

By Mr. McNeil of Malden, petition of John C. McNeil for legislation to provide warnings of significant health risks from toxic chemicals. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT TO PROVIDE WARNINGS OF SIGNIFICANT HEALTH RISKS FROM TOXIC CHEMICALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. *Whereas*, The commonwealth of Massachusetts
2 has suffered serious environmental damage and public and
3 occupational health problems due to toxic substances, and that
4 an effective way to protect the environment and public health is
5 through reduced use of toxic and hazardous substances; and

6 *Whereas* Products are often a widespread source of environ-
7 mental and human exposure to dangerous substances, and a
8 component of hazardous waste in the commonwealth of
9 Massachusetts; it is hereby resolved that the policy goals of this
10 act shall be:

11 (1) to require warnings from persons that knowingly expose
12 individuals through products to toxic substances that threaten the
13 environment or can cause cancer, birth defects and other serious
14 health effects;

15 (2) to encourage companies to reformulate products and
16 develop safe products by eliminating or avoiding the use of
17 harmful chemicals;

18 (3) to improve public health, and reduce health care costs, by
19 protecting people exposed to harmful products, particularly
20 sensitive populations such as children and infants, pregnant
21 women, the elderly, and people with respiratory and other
22 illnesses; and

23 (4) to educate and inform consumers about harmful chemicals
24 to products.

1 SECTION 2. The General Laws are hereby amended by
2 inserting after chapter 21I the following chapter:

3 Chapter 21J. Massachusetts Toxic Warnings Act.

4 Section 1. This chapter shall be known and may be cited as the
5 "Massachusetts Toxic Warnings Act."

6 Section 2. Definitions. In this chapter, the following words and
7 phrases shall have the following meanings:

8 "Commissioner," the Commissioner of Public Health.

9 "Department," the Department of Public Health.

10 "Environmental health threat," a substance listed pursuant to
11 paragraph (b) of section three that poses an undue risk to public
12 health due to its toxic effects or its persistence, bioaccumulation,
13 or toxicity in the environment.

14 "Label," a display of written, printed, or graphic matter upon
15 the immediate container and any outside container or packaging
16 of a product, or a display affixed to a product that is not packaged
17 or in a container.

18 "Massachusetts substance list," a compilation of toxic or
19 hazardous substances promulgated pursuant to section four of
20 chapter one hundred and eleven F.

21 "Other toxic effects," reproductive toxicity, neurotoxicity,
22 mutagenicity, or other serious or irreversible chronic human
23 health effects.

24 "Person," an individual, partnership, firm, company,
25 corporation, trust, association, group of individuals, estate, legal
26 representative or agent.

27 "Products," any goods sold or intended to be sold, including
28 food.

29 "Reproductive toxicity," reproductive or developmental
30 toxicity, including but not limited to birth defects, teratogenicity,
31 fetal toxicity, and sterility.

32 "Substance," any chemical substance or mixture of substances.

33 "Toxic effects," cancer or other toxic effects, as defined herein.

34 "Toxic effects warning list," a list of substances with toxic
35 effects established by section three, which may be a subset of the
36 Massachusetts substance list.

37 "Warning," a communication of the risks of cancer or other
38 toxic effects due to a product, that need not be made separately

39 to each exposed individual and that may be provided by a label;
40 provided that the warning is clearly associated with and in close
41 proximity to the individual product in the normal course of
42 business, that clear and reasonable warning to purchasers of the
43 product is accomplished before purchase, and that such warning
44 is not provided by telephone.

45 Section 3. The Toxic Effects Warning List.

46 (a). The department of public health shall establish a toxic
47 effects warning list. On or before September 1, 1992, the
48 department of public health shall cause the list to be published
49 and to consist of substances known to the department to cause
50 cancer or reproductive toxicity. The list shall include, but not be
51 limited to, those substances designated as carcinogens or
52 teratogens on the Massachusetts substances list. If the list is not
53 in effect on September 1, 1992, the list shall include the substances
54 designated as carcinogens or teratogens on the most recently
55 published Massachusetts substance list.

56 (b) On or before March 1, 1992, and annually thereafter, the
57 department of environmental protection shall identify for
58 inclusion on the toxic effects warnings list, and cause to be
59 published, no less than five and no more than fifteen
60 environmental health threats that result from aggregate toxic
61 chemical use, emissions, or disposal. If the environmental health
62 threats have not been identified on March 1, 1992, the
63 environmental health threats shall include the ten substances with
64 the largest total environmental emissions from Massachusetts
65 facilities in the most recent database available pursuant to the
66 Emergency Planning and Community Right-to-Know Act, 42
67 U.S.C. S11001 et. Seq. (Public Law 99-499). On or before
68 September 1, 1992, the toxic effects warnings list shall include the
69 identified environmental health threats.

70 (c) On or before September 1, 1993, the department shall cause
71 to be added to the toxic effects warning list those substances
72 known to the department to cause other toxic effects. Such
73 additions shall include, but not be limited to, those substances
74 designated as neurotoxins or mutagens on the Massachusetts
75 substances list. If the additions are not in effect on September 1,
76 1993, the toxic effects warning list shall include the substances

77 designated as neurotoxins, mutagens or substances that cause
78 other toxic effects on the most recently published version of the
79 Massachusetts substance list.

80 (d) The department shall cause the toxic effects warning list to
81 be revised in light of additional knowledge and to be republished
82 at least once per year.

83 (e) A substance is known to the department to cause cancer
84 or other toxic effects if

85 (1) in the opinion of the department, the substance has been
86 shown through substantial and valid scientific evidence, according
87 to generally accepted principles, to cause cancer or other toxic
88 effects; or

89 (2) a body considered to be authoritative has formally
90 identified the substance to cause cancer or other toxic effects; or

91 (3) an agency of the state or federal government has formally
92 required it to be labeled or identified as a substance that causes
93 cancer or other toxic effects; or

94 (4) a person has notified the department of a substance found
95 to cause cancer or other toxic effects, including but not limited
96 to notifications required by section nine, provided that the
97 evidence is substantial and valid.

98 Section 4. Warning Requirement for Products.

99 No person shall knowingly expose through a product any
100 individual to a substance known to the department to cause cancer
101 or other toxic effects, or that is an environmental health threat,
102 without giving warning to such individual, except as provided in
103 section five.

104 Rules and regulations implementing this section shall to the
105 extent practicable place the obligation to provide labels or other
106 warnings on the producer or packager, except where a retail or
107 wholesale seller is responsible for introducing into a product a
108 substance subject to this section.

109 Section 5. Exemptions from Warning Requirement.

110 No warning requirement established by section four shall apply
111 to:

112 (a) an exposure for which federal law governs warnings in a
113 manner that preempts state authority; or

114 (b) an exposure that takes place less than eighteen months
115 subsequent to the listing of the substance in question on the toxic
116 effects warning list; or

117 (c) an exposure for which the person responsible can show,
118 using the most conservative methodology that is protective of
119 public health and generally accepted to be scientifically valid, that
120 the product in question:

121 (1) poses no significant risk of cancer, assuming lifetime
122 exposure; and

123 (2) will not cause or contribute to other toxic effects for
124 which there are scientifically valid thresholds below which
125 exposure is safe, including an ample margin of safety; and,

126 (3) in the case of any substance identified as an environmen-
127 tal health threat, contains less than one-tenth of one per cent by
128 product weight, excluding packaging or dispenser of the
129 substance; provided, however, that the department of environ-
130 mental protection may promulgate a regulation to exempt other
131 per cents of product weight, but in no event less than two per cent.

132 The exemption in clause one in paragraph (c) of this section
133 shall also apply to any other toxic effects of any substance for
134 which there are no scientifically valid thresholds below which
135 exposure is safe.

136 An ample margin of safety shall be one thousand times the no
137 observable effect level, or one hundred times the no observable
138 effect level if based on complete and reliable exposure and toxicity
139 data; provided that the department may promulgate a regulation,
140 based on compelling scientifically valid evidence, to provide for
141 a particular substance that a lower margin is ample if the
142 department has found such margin to be ample for the most
143 susceptible subpopulation that can be identified.

144 In any action brought to enforce this section, the burden of
145 showing that an exposure is exempt under this section shall be
146 on the person responsible for warning. The burden of satisfying
147 clauses one and two of paragraph (c) shall be limited to the
148 cumulative risk of the toxic effects known to the department to
149 be caused by substances in the product.

150 Section 6. List of Substances Required to be Tested for Toxic
151 Effects.

152 On or before March 1, 1994, and at least once per year
153 thereafter, the department shall cause to be published a separate
154 list of substances that are required by state or federal law to have

155 been assessed or tested for potential to cause cancer or other toxic
156 effects and that the department has not yet found to have been
157 adequately assessed or tested.

158 Section 7. Disclosure of Information on Toxic Substances.

159 (a) Any person providing a warning pursuant to section four
160 shall, upon request from any individual, disclose the chemical
161 identify of any substance for which a warning was provided, unless
162 disclosure to purchasers of the product of the chemical identity
163 is being otherwise accomplished.

164 (b) Any person shall notify the department about the chemical
165 identity of any substance, and make all health assessments of the
166 substance available to the department for review, before
167 introducing into a product any substance that the person knows,
168 or has reason to know, to cause cancer or other toxic effects and
169 that is not on the toxic effects warning list.

170 Section 8. Duties of State Agencies.

171 (a) The department, after consultation with the department of
172 environmental protection, shall promulgate rules, regulations or
173 guidelines to identify methodologies that may be utilized to
174 determine exposures that would satisfy the exemption in
175 paragraph (c) of section five. If regulations or guidelines pursuant
176 to this paragraph are not in effect by September 1, 1992, the
177 requirements of sections four and five shall nevertheless take full
178 effect.

179 (b) The department shall adopt and modify regulations, rules,
180 standards, and permits as it deems necessary to implement this
181 chapter and further its purposes. The department shall
182 promulgate regulations to prevent and minimize frivolous,
183 misleading or inadequate warnings. The department, or the
184 department of environmental protection if so designated by the
185 governor, may upon request or at its own initiative determine
186 levels below which exposures to a substance would satisfy section
187 five. Said department may assess reasonable charges to recover
188 its costs in determining such levels.

189 (c) The department shall establish a scientific advisory
190 committee concerning the department's duties under this chapter,
191 unless a committee with similar composition and purpose is
192 already established. The members of the committee shall serve

193 without compensation. No more than one-fourth of the committee
194 shall consist of industry representatives or individuals
195 compensated by persons responsible for satisfying the require-
196 ments of section four. No less than one-fourth of the committee
197 shall consist of nominees of public health, consumer advocacy,
198 or environmental organizations.

199 Section 9. Penalties and Enforcement.

200 (a) Any person violating section four may be enjoined in the
201 superior court for the jurisdiction in which such violation is
202 occurring.

203 (b) Any person who violates any provision of section four shall
204 be subject to a civil penalty not to exceed five thousand dollars
205 per product unit for each violation in addition to any other penalty
206 established by law. Such civil penalties may be assessed and
207 recovered in a civil action brought in the superior court for the
208 jurisdiction in which such violation has occurred.

209 (c) Actions pursuant to this section may be brought by any
210 person in the public interest if (1) the action is commenced more
211 than sixty days after the person has given notice in writing of the
212 violation which is the subject of the action to the attorney general
213 and to the alleged violator, and (2) the attorney general has not
214 commenced and is not diligently pursuing an action against such
215 violation. A court may award costs of litigation, including
216 reasonable attorney and expert witness fees, to any party that
217 advances the purposes of this statute through an action brought
218 pursuant to this paragraph.

219 (d) Action pursuant to this section may be brought by the
220 attorney general. If the attorney general brings an enforcement
221 action pursuant to the written notice described in paragraph (c),
222 before the noticing party brings an action pursuant to paragraph
223 (c), the noticing party shall be permitted to intervene in the action
224 on such terms as the court finds appropriate.

225 Section 10. Nothing in this chapter shall diminish any legal
226 obligation otherwise required at common law or by statute or
227 regulation, and nothing in this chapter shall create or enlarge any
228 defense in any action to enforce such legal obligation. Penalties
229 and sanctions imposed under this chapter shall be in addition to
230 any penalties or sanctions otherwise prescribed by law.

