



# 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 "R 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.