



The Nelson A. Rockefeller Center at Dartmouth College
The Center for Public Policy and the Social Sciences

Policy Research Shop

Revising Trade and Commerce Statutes: Sales of Specific Items

A Study of New Hampshire's RSA Chapter 339

Presented to the Commerce and Consumer Affairs Committee of
the New Hampshire House of Representatives

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EXECUTIVE SUMMARY

Chapter 339 of the New Hampshire Revised Statutes (RSA) regulates the sale of specific items in the state and can be found under *Title XXXI: Trade and Commerce*. The chapter contains many laws enacted in the nineteenth and early twentieth centuries that are outdated and not actively enforced. This report provides an assessment of the statutes in Chapter 339 and considers which statutes might be considered for repeal. The report begins with a description of the methodology we employed. Using a set of key questions as a guide for analysis, we developed criteria and created a codebook to evaluate each statute in Chapter 339. The next section identifies the criteria required for a statute to be recommended for repeal and provides comprehensive analyses of several of the statutes. Each statute is coded and identified as still relevant, legally irrelevant, or empirically irrelevant. Next, the report provides possible policy options based on the evaluations of the statutes. Finally, it closes with a section on recommendations for future research, interviews, and improvement methods. Ultimately, we find that when we apply these standards some statutes might be considered for repeal while others are still relevant to New Hampshire trade and commerce. The appendices include the codebook and an analysis of each of the 339 statutes repealed to date.

1. INTRODUCTION

Chapter 339 of the New Hampshire Revised Statutes Annotated regulates the sale of specific items in the state and still includes laws that were enacted in the nineteenth and early twentieth centuries. The laws regulate the sale of items such as kerosene, raw cotton, arsenic, and secondhand bedding. The statutes in Chapter 339 generally fall into the categories of health, public safety, energy, and industry. Thus, agencies such as the New Hampshire Department of Health and Services, the New Hampshire Office of Energy and Planning, and the New Hampshire Consumer Protection and Antitrust Bureau are responsible for enforcing many of the regulations. However, many of these laws are no longer relevant to New Hampshire trade and commerce because of changes in technology, federal policy, and the industries they regulate.

Over time, state legislators have repealed and revised various statutes in Chapter 339, though some remaining statutes may still be outdated. Representative Carol McGuire of the New Hampshire House has taken an interest in reexamining Chapter 339 and has tasked us with identifying the statutes that are obsolete, antiquated, and/or irrelevant. Removing these statutes would streamline and update the RSA. Accordingly, we identified several key questions that guided our research. The questions are: Which statutes in Chapter 339 are still relevant in a regulatory capacity? Which statutes address outmoded industries and technologies? Which statutes are superseded by other state or federal laws? Which statutes serve to augment existing state or federal law?

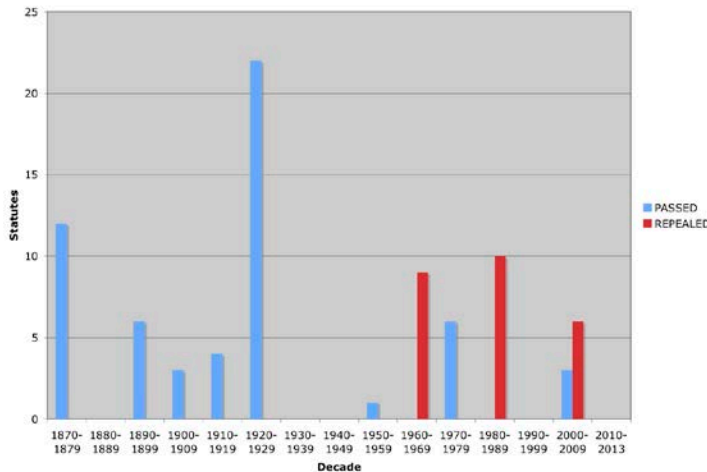


The purpose of this report is to investigate the provisions in Chapter 339 by developing detailed criteria to analyze their relevance and to define conditions under which the NH House of Representatives might consider them for repeal. This report identifies statutes for possible repeal on the basis of consistent, comprehensive criteria.

2. STATUTE ANALYSIS METHODOLOGY

To determine whether the statutes in Chapter 339 are relevant to current trade and commerce in New Hampshire, we conducted a detailed analysis of each one. Our analysis began with the oldest regulations, which may have the greatest potential to be antiquated, and moved forward chronologically through the most recent regulations. In total, this analysis spans almost 140 years of regulations in New Hampshire, from the 1870 regulations on raw cotton to the 2007 regulations on gasoline. Currently, the General Court shows that there are 57 standing statutes in Chapter 339, some of which have been

Figure 1: Passed and Repealed Statutes



revised over time. The listings also show the names of an additional 24 statutes that were repealed between 1965 and 2007. As seen in Figure 1, most of the statutes are older than 1929, while all legislation for repeals have occurred since the 1960s. There have been three rounds of repeal to date. In order to examine the continuing relevance of the statutes, we ran each non-repealed statute through the Codebook, an explanation of which is provided in the following section.

To construct a reliable and rigorous system of analysis, we asked an identical series of questions of each statute. This line of analysis formed the basis of our codebook, which is made up of five sections designed to investigate the relevant aspect of each of the Chapter 339 statutes (see Appendix A). The ultimate goal of this investigation is to accurately determine how the statutes function today and create suggestions as to whether any are eligible for consideration for repeal by the legislature. This section describes the method we used to find, describe, and record the statutes. The purpose of this section is to allow replication of our methods for future statute analysis, or verification of our findings.



2.1 Using the Codebook

The Codebook begins with a *basic information* section that asks a series of identifying questions: *statute number*, *statute name*, a brief *statute description*, *date of passage*, *date effective* if this is different, and a *category* such as health or energy. After answering these initial questions, the researcher proceeds to a series of in-depth questions that ask about essential topics such as the reason for the statute's existence, the presence of similar state and federal law, and the responsible agency's role in current regulation of the item or activity. The five sections that contain these substantive questions are *origin*, *general regulation*, *state regulation*, *federal regulation*, and *analogous regulation in Vermont*. Each section has a series of questions with answers that can be coded as one of three or more options. An answer of "0" does nothing to suggest the repeal of the statute, while an answer of "1" to any question suggests that the statute may be eligible to be considered for repeal. For unclear or complicated situations answering "2" suggests the need for additional research.

In the *origin* section, we ask whether the reason for the passage of the statute still exists, since we contend that a statute may be considered for repeal if the original reason for passage is proven to have changed significantly over time. Answering this question requires research into the historical context and logic of the regulation at the time of its passage, as well as its current application. This section provides a solid background for answering the subsequent questions.

The *general regulation* section determines the regulatory body in charge of each statute. We first ask if the activity or item is still regulated in New Hampshire. Answering "yes" (coded as 0) suggests that it is still regulated regardless of whether the agency derives its regulatory authority from Chapter 339, other state laws, or federal law. The follow-up asks which agency is responsible for the regulation. Answering "no" (coded as 1) suggests that the activity or item is not regulated in the state. A subsequent question asks why. The answer may be because the responsible agency is choosing not to fulfill its regulatory role or because there is currently no regulatory role for the agency. If there is currently no regulatory role, this may suggest repeal since the regulation would not be enforced or considered necessary.

The next two sections, *federal regulation* and *state regulation*, examine the relationship between the statute and other existing laws on the topic. The researcher first determines whether there is a federal or state law on the topic and, if so, whether this law was passed after the statute in Chapter 339. This is important because if a federal or state law was passed after a Chapter 339 statute, the law may supersede the statute and render it irrelevant. If this is the case, the statute may be considered for repeal.



Lastly, we look at *analogous regulations in Vermont*. We first look to Title 9, Commerce and Trade, as found at <http://www.leg.state.vt.us/statutes/chapters.cfm?Title=09>. This is the set of regulations most similar to those found under Chapter 339, though similar regulations may be found elsewhere in Vermont's statutory code. By looking at similar regulation in Vermont, we can determine whether the neighboring state considers the regulations relevant. While Vermont's legislation provides valuable additional information about regulations, coding in this section does not provide conclusive evidence about recommendation for repeal. Finding that Vermont does not regulate the same item or activity as New Hampshire may indicate that New Hampshire does not need to either, though state-to-state differences must be considered. Finding that Vermont has an equivalent regulation provides inconclusive evidence, since their statutes may be antiquated as well or Vermont may be regulating an activity or item that is relevant to that state and obsolete in New Hampshire. Furthermore, we can look into where New Hampshire is missing potentially useful regulations that its neighboring state has chosen to write into its laws.

Every statute in Chapter 339 has been subjected to this series of rigorous questions. The information from each statute was entered into a spreadsheet with all the results, which provides a comprehensive overview of the Chapter. Additionally, researchers performed further inter-coder reliability checks, where multiple researchers independently examined each statute using the codebook. The results of our reliability checks show that the codebook provides *precise*, replicable analysis.

Further, the New Hampshire legislature has repealed statutes seven times in the past. Repeals have occurred when regulatory changes need to be made (i.e. the regulatory body changes but the law itself stays the same), when laws are rendered empirically irrelevant by changes in custom over time, or when laws become legally irrelevant because a state or federal law supersedes the existing statute. We subjected these repealed statutes to our codebook questions to confirm that our methods would lead us to conclude that they might be considered for repeal. (See Appendix B.) After coding, we concluded that all of the previously repealed statutes would be candidates for repeal under our criteria. This test shows the *accuracy* of our coding process, and thus suggests that it can provide useful and reasonable recommendations.

The inter-coder reliability checks and the coding of the repealed statutes show that our methods are both *precise* and *accurate*. Thus, our methods provide a consistent and replicable process that leads to reliable recommendations for repeal.

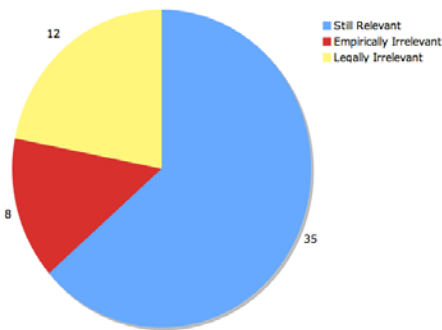


3. CHAPTER 339 STATUTE ANALYSIS

The codebook ensures that relevant information is compiled for each statute and provides data to analyze. However, each series of answers coded as “0” or “1” must be turned into a concrete suggestion about whether the statute should be considered for repeal. To do

Figure 2: Coding Results

Distribution of Statutes by Category



this, we place each statute in one of three categories based on which answers were selected. The first category is *still relevant*. Second, some statutes have become *legally irrelevant*. Third, other statutes may now be considered *empirically irrelevant*. The two categories of irrelevant statutes will provide suggestions for which statutes may be considered for repeal. Figure 2 summarizes our findings. It shows that while some of the statutes may be considered for repeal, a majority of Chapter 339’s statutes are still relevant. Table 1 shows how each section of statutes coded into our three categories.

3.1 Statutes That Are Still Relevant

Statutes that currently regulate an activity, industry or item in New Hampshire are considered relevant to the state’s statutory law. Coding results have yielded the conclusion that statutes placed in the relevant category function in conjunction with state and/or federal law to provide complementary regulatory mechanisms. These statutes build on existing federal and/or state regulations by focusing on a specific aspect of the activity, industry or item being regulated.

A distinct combination of answers obtained from the codebook indicates whether a statute belongs in the still relevant category. The most pertinent questions provided by the codebook for category determination are found in *origin* and *general regulation*. If the reason the regulation was passed still exists and it is currently being enforced by a state agency, then a researcher may make the determination that the statute is still relevant. Furthermore, if a researcher finds that federal and/or state laws exist on the subject, and that the federal and/or state laws were passed prior to the statute in Chapter 339, the researcher may conclude that the statute complements existing federal and/or state laws. We do not recommend these statutes for repeal, as they can successfully coexist with other relevant regulatory legislation. Where the codebook asks about *analogous regulation in Vermont*, it should be noted that a lack of an analogous regulation in Vermont does not imply that the statute in Chapter 339 is irrelevant.



Table 1: Statutes by Category

Number(s)	Section
Still Relevant	
339-2A	Unsolicited Merchandise
339: 25-30A	Petroleum, Naphtha and Illuminating Oils
339:39-44	Energy Administrator
339:52-55	Caustic Potash, Oxalic Acid, Etc.
339:56-68	Manufacture, Sale, Etc., of Bedding
339:69-70	Sale of Solid Fuel Heating Appliances
339:77	Lead Fishing Sinkers and Jigs
339:78-79	Petroleum Sales Contracts
Empirically Irrelevant	
339:1-2	Sales Tickets
339:19-21	Raw Cotton
339:22-24	Petroleum, Naphtha and Illuminating Oils: Inspectors
Legally Irrelevant	
339:14-15	Leather
339:31-34	Goods Marked "Sterling," Etc.
339:45-46	Fabrics, Etc., Containing Arsenic
339:47-50	Wood Alcohol, Etc.

Many of the statutes in Chapter 339 coded as still relevant by virtue of our criteria. These statutes currently regulate an activity, industry, or item in New Hampshire and the reasons for their passage still exists. They function in conjunction with state and/or federal law to provide complementary regulatory mechanisms. By focusing on a specific aspect of the activity, industry, or item being regulated, these statutes build on existing federal and/or state regulations. Our criteria suggest that the following statutes be kept as part of New Hampshire's statutory code.

3.1.1 Unsolicited Merchandise

Additionally, 339:2A, protecting consumers from unsolicited merchandise, is still relevant. Before the passage of this regulation and similar ones in various states, companies were able to send merchandise to unsuspecting consumers, saying that the consumers had ordered it or that they had to return it by a certain date if they did not want to pay for it. The Federal Trade Commission has been concerned with the practice of unsolicited merchandise since 1939, and has a broad prohibition on the practice that complements New Hampshire's more specific regulation.¹ The Postal Reorganization Act of 1970 gave the United States Post Office the ability to prohibit this, but New Hampshire's statute became effective in 1973. Therefore, the legislators drafting it had full knowledge of the current state of the law, and chose to add this statute to the existing regulatory framework. Due to the legal and empirical relevance of this statute, it remains a beneficial protection for New Hampshire consumers.

3.1.2 Sales and Tests of Fuels

Statutes 339:25-26, a part of the larger "Petroleum, Naphtha and Illuminating Oils" section, regulate the formulation and sales of fuel mixtures. First, 339:25 prohibits the sale of gasoline and illuminating oil mixtures and the sale of illuminating oils with a flash point of less than 100 degrees. The flash point test is a nationally recognized procedure designed to ensure that fuels do not ignite at low temperatures. Statute 339:26 says that violation of 339:25 is a misdemeanor, and that any violator must also compensate anyone who is damaged by the explosion or ignition of illegal fuels, and must give proceeds from the fuel sales to the state. After the 1869 Supreme Court case *United States v. DeWitt*



invalidated federal legislation requiring this test in intrastate commerce and establishing penalties, New Hampshire and other states passed statutes such as these in order to regulate the matter on the state level. New Hampshire's were passed in 1873, but amended as recently as 1983. Other states, including Vermont, retain these statutes to this day, indicating that the consumer safety and honest business practices they secure are relevant to modern commerce.

Yet while the content and purpose of the law remain relevant, there is uncertainty as to whether this statute is necessary for this purpose to be accomplished in the state. The New Hampshire Department of Safety's Division of Fire Safety publicly states that its definitions of combustible fuels are based on standards set forth by ASTM International, formerly known as the American Society for Testing and Materials. ASTM's mission is to promote the global distribution of voluntary consensus standards, and its relevant standard here is ASTM D 323, Standard Method of Test for Vapor Pressure of Petroleum Products. The Division of Fire Safety uses this standard when regulating fuel storage containers and other relevant matters, without referencing Chapter 339. However, neither the state fire code contained in Chapter 153 nor the fuel regulations of Chapter 339-B include statutes similar to 339:25-26. While the 339:25-26 may not be used in the current regulatory framework, their repeal has the potential to create a gap in the RSA. Therefore, keeping these statutes is cautiously recommended.

3.1.3 False Name

Statute 339:27, also located in the "Petroleum, Naphtha and Illuminating Oils" section, prohibits the sale of naphtha under a false name and says that violators must face the penalties outlined in 339:26. These are a misdemeanor charge, compensation for damages, and the forfeiture of proceeds to the state. Naphtha is a fuel that can still be considered a dangerous substance, though it is used in common products such as lighter fluid, fuel for camp stoves, and cleaning solvents. The "false or assumed name" referred to in the statute refers to sales of naphtha as illuminating oil. Vermont has a similar regulation. Due to its dangerous chemical properties, and the potential of dishonest sales, this statute may be considered still relevant. However, with illuminating oil sales decreasing across the state, this may be eligible for revisiting in the future.

3.1.4 Search, Special Permits, and Inspection

339:28, titled "Search," allows courts to issue search warrants if complaints are made to city officials, such as firemen, police chiefs, and judges. Due to the continuing legal relevance of search warrants and the empirical relevance of fuel safety, we recommend that this statute be kept. 339:29, "Special Permits," says that the fuel described in the rest of the section may not be kept outside on public land such as a yard, wharf, or railroad for



more than 24 hours in a city or 48 hours in a town. Though the evidence of the usage of this statute is unclear, and the fine of \$50 may be outdated, the principle of special permits for prolonged fuel usage may be relevant. Preventing theft, fire hazards, and the continued occupation of public space may all be reasonable justifications for the keeping of this statute. 339:30, “Inspection,” says that any crude or refined fuels – particularly petroleum, naphtha, kerosene, or illuminating oil – must be inspected before sale or storage. Although the inspector system set forth in 339:22-24 may be empirically irrelevant and there are more modern replacement options to consider, 339:30 is not based on any specific inspector system. Rather, the general requirement for a fuel inspection can be done via any system chosen by the legislature and relevant regulatory bodies. Therefore, 339:30 may still be relevant to Chapter 339 and fuel sales in New Hampshire.

3.1.5 Gasoline and Diesel Fuel Prices

339:30-a, requiring and regulating the labeling of prices outside gas stations, is still relevant. This six-part statute is the chapter’s longest, detailing options for where price labels may be posted, how large the numbers must be, as well as other requirements such as labels that state the difference between cash-only and credit card prices. The statute originated in 1974, yet the House Commerce and Consumer Affairs Committee updated it just last year with the passage of HB 1157, which went into effect on January 1, 2013. Its provisions affect New Hampshire gas consumers every day, as each of the state’s gas stations is required to comply. The statute complements federal regulations, as the Federal Trade Commission provides only four requirements for gas station signage, none of which regulate price labels. New Hampshire is one of a growing number of states across the country that chooses to regulate price labeling. For these reasons, 339:30-a serves an important purpose in current state commerce.

However, the RSA contains a redundancy where gas price labeling is concerned, with two regulations on the matter in two different chapters. The second regulation is in Chapter 339-B, the chapter titled “Sale of Liquid Fuels.” The statute is 339-B:8, Gasoline Sales, and was passed in 1971. It has just two sections and provides broad requirements on price labels, all of which are less detailed than the regulations in 339:30-a. This statute’s simplicity and relative age mean that it does not address modern complexities such as digital signs or the disparities in credit card and cash-only prices. 339:30-a’s more current and comprehensive regulations mean that this second statute is legally irrelevant, as well as empirically outdated. Therefore, 339-B:8 may be considered eligible for repeal, while 339:30-a remains relevant in daily commerce.



3.1.6 Energy Administrator

According to our criteria, the section of Chapter 339 titled “Energy Administrator” is still relevant. Consisting of statutes 339:39 to 339:44, the section provides that the governor of New Hampshire may appoint an energy administrator in the case of an emergency requiring public regulation of the supply and sale of fuel or allocation of the supply of electrical energy. The energy administrator can fix prices and standards of fuel and electrical energy and is subject to the authority of the governor. Originally passed in 1923, this section has been reauthorized as recently as 1995. The reason for its passage still exists today, and it is regulated by the Governor’s Office, the Department of Energy, the Department of the Interior, the Federal Energy Regulatory Commission, and the ISO New England. Both federal and state law exist on this subject including the 2005 Energy Policy Act, the 2008 Strategic Petroleum Reserve Suspension and Consumer Protection Act, and Chapter 374-F of the New Hampshire RSA. These statutes complement federal and state law and are still enforced in New Hampshire.

3.1.7 Caustic Potash, Oxalic Acid, Etc.

Statutes 339:52-55, enacted in 1925 and 1927, bans the misbranding or misleading advertising of ammonia or “any laundry type chlorinated bleaching fluid.” Household cleaners claiming to contain ammonia must contain at least four percent ammonia by weight, and any laundry type chlorine bleaching fluid must contain at least 2.25 percent chlorine by weight. This statute was designed to combat misleading market practices that described products as “sudsy ammonia” or something similar and then did not contain significant amounts of the chemical. The Federal Trade Commission’s Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction and the Commission’s policy on deceptive practices support these statutes, but the New Hampshire is specific enough not to be overruled by the FTC regulations.^{2,3} As ammonia is still commonly used in household cleaning supplies and these statutes are complemented by FTC regulations and analogous regulations in Vermont, the statutes are still relevant.⁴ Thus, our criteria suggest that they should be maintained as part of Chapter 339.

3.1.8 Manufacture, Sale, Etc., of Bedding

Statutes 339:56 to 339:68 regulate the sale of mattresses, pillows, cushions, quilts, and upholstered furniture with fillings of hair, down, feathers, wool, or cotton unless each is marked with a statement of the material used and whether it has been previously used. No secondhand materials may be used unless disinfected and approved by the New Hampshire Department of Health and Human Services. These statutes, originally passed in 1925, have been reauthorized as recently as 1995 because they safeguard public health. The reason for passage of this section still exists, and it is still actively enforced by the New Hampshire DHS and the U.S. Product Safety Commission. There is also federal law



on this subject that was passed prior to the reauthorization of this section in 1995, which suggests that the two are complementary. Thus, the statutes are still relevant and do not suggest repeal on the basis of our criteria.

3.1.9 Sale of Solid Fuel Heating Appliances

Titled “Sale of Solid Fuel Heating Appliances,” statutes 339:69 and 339:70 requires that all dealers selling solid fuel heating appliances provide the purchaser with complete instructions on safe installation and operation. Homes across New Hampshire continue to use these appliances. Passed in 1979, the statutes are enforced by the New Hampshire Department of Safety, Division of Fire Safety. 339:69 and 339:70 appear to be still relevant because the reason for their passage still exists and they are actively enforced by a New Hampshire agency.

3.1.10 Lead Fishing Sinkers and Jigs

Statute 339:77, which prohibits the sale of lead fishing sinkers and jigs, regulates an industry that is still relevant in New Hampshire. Fishing sinkers were traditionally cast in lead because of its low production cost, density, and lack of corrosiveness in water. However, lead sinkers have the potential to cause environmental damage if they are lost during fishing. The Environmental Protection Agency has identified lead as a poisonous metal that may cause significant health concerns in humans and animals.⁵ Federal laws currently regulate lead in paint, gasoline, and plumbing to prevent lead deposits into the water, air, and soil.⁶ While the United States Fish and Wildlife Service has prohibited the use of lead fishing sinkers in two wildlife refuges and Yellowstone National Park, the federal government does not regulate their sale and use around the country. A few states — including New Hampshire, Vermont, Maine and New York — have passed legislation regulating either use or sale of lead fishing sinkers.⁷ Only New Hampshire and Vermont have legislation in place regulating both the sale and use of lead fishing sinkers.⁸ In 2004, the legislature prohibited the use of lead fishing sinkers in the regulation 211:13-b and prohibited their sale under 339:77. This statute is still relevant as a regulatory mechanism because it functions as a complementary regulation to existing federal laws about lead in general that were passed before 339:77, and is as specific or restrictive. Consequently, statute 339:77 is still relevant as a regulatory mechanism in the New Hampshire as it functions as a complementary regulation to existing federal and state laws, was passed after those laws, and is actively enforced.

3.1.11 Petroleum Sales Contracts

Enacted in 2007, the “Petroleum Sales Contracts” section consists of statutes 339:78 and 339:79, which require guaranteed price plans and pre-paid contracts between customers and dealers of heating fuels. New Hampshire households spend approximately \$3,000



annually to heat their homes during the winter season.⁹ The section regulates contracts for sale of heating oil, kerosene, or liquefied petroleum gas for personal, family, or household use. The regulation is meant to ensure that consumers, as well as dealers, are protected from price increases and deceptive practices through contracts that govern the sale transactions. The federal government has also been regulating petroleum reserves and home heating oil since 1975 under the Energy Policy and Conservation Act. Further, the passage of the Energy Act of 2000 established the Northeast Home Heating Oil Reserve to protect northeast consumers from sudden increases in the price of fuels. The law also required the Secretary of Energy to report on the effectiveness of contracts between dealers and consumers to protect consumers against possible price surges. Thus, the original reason for passage still exists and the statutes are actively enforced in New Hampshire. This section complements existing federal and state law such as the Energy Act of 2000 and New Hampshire RSA 438:33. Additionally, Vermont has analogous legislation in its trade and commerce title (Title 9). Since this section was passed after both the federal and state laws it complements and is currently being enforced, it can be labeled as still relevant.

3.2 Statutes That Are Legally Irrelevant

A statute in Chapter 339 can be considered *legally irrelevant* if either federal or state law supersedes the statute. By supersede, we mean that the federal or state law already fully regulates, or even bans, the activity or item and does so in a more comprehensive and restrictive way than Chapter 339 law. If the reason for passage of a statute in Chapter 339 still exists and the item or activity is still regulated in New Hampshire, we look to *federal* and *state regulation* for evidence that the statute may be repealed. There must be federal or state legislation on the subject that was passed after the Chapter 339 regulation and that supersedes the Chapter 339 regulation for a statute to be classified as legally irrelevant. Additionally, finding that Vermont does not regulate the activity or item lends further evidence for repealing the statute but is neither necessary nor sufficient reason to label it as legally irrelevant.

3.2.1 Leather

Statutes 339:14 and 339:15, from 1871, grant leather craftsmen the right to stamp their leather with "...the initials of his Christian name and the whole of his surname, and the name of the town of his abode" and that this stamp "...shall be deemed a warranty that the leather so stamped is merchantable, made of good materials and well manufactured." The statutes also outlaw fraudulent stamping. While the wording of the beginning of the statutes is antiquated, the practice of labeling handmade leather goods is still encouraged by the League of New Hampshire Craftsmen and the outlaw of fraudulent stamping is still important in order to ensure quality.¹⁰ However, a federal regulation created in 1979 declared it "unfair or



deceptive to misrepresent, directly or by implication,” anything about the qualities of the leather, from material content to thickness to ease of cleaning.¹¹ This regulation supersedes the New Hampshire statutes, rendering them legally irrelevant.

3.2.2 Goods Marked "Sterling," Etc.

The section of statutes titled “Goods Marked ‘Sterling,’ Etc.” can also be labeled legally irrelevant, which it has been for over a century. This section consists of statutes 339:31 through 339:34, which say that goods labeled as sterling silver must contain 92.5 percent pure silver, while coin silver must consist of 90 percent pure silver. When these statutes were passed in 1895, New Hampshire joined Massachusetts as one of the first states to protect its consumers by regulating the labeling of silver products. However, the National Stamping Act soon made these statutes legally irrelevant. Passed by Congress in 1906 and put into effect on June 13, 1907, this law continues to provide the basis for regulating the marking and stamping of silver products nationwide. The National Stamping Act and Chapter 339 have identical definitions for sterling and coin silver, so a repeal of these statutes would not change the current standards in New Hampshire. The Federal Trade Commission (FTC) is currently responsible for enforcement of the law, which it regulates under its “guides for the jewelry, precious metals, and pewter industries”. Pursuing its mission to avoid unscrupulous sales practices, the FTC would continue to regulate coin and sterling silver regardless of whether New Hampshire’s equivalent statutes were repealed. Therefore, because federal law supersedes state law, and because the federal law is actively enforced, these statutes may be considered for repeal.

3.2.3 Fabrics, Etc. Containing Arsenic

The set of statutes titled “Fabrics, Etc., Containing Arsenic” in Chapter 339 can be considered legally irrelevant. This section consists of 339:45, which bans the sale or exchange of any fabrics or paper that contain arsenic and 339:46, which establishes a penalty for violating the statute. Both statutes were passed in 1901. Arsenic is a dangerous substance and presents health and safety risks in high concentrations. The reason for passage of the Chapter 339 statute still exists today because arsenic poses health risks and regulation serves to protect people from its harmful effects. Federal law, however, now supersedes this statute. In 1976, the federal government passed the Toxic Substances Control Act, which gave federal agencies such as the Environmental Protection Agency (EPA) wide authority to promulgate rules that regulated toxic substances such as arsenic.¹² The EPA has since banned arsenic in all household products and it is no longer produced in the United States. These regulations provide stricter and more comprehensive regulation than those established by the 339 statutes. Consequently, repealing these statutes would not affect the way arsenic is regulated in New Hampshire. Thus, federal law supersedes state law, and 339:45 and 339:46 may be considered for



repeal.

3.2.4 Wood Alcohol Etc.

The set of statutes titled “Wood Alcohol, Etc.” in Chapter 339 can be considered legally irrelevant. 339:47 prohibits the sale of any substance intended for human use, internally or externally, that contains any wood alcohol or methyl alcohol. 339:48 bans the sale of wood alcohol or methyl alcohol without appropriate warning labels. 339:49 prevents denatured alcohol from being sold as “alcohol” without proper qualification. 339:50 establishes that anyone who violates the statutes in this section will be guilty of a misdemeanor. All of the statutes were passed in either 1911 or 1915. Wood alcohol is a dangerous substance and presents serious health and safety risks to humans. Thus, the original reason for passage of these statutes still exists. Several federal laws, however, now supersede them. In 1976, the federal government passed the Toxic Substances Control Act, which gave federal agencies such as the Environmental Protection Agency (EPA) wide authority to promulgate rules that regulated toxic substances such as wood alcohol.¹³ The EPA currently regulates wood alcohol under this legislation. The 1935 Federal Alcohol Administration Act and the 1960 Federal Hazardous Substances Labeling Act, among others, also regulate wood alcohol. Taken together, they provide stricter and more comprehensive regulation of wood alcohol than the statutes in chapter 339. Thus, it looks like federal law supersedes state law in this case, and 339:47 to 339:50 may be considered for repeal.

3.3 Statutes That Are Empirically Irrelevant

A designation of *empirically irrelevant* means that the statute regulates an industry, item, or activity that no longer exists or perhaps was never put into place at all. Certain answers obtained through the Codebook would indicate that a statute should be placed in this category. Most importantly, the *origin* section provides the basis for placing a statute into this category. If a researcher determines that the reason for the passage of the statute no longer exists, this statute can be considered empirically irrelevant. Furthermore, the *general regulation* section will provide information on whether there is currently a regulatory role for the relevant agency. If there is no role for regulation, perhaps because the practice has been standardized or no longer occurs, this would indicate that the statute is empirically irrelevant as well.

3.3.1 Sales Tickets

An empirically irrelevant group of statutes, 339:1-2, regulate the tickets used in door-to-door milk and bread delivery. The 1903-1904 Report by the New Hampshire State Board of Health describe the use of bread and milk tickets:



“It is said to have been the practice of milk dealers as well as of bakers to sell a certain number of tickets, one to be taken up upon each delivery of milk or bread, and that the same tickets have been used over and over on their routes, reaching perhaps many families, until entirely worn out or their legibility obliterated by filth.”¹⁴

The report continues by explaining that lawmakers were concerned about disease being spread between families by these reused grocery tickets. States 339:1-2 eliminate this problem by mandating tickets be used only once and anyone using a pre-used ticket would be guilty of a violation. Since the door-to-door delivery of milk or bread is no longer commonly used—only two or three dairy farms in the state still deliver directly to homes—this statute is no longer empirically relevant. There are no national laws regarding milk or bread tickets and no analogous legislation in Vermont. According to our criteria, these statutes are empirically irrelevant and thus may be considered for repeal.

3.3.2 Raw Cotton

Another empirically irrelevant set of statutes is the “Raw cotton” section of Chapter 339, which is made of 339:19 through 339:21 and dates back to the year 1870. These three statutes govern the net weight, marking, and weighting by sample of raw or unmanufactured cotton. All of them serve to regulate an industry that no longer exists. During the Industrial Revolution of the mid- to late-1800s, the city of Manchester became the hub of a booming textile industry. By 1912, the mills at the largest plant produced 50 miles of woven cloth per hour. However, the Great Depression caused a severe downturn and the mills closed on Christmas Eve of 1935. Manchester’s last yard of cotton was woven in March of 1975.¹⁵ Today, the state’s biggest manufacturing industry is computer and electronic products, along with telephone equipment.¹⁶ The authors of these statutes could not have envisioned this change, but it is a change that makes the statutes empirically irrelevant and therefore they may be considered for repeal.

3.3.3 Fuel Inspectors

Statutes 339:22 through 330:30A constitute a section titled “Petroleum, Naphtha and Illuminating Oils”. Statutes 339:22-30 were all passed in 1873, making them some of the chapter’s oldest. The first three statutes, 339:22-24, establish a system for petroleum inspectors, who are annually appointed by any town with over 1,500 residents or upon the petition of five residents from a town with under 1,500 residents. Provisions are made for inspectors’ compensation and a penalty is set for fraud or negligence. Yet these statutes were not implemented, as an 1885 New Hampshire Department of Health report shows. The report found just five inspectors in the state, and calls the law a “dead letter,” before



noting that the consequences may be harmful to state consumers if poor-quality kerosene were sold in the state. This tension between the statute's disuse and its relevant safety-related goals was seen as recently as 2012, when one writer for the libertarian blog Free Keene posted a letter sent to the Keene City Attorney, arguing that while the attorney thought the statutes' abandonment was justified because it was outdated, it was important to regulate the safety of illuminating oils.

Although these statutes have become empirically irrelevant, New Hampshire residents still stand to benefit from the regulation of fuel safety and quality. Chapter 339:B, Sale of Liquid Fuels, regulates formulas and methods of fuel sales, but does not provide for inspection. Therefore, a replacement inspection system may be beneficial. The National Institute of Standards and Technology and the National Conference on Weights and Measures promote one such system that has been adopted by many other states. NIST is a non-regulatory agency of the U.S. Department of Commerce, while NCWM is a nonprofit corporation dedicated to promoting national technical standards. The equivalent regulation to Chapter 339:22-24 is called the "Uniform Engine Fuels and Automotive Lubricants Inspection Law." Designed to achieve uniform regulation, it calls for fuel inspection, grants access to fuel samples, prohibits fraudulent fuel sales, and allows stop-sale orders. This regulatory framework is modifiable by any state that adopts it, allowing states to choose the amounts for inspection and penalty fees, the person in charge of enforcement, and the effective date of the act. Many states have chosen to adopt these standards, and while New Hampshire has used NIST standards in areas such as packaging and labeling, it has not adopted NIST's uniform engine fuel regulation standards. Provisions in Chapter 339-B comply with NCWM recommendations, yet these do not establish an inspector system. Therefore, NIST's Uniform Engine Fuels and Automotive Lubricants Inspection Law may be a candidate to replace the empirically irrelevant statutes 339:22-24.

4. POLICY OPTIONS

The statutes in Chapter 339 have been divided into three categories described above based on specified criteria and questions found in the codebook. These categories describe the statutes as relevant, legally irrelevant or empirically irrelevant. Based on our findings, we recommend New Hampshire legislators to consider repealing some statutes that no longer regulate the activity, industry or item in question. We recommend statutes that have been categorized as *legally* and *empirically irrelevant as candidates for repeal*. We also recommend that statutes categorized as *still relevant* remain in Chapter 339 in their original wording and conception.



4.1 Repeal Certain Statutes in Chapter 339

Statutes categorized as *legally* and *empirically irrelevant* may be considered for repeal, as they no longer regulate the activity, industry, or item they were intended to address when first enacted. The *legally irrelevant* statutes have been superseded by federal and/or state laws enacted at a date following the enactment of the statute in Chapter 339. Consequently, statutes in this category are no longer necessary for the regulation of the activity, industry or item they address. Instead, federal and/or other state laws provide more specific and wide-reaching regulations that supersede the statutes in Chapter 339.

Statutes categorized as *empirically irrelevant* specify regulations for an activity, industry or item that no longer exists. Or, the relevant agency no longer has a regulatory role in regard to the activity, industry or item in the statute. Consequently, statutes in this category may be deemed obsolete in terms of their regulatory capacity.

We recommend statutes in the legally and empirically irrelevant categories for repeal, as they no longer perform their intended regulatory function.

4.2 Maintain The Statutes In Chapter 339

Statutes placed in the still relevant category in section 3.1 continue to regulate an activity, industry or item that exists. We recommend that these statutes remain part of Chapter 339 in their original language and conception because they continue to provide the primary statutory authority for the relevant regulatory agencies. Many of the statutes in this category were passed in the last 50 years. Furthermore, these statutes were passed after federal and/or other related state laws, and they complement existing legislation on the federal and state level. Some of the statutes in this category are also found in the Vermont statutory code, implying a further indication of their relevance. We recommend that legislators maintain these statutes as part of Chapter 339.

5. CONCLUSION

The statutes in Chapter 339 have regulated trade and commerce in the state of New Hampshire since 1870, governing a variety of industries and items. Over the Chapter's nearly 140-year lifespan, some of these statutes have become irrelevant to modern commerce. Due to this change, and following in the tradition of the legislators who have taken part in the repeal of 24 of the Chapter's statutes, we have examined the current text of Chapter 339 in order to investigate which of the remaining regulations may be eligible to be considered for repeal.

This report has described and examined the current state of regulation under Chapter 339. Using a codebook and a rigorous methodology, we have constructed a system that can be used to analyze each of the 57 statutes. We have determined that the statutes fit into three



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main categories based on their relevance. While some statutes are still relevant, others have become legally or empirically irrelevant and may be considered for repeal. Based on our system of analysis, we have provided policy options for the legislature to consider in its upcoming session as it looks to the current text of Chapter 339.



Appendix A. Codebook: Revising Trade and Commerce Statutes in Chapter 339

Unit of Analysis: Each individual statute in Title XXXI, Chapter 339 of the New Hampshire RSA

Steps and Procedures for identifying and describing statutes:

- Identify each statute in RSA Chapter 339
- Code the statute into the spreadsheet titled “Chapter 339 Data” based on descriptive categories drawn from information in the Chapter 339 law.
 - Some statutes in Chapter 339 govern the same activity/item or industry. For example, one of the statutes in the series may give a definition of terms and the next statute in the series defines the regulation itself. In this case, place all the statutes in the series in one row in the excel document designating that these statutes govern the same activity/item or industry.
 - A useful research tool that provides cross-references between Chapter 339 statutes, other New Hampshire statutes and federal regulations is found on the website <http://www.lawserver.com/>. For Chapter 339, select “New Hampshire Revised Statutes,” then “Title 31 Trade and Commerce.” You can then look through the different chapters in Title 31. When you look up different statutes, the website gives you recommendations for related statutes and regulations.
 - Proceed to research and answer questions presented in columns F-S in “Chapter 339 Data” to refine an understanding of each statute. The answers coded in response to these questions will help identify criteria for a recommendation to repeal the statute. Use the “Notes” section at the end of each question to fill in information on why you answered the question the way you did.

Codebook Questions:

Note that “Unclear” is an option for most of the following questions. If you decide to select this answer, please indicate your reasons for doing so. Continue through the Codebook and answer as many questions as possible. In order to resolve an response of “Unclear,” identify people who you may be able to speak with and get further clarifying information.

I. Basic information drawn from Chapter 339 statute descriptions: (Code in “Chapter 339 Data” Columns A-F)

- a. Statute Number
- b. Statute Name
- c. Statute Description (*This is a short summary of the long description provided in the law.*)
- d. Date of passage
- e. Date effective



f. Category (*Categories include health, public safety, energy and other as identified*)

II. Origin: Conduct research on the background and origins of the statute.

1. Does the reason for passage of the 339 statute still exist? *Answering “yes” implies that the industry may still need Chapter 339 regulation, which can be further determined by answering the following questions in the codebook. Answering “no” may mean that the activity/item/industry no longer exists in New Hampshire or that the reasons have changed over time, so the statute may be considered for repeal.*

0 = Yes

1 = No

2 = Unclear

Caution: The research findings for this question are critical because the origins of the statute will be important when writing the report and testifying before the legislature. An answer of “no” may even be sufficient for repeal of the statute, so be sure of your answer to this question. Please include additional notes below, along with documentation of sources.

Notes:

III. General Regulation: Determine the state regulatory bodies in charge of the statutes.

Note that it is possible for an activity/item/industry to still be regulated in New Hampshire generally, but under a different law than 339.

1. Is the activity/item still regulated in the state of New Hampshire? *The activity/item may be regulated by 339 law, other state laws or federal law. Answering “yes” suggests that the activity/item is still regulated regardless of which law the agency uses. Proceed to answer question III.2 to define which agency has regulatory power. Answering “no” suggests that the activity/item is not regulated in the state. Proceed to question III.3 to determine why it’s not regulated.*

0 = Yes

1 = No

2 = Unclear

Notes:

2. If answered “yes” to question 1, by what regulatory body? *Identify the agency to interview for further information about the statute.*

2 = Unclear

3 = Other



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- 4 = New Hampshire Health and Human Services
- 5 = New Hampshire Office of Energy and Planning
- 6 = Federal Health and Human Services
- 7 = Federal Environmental Protection Agency

Notes:

3. If answered “no” to question 1, why is the activity/item not being regulated?

Answer “0” if the agency could be regulating this item, but is not doing so for whatever reason. For example, there may be no money allocated towards regulation. Answering “0” may suggest a need for further research and policy options. Answer “1” if this item/activity is no longer in need of regulation. For example, it is already standardized uniformly throughout the state. Answering “1” may suggest that the 339 statute is no longer relevant and may be repealed.

- 0 = The responsible agency is choosing not to fulfill its regulatory role
- 1 = There is currently no regulatory role for the agency
- 2 = Unclear

Notes:

IV. Federal Regulation: Determine whether or not federal regulations exist on the activity/item.

To conduct research on federal regulations, use LexisNexis Academic, which can be found in the Dartmouth Library catalog. In the sidebar on the left of the page, select “US Legal” then “Federal Statutes, Codes and Regulations.” Search for relevant keywords and select all sources from the list given. Alternatively, use the websites of the relevant regulatory agencies (e.g. Environmental Protection Agency or Department of Health and Human Services). In the search bar, search for keywords from the 339 statute to identify if there is any federal law on which the agency relies for its statutory authority.

1. Is there a federal law on this subject? *Determine whether federal laws exist to regulate the activity/item. If no, skip subsequent question in part IV and proceed to part V.*

- 0 = No
- 1 = Yes
- 2 = Unclear

Notes:

2. When was the federal law passed? *Look at information found in Lexis Nexis database.*

Date: _____



3. Was the federal law passed before the 339 law? *Compare the dates of the federal law and the 339 statute found in question V.2 and section 1 column D in the excel spreadsheet, based on the information identified at the beginning of the document. If the federal law was passed before the 339 statute, answer “0” to this question. Answering “0” suggests that the 339 statute may still be relevant. Answering “1” suggests that the 339 statute may be irrelevant and should be considered for repeal.*

0 = Yes

1 = No

2 = Unclear

Notes:

4. If answered “no” to question 3, and the federal law was passed after the 339 law, what is the nature of the relationship between federal law and 339 law?

Answer “0” if the federal law complements the Chapter 339 law or, alternatively, is not currently enforced. By complement, we mean that the federal law and the 339 law can work in tandem. For example, 339 law could regulate a similar but distinct aspect of the activity/item or could be more restrictive. Also answer “0” if the federal law is not enforced, in which case it would have no impact on 339 law. We have placed these options together because an answer of “0” means that the existence of federal law does not mean 339 law should be repealed.

Answer “1” if 339 law supersedes federal law. By supersede, we mean the federal law already fully regulates, or even bans, the activity/item. It does so in a more comprehensive and restrictive way. This suggests that the 339 statute may be irrelevant and should be considered for repeal.

0 = Federal law complements 339 law or is not enforced

1 = Federal law supersedes 339 law

2 = Unclear

3 = Other (please specify)

Notes:

V. State Regulation: Determine whether or not state regulations exist on the activity/item.

To conduct research on state regulations, use LexisNexis Academic, which can be found in the Dartmouth Library catalog. In the sidebar on the left of the page, select “US Legal” then “State Statutes, Codes and Regulations.” Search for relevant keywords and select all sources from the list given. Alternatively, use the websites of the relevant regulatory agencies (e.g. New Hampshire Department of Health and Human Services). In the search bar, search for keywords from the 339 statute to identify if there is any state



law on which the agency relies for its statutory authority.

1. Is there a state law on this subject? *Determine whether state laws exist to regulate the activity/item. If no, skip subsequent questions in part V.*

0 = No

1 = Yes

2 = Unclear

Notes:

2. When was the state law passed? *Look at information found in Lexis Nexis database.*

Date: _____

3. Was the state law passed before the 339 law? *Compare the dates of the state law and the 339 statute found in question 2 and section 1 column D, based on the information identified at the beginning of the document. If the state law was passed before the 339 statute, answer "0" to this question. Answering "0" suggests that the 339 statute may still be relevant. Answering "1" suggests that the 339 statute may be irrelevant and should be considered for repeal.*

0 = Yes

1 = No

2 = Unclear

Notes:

4. If answered "no" to question 4, and the state law was passed after the 339 law, what is the nature of the relationship between state law and 339 law?

Answer "0" if the state law complements the 339 law or, alternatively, is not currently enforced. By complement, we mean that the state law and the 339 law can work in tandem. For example, 339 law could regulate a similar but distinct aspect of the activity/item or could be more restrictive. Also answer "0" if the state law is not enforced, in which case it would have no impact on 339 law. We have placed these options together because an answer of "0" means that the existence of state law does not mean 339 law should be repealed.

Answer "1" if 339 law supersedes state law. By supersede, we mean the other state law already fully regulates, or even bans, the activity/item. It does so in a more comprehensive and restrictive way. This suggests that the 339 statute may be irrelevant and should be considered for repeal.

0 = State law complements 339 law or is not enforced

1 = State law supersedes 339 law

2 = Unclear



3 = Other (please specify)

Notes:

VI. Analogous Regulations in Vermont

Does Vermont currently regulate the item/activity in its equivalent regulations under Title 9? Look at <http://www.leg.state.vt.us/statutes/chapters.cfm?Title=09> to determine whether a similar regulation exists. You can also search at LexisNexis by selecting “Title 9” and searching for the keywords at <http://www.lexisnexis.com/hottopics/vtstatutesconstctrules/>. If the answer is “yes,” this not tell us much since the regulation may be irrelevant in Vermont but still on the books. If the answer is “no,” this may suggest repeal. Look into what the initial regulation said, when it was repealed, and why.

0 = Yes

1 = No

2 = Unclear

Notes:



Appendix B. Repealed Statutes

Regulatory Changes

Two sets of statutes were repealed due to changes in the groups that would regulate them. Simultaneously with their deletion from Chapter 339, these statutes were copied verbatim into different statute chapters that would better fit their regulatory needs. Statutes 339:35-36 outlawed fraud by ice vendors by specifying a punishment for citing a false weight of ice to a customer. Ice vendors still operate in New Hampshire, but the practice is now regulated under statutory code Title XI Agriculture, Horticulture And Animal Husbandry; Chapter 434: Marketing And Grading Of Certain Commodities.¹⁷ Statutes 339:11-13 gave specifications for the legal size of boxes in which farm produce could be transported. These statutes were placed verbatim in the same Chapter 434 as the ice vendor statutes.¹⁸

Empirically Irrelevant

Three sets of statutes were repealed because changes in common practices or technology rendered them empirically irrelevant. Statutes 339:3-10 are a quintessential example of statutes that became outdated; these statutes regulated the pressing of hay, the farming technology predecessor to the hay baler. The hay press was invented in the mid-nineteenth century and was used until the introduction of the hay baler in the 1930s.¹⁹ The Senator who advocated for the statutes' repeal called the law "archaic" and no one opposed his push for repeal.²⁰

Statutes 339:37-38 regulated the sale and transportation of coal in a way that became antiquated. The statutes measured coal by its purity rather than its carbon footprint, and specified qualities of transportation vehicles that are no longer used, such as the tare of the vehicle. Upon their deletion, these statutes were rewritten to reflect the modern ways coal is regulated and were placed in Chapter 434.²¹

Statutes 339:16-18 specified required measurements for cordwood but were repealed and placed in Chapter 434: Marketing And Grading Of Certain Commodities in 1989, and then repealed again and were finally replaced in 1995 by general forestry regulations under Title XIX-A: Forestry, Chapter 227-H Public Forest Lands: Management And Acquisition and Chapter 227-J: Timber Harvesting.²² Even the definition of the measure of a cord of wood was repealed in Title XL Agriculture, Horticulture, and Animal Husbandry, Chapter 438: Standards for Weights and Measures in 1989.²³ These shifts reflect changes in how the state viewed policies on wood used for fuel; it changed from a trade and commerce issue to an agriculture and horticulture issue to an environmental issue.



Legally Irrelevant

Two sets of statutes were repealed because they became legally irrelevant after federal or state law was created that superseded the statutes. Statutes 339:71-76, originally passed in 1991, prohibited the sale on non-recyclable or non-degradable packaging materials, such as plastic rings. In 1994, the federal government passed a similar law requiring plastic ring carriers to be made of degradable materials. In 1996, the state created regulations on plastic waste in general in Title X: Public Health, Chapter 149-m: Solid Waste Management. Senator Fuller Clark testified in favor of repeal and cited that an audit by the Legislative Budget Assistant revealed these statutes were not being enforced by the Department of Environmental Services.²⁴ The statutes were deleted from Chapter 339, expanded, and placed in Chapter 149: Solid Waste of Title X: Public Health.²⁵

Statute 339:51 was passed in 1925 to regulate dangerous chemicals often used in the home, such as caustic potash and oxalic acid, but was superseded by a 1960 federal law that was far more specific about poison control.²⁶ In 1965, the statute was repealed and an entire section, 339-A, was added to govern Labeling of Hazardous Substances.²⁷



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