

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 (EMERGENCY)
2 (New Draft of H.P. 614, L.D. 884)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2326

8
9 H.P. 1649

House of Representatives, April 4, 1986

10 Reported by Representative Cashman from the Committee on Taxation
11 and printed under Joint Rule 2. Original bill sponsored by Representative
12 McGowan of Canaan. Cosponsored by Representative Higgins of Portland
and Representative Weymouth of West Gardiner.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT Relating to the Sales of Extended
20 Cable Television Services.
21

22 **Emergency preamble.** Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, the sales tax imposed on the sale of ex-
26 tended cable television service is a violation of the
27 First Amendment right of free speech guaranteed by
28 the United States Constitution; and

29 Whereas, the sales tax imposed on the sale of ex-
30 tended cable television service is an inequitable
31 tax, imposed on only one segment of the mass media
32 industry; and

33 Whereas, in the judgment of the Legislature,
34 these facts create an emergency within the meaning of
35 the Constitution of Maine and require the following

1 legislation as immediately necessary for the preser-
2 vation of the public peace, health and safety; now,
3 therefore,

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

6 Sec. 1. 36 MRSa §1752, sub-§2-B, as enacted by
7 PL 1983, c. 859, Pt. M, §§1 and 13, is repealed.

8 Sec. 2. 36 MRSa §1752, sub-§11, as amended by PL
9 1985, c. 276, §2, is further amended to read:

10 11. Retail sale or sale at retail. "Retail
11 sale" or "sale at retail" means any sale of tangible
12 personal property, in the ordinary course of busi-
13 ness, for consumption or use, or for any purpose oth-
14 er than for resale, except resale as a casual sale,
15 in the form of tangible personal property, any rental
16 of living quarters in any hotel, rooming house, tour-
17 ist or trailer camp, any rental of automobiles on a
18 short-term basis, other than rental to a person en-
19 gaged in the business of renting automobiles, and the
20 sale of telephone or telegraph service and the sale
21 of extended cable television service. The term "re-
22 tail sale" or "sale at retail" includes conditional
23 sales, installment lease sales, and any other trans-
24 fer of tangible personal property when the title is
25 retained as security for the payment of the purchase
26 price and is intended to be transferred later. The
27 term "retail sale" or "sale at retail" also means
28 sale of products for internal human consumption to a
29 person for resale through coin-operated vending ma-
30 chine when sold to a retailer whose gross receipts
31 from the retail sale of tangible personal property
32 derived through sales from vending machines are more
33 than 50% of his gross receipts, which tax shall be
34 paid by the retailer to the State. The term "retail
35 sale" or "sale at retail" does not include any sale
36 by an executor or administrator in the settlement of
37 an estate, unless such sale is made through a retail-
38 er, or unless such sale is made in the continuation
39 or operation of a business; nor does the term include
40 any other isolated transaction in which any tangible
41 personal property is sold, transferred, offered for
42 sale or delivered by the owner of the property, such
43 sale, transfer, offer for sale, or delivery not being

1 made in the ordinary course of repeated and succes-
2 sive transactions of a like character by such owner,
3 such transactions being elsewhere sometimes referred
4 to as "casual sales." "Casual sales" includes trans-
5 actions by a civic, religious or fraternal organiza-
6 tion, which is not a registered retailer, at bazaars,
7 fairs, rummage sales, picnics or similar events but
8 not exceeding 8 days in a calendar year. The sale by
9 a registered retailer of tangible personal property,
10 which that retailer has used in the course of his or
11 its business, is not a casual sale and is a retail
12 sale subject to taxation under this Part, if that
13 property is of a like character to that sold in the
14 ordinary course of repeated and successive transac-
15 tions. "Casual sale" shall not include any transac-
16 tion in which tangible personal property is sold,
17 transferred or offered for sale by a representative
18 for the owner's account when such representative is a
19 registered retailer, in which event such registered
20 retailer shall have the same duties respecting such
21 sale as if he had sold on his own account. "Retail
22 sale" and "sale at retail" do not include the sale of
23 tangible personal property which becomes an ingredi-
24 ent or component part of, or which is consumed or de-
25 stroyed or loses its identity directly and primarily
26 in the production of, tangible personal property for
27 later sale or lease, other than lease for use in this
28 State, but shall include fuel and electricity but
29 shall not include electricity separately metered and
30 consumed in any electrolytic process for the manufac-
31 ture of tangible personal property for later sale,
32 nor any fuel oil or coal, the by-products from the
33 burning of which become an ingredient or component
34 part of tangible personal property for later sale.
35 "Retail sale" and "sale at retail" do not include the
36 sale, to a person engaged in the business of renting
37 automobiles, of automobiles, or integral parts of au-
38 tomobiles or accessories to automobiles, for rental
39 or for use in an automobile rented, on a short-term
40 basis. It shall be considered that tangible personal
41 property is "consumed or destroyed" or "loses its
42 identity" in such manufacture, if it has a normal
43 physical life expectancy of less than one year as a
44 usable item in the use to which it is applied. "Re-
45 tail sale" or "sale at retail" do not include the
46 sale of containers, boxes, crates, bags, cores,
47 twines, tapes, bindings, wrappings, labels and other

1

FISCAL NOTE

2

It is estimated that this bill will result in the following decrease in revenues.

3

4

1985-86

1986-87

5

General Fund

(\$47,450)

(\$400,000)

6

Local Government Fund

(\$2,550)

(\$21,500)

7

STATEMENT OF FACT

8

This new draft updates the original bill to incorporate changes enacted last session and adds an allocation and a fiscal note.

9

10

11

7155040186