination and shall give the petitioner ~~10 days'~~ 10 working days' notice of the time and place of the conference. However, the conference may be held with less than 10 working days' notice if a mutually con-

venient time and place can be arranged between the petitioner and the State Tax Assessor. The reconsideration, with or without an informal conference, ~~shall not be deemed to be~~ is not an "adjudicatory proceeding" ~~within the meaning of that term in the Maine Administrative Procedure Act as defined in Title 5, section 8002.~~

Sec. 4. 36 MRSA §151-A is enacted to read:

§151-A. Additional safeguards

1. Recording of interviews. The State Tax Assessor, upon advance request, shall allow a taxpayer to make an audio recording of any in-person interview concerning the determination and collection of any tax. The recording must be made at the taxpayer's own expense and with that person's own equipment.

The State Tax Assessor may record the interview if the State Tax Assessor:

A. Informs the taxpayer of the recording prior to the interview; and

B. Upon request of the taxpayer, provides the taxpayer with a transcript or copy of the recording, but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of the transcript or copy.

2. Representative of taxpayer. The taxpayer may bring to any interview or informal conference any attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer. If the taxpayer does not bring anyone to the conference but clearly states at any time during the informal conference that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary or any other person permitted to represent the taxpayer, the State Tax Assessor shall suspend the interview. The suspension must occur even if the taxpayer has answered one or more questions before that point in the interview. The conference must be rescheduled to be held within 10 working days.

See title page for effective date.

CHAPTER 849

H.P. 1715 - L.D. 2368

An Act to Reduce Toxics in Packaging

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

Sec. 1. 32 MRSA c. 26-A is enacted to read:

CHAPTER 26-A

REDUCTION OF TOXICS IN PACKAGING

§1731. Purpose

The purpose of this chapter is to reduce toxicity of packaging waste without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components. Under this chapter, reduction of the toxicity in packaging is accomplished by prohibiting the unnecessary addition of heavy metals, such as lead, mercury, cadmium and hexavalent chromium, in packaging and packaging components.

§1732. Definitions

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

1. Agency. "Agency" means the Maine Waste Management Agency.

2. Distributor. "Distributor" means any person, firm or corporation that sells a packaged product to a retailer in this State or any person, firm or corporation that receives a shipment or consignment of, or in any other manner acquires, packaged products outside the State for sale to consumers in the State.

3. Manufacturer. "Manufacturer" means any person who manufactures a package or packaging component.

4. Package. "Package" means a container used in marketing, protecting or handling a product and includes a unit package and a shipping container defined by the American Society for Testing and Materials in its annual book of standards as ASTM, D996. "Package" also includes such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.

5. Packaging component. "Packaging component" means any individual part of an assembled package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks and labels.

6. Supplier. "Supplier" means any person, firm or corporation that sells packages or packaging components to a distributor.

§1733. Prohibition; schedule for removal of incidental amounts

1. Prohibition of sale of packaging. A manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component that includes inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

2. Prohibition of sale of product in packaging. A manufacturer or distributor may not offer for sale or for promotional purposes any product in a package that includes, in the package itself or any packaging components, inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

3. Concentration levels. The sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium present in any package or packaging component may not exceed:

A. Effective April 1, 1992, 600 parts per million by weight, or 0.06%;

B. Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and

C. Effective April 1, 1994, 100 parts per million by weight, or 0.01%.

4. Substitute materials. No material used to replace lead, cadmium, mercury or hexavalent chromium in a package or packaging component may be used in a quantity or manner that creates a hazard as great as or greater than the hazard created by the lead, cadmium, mercury or hexavalent chromium.

§1734. Exemptions

All packages and packaging components are subject to the provisions of section 1733 unless:

1. Manufactured prior to effective date. The package or packaging component has a code indicating a date of manufacture prior to the effective date of this section; or

2. Health and safety requirements; feasibility; post-consumer materials. The manufacturer, supplier or distributor petitions the agency for an exemption for a particular package or packaging component and the agency grants an exemption for one or more of the following reasons.

A. The package or packaging component contains lead, cadmium, mercury or hexavalent chromium added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of state or federal law.

B. There is no feasible alternative to the use of lead, cadmium, mercury or hexavalent chromium in the package or packaging component. For the purposes of this section, "no feasible alternative" means a use in which the regulated substance is essential to the protection, safe handling or function of the package's contents.

C. The addition of post-consumer materials causes the package or packaging component to exceed the maximum concentration levels set forth in section 1733, subsection 3.

For packages or packaging components exempted under paragraph A or B, a 2-year exemption may be granted and that exemption may be renewed for an additional 2 years. An exemption granted under paragraph C expires 4 years after the effective date of this chapter.

§1735. Certificate of compliance

A certificate of compliance is a document developed by a manufacturer and filed with the agency that attests that one or more packages or packaging components meets the standards established in section 1733 or is exempt under the provisions of section 1734. If compliance is achieved under the exemptions provided in section 1734, the certificate must state the specific basis upon which the exemption is claimed. A certificate of compliance must be signed by an authorized official of the manufacturer. A certificate of compliance may cover more than one type of package or packaging component as long as they are separately identified.

1. New or reformulated packaging. If the manufacturer reformulates or creates a new package or packaging component, the manufacturer shall provide the agency with an amended or new certificate of compliance for the reformulated or new package or packaging component.

2. Presentation of certificates. Each manufacturer shall furnish the agency with an original certificate of compliance and each manufacturer or supplier shall furnish, at the agency's request, copies of a certificate of compliance for distribution to the public.

§1736. Enforcement and penalties

1. Enforcement. The Department of Agriculture, Food and Rural Resources shall enforce the provisions of this chapter and may inspect, with the consent of the owner or agent, any property or building to accomplish the objectives of this chapter.

2. Violation. Any manufacturer or supplier that violates this chapter commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each package or packaging component in violation constitutes the basis of a separate offense.

§1737. Rules

The agency shall adopt rules implementing the provisions of this chapter in consultation with the Department of Agriculture, Food and Rural Resources. Rules must be adopted in accordance with the Maine Administrative Procedure Act. No rule adopted pursuant to this

chapter may add or remove prohibitions on packaging or packaging components.

§1738. Public access

A citizen of the State may request in writing from the agency a copy of the certificate of compliance for a package or packaging component found in use or for sale in the State.

§1739. Effective date

This chapter takes effect April 1, 1992.

Sec. 2. Agency rulemaking; assistance. Prior to the effective date of the Maine Revised Statutes, Title 32, chapter 26-A, the Maine Waste Management Agency may adopt rules necessary to implement the provisions of this Act. The agency shall assist manufacturers and others that wish to comply with Title 32, section 1733, prior to its effective date.

Sec. 3. State review. The Maine Waste Management Agency shall, in consultation with the Source Reduction Council of the Coalition of Northeast Governors, review the effectiveness of the Maine Revised Statutes, Title 32, chapter 26-A, and shall develop a report based on that review. The report may contain recommendations to add other toxic substances contained in packaging to the list set forth in that chapter in order to further reduce the toxicity of packaging waste, and must contain recommendations whether to continue the recycling exemption provided in Title 32, section 1734, subsection 2, paragraph 3 and describe the nature of the elements used in lieu of lead, mercury, cadmium and hexavalent chromium. The agency shall issue its recommendations in a report submitted to the Governor and the Office of the Executive Director of the Legislative Council for transmittal to the Joint Standing Committee on Energy and Natural Resources by December 1, 1992.

See title page for effective date.

CHAPTER 850

H.P. 1721 - L.D. 2377

An Act to Reduce the Use of Marijuana and to Make Related Amendments to the Drug Laws

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

Sec. 1. 15 MRSA §3314, sub-§3-A is enacted to read:

3-A. Operator's license suspension for drug offenses. The court may suspend for a period of 6 months the license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license of any