

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1148

H.P. 802

House of Representatives, March 18, 1991

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

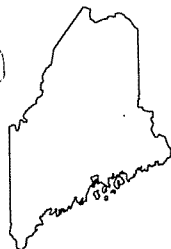
EDWIN H. PERT, Clerk

Presented by Representative GOULD of Greenville.
Cosponsored by Representative TRACY of Rome.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Concerning Slack-filled Food Packages.



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

2 Sec. 1. 7 MRSA §525, as enacted by PL 1969, c. 325, is
4 amended to read:

6 §525. Net quantity of contents

8 The net quantity of contents shall ~~must~~ appear in
10 conspicuous and easily legible type in distinct contrast, by
12 topography, layout, color, embossing or molding, with other
14 matter on the package. The letters or numerals used shall ~~must~~ be
16 in type size which ~~shall be~~ established in relationship to the
18 area of the principal display panel of the package and uniform
for all packages of substantially the same size. The lines of
printed matter included in that statement shall ~~must~~ be placed
generally parallel to the base on which the package rests as it
is designed to be displayed.

20 Notwithstanding section 528, a manufacturer who reduces the
22 number of servings or size of serving in a package of a consumer
24 commodity without substantially reducing the package size or
26 increases the package size without increasing the number of
28 servings or size of servings shall alert the consumer of this
30 change by either placing a notice on the package for 3 months
32 after the change occurs or providing shelf signs to the retailer
34 at no cost. The retailer to whom these shelf signs are provided
shall post them for a period of 3 months. If a notice of the
change is placed on the package, it must be in a prominent
position on the front of the package, similar to the prominence
given when an improvement is made in the product. The
manufacturer shall obtain approval of the proposed wording for
the notice or shelf sign from the State Sealer of Weights and
Measures. Failure to provide this notice or failure to display a
notice, if provided, is a violation of Title 22 section 2157,
subsection 5, paragraph C.

36 A person who has been injured as a result of a failure of a
38 manufacturer to provide the notification of change in package
40 content as required in this section may bring an action in that
42 person's name to recover actual damages or \$50, whichever is
greater. The court may award reasonable attorney's fees to a
prevailing plaintiff.

44 In addition to the other remedies provided, whenever there
46 is a violation of the manufacturer notification requirement of
48 this section, application may be made by the Attorney General in
50 the name of the people of the State to a court having
52 jurisdiction by a special proceeding to issue an injunction and,
upon notice to the defendant of not less than 5 days, to enjoin
and restrain the continuance of that violation. If it appears to
the satisfaction of the court that the defendant has violated
this section, an injunction may be issued by the court, enjoining
and restraining any further violation, without requiring proof
that any person has been injured or damaged. In any such

2 proceeding, the court may make allowances to the Attorney General
3 and direct restitution. Notwithstanding section 528, whenever
4 the court determines that a violation of this section has
5 occurred, the court may impose a civil penalty of not more than
6 \$500 for each violation. In processing any such proposed
7 application, the Attorney General is authorized to take proof and
8 make a determination of the relevant facts and to issue subpoenas
9 in accordance with civil practice laws and rules.

10 Sec. 2. 10 MRSA §2406, as amended by PL 1977, c. 694, §180,
11 is further amended to read:

12 **§2406. Inspection of packages**

13
14 The state sealer shall, from time to time, weigh or measure
15 and inspect packages or amounts of commodities kept, offered or
16 exposed for sale, sold or in the process of delivery, to
17 determine whether ~~the same~~ they contain the amounts represented
18 and whether they be are kept, offered or exposed for sale, or
19 sold, in accordance with law. In addition to the weight, the
20 state sealer shall consider the physical volume of the contents
21 relative to the size of the package in determining if the package
22 contains the amount represented, regardless of whether the
23 package contains a disclaimer that it is sold by weight, not
24 volume. When such packages or amounts of commodities are found
25 not to contain the amounts represented or are found to be kept,
26 offered or exposed for sale in violation of law, the state sealer
27 may order them off sale and may mark or stamp them as "illegal."
28 ~~These orders shall not be considered to be~~ are not licensing or
29 any adjudicatory proceeding, as those terms are defined by the
30 Maine Administrative Procedure Act. No A person shall may not
31 sell, or keep, offer or expose for sale any package or amount of
32 commodity that has been ordered off sale as provided in this
33 section, unless and until such the package or amount of commodity
34 has been brought into full compliance with legal requirements, or
35 dispose of any package or amount of commodity that has been
36 ordered off sale and that has not been brought into compliance
37 with legal requirements, in any manner, except with the specific
38 approval of the state sealer.

39
40 Sec. 3. 10 MRSA §2751, sub-§5, as enacted by PL 1973, c. 654,
41 §2, is amended to read:

42
43 5. Sale of less quantity represented. Sell, or offer or
44 expose for sale, less than the quantity he represents represented
45 of any commodity, thing or service. The term "quantity
46 represented" includes the volume of product relative to the
47 package size, even if the package contains a disclaimer that the
48 product is being sold by weight, not volume;

49
50 Sec. 4. 10 MRSA §2756 is enacted to read:
51
52

2 §2756. Consumer education

4 The state sealer shall periodically take action to make
6 consumers aware that sale of a slack-filled package may be a
8 violation of the law and shall provide the name, address and
10 telephone number of federal and state agencies to which
12 complaints may be directed. The state sealer shall, at a
14 minimum, distribute releases to newspapers and posters and
16 brochures to food stores or take similar action to accomplish the
18 purpose of this section. A food store receiving this material
20 must make it readily accessible to its customers.

22 Sec. 5. 17-A MRSA §901, sub-§1, ¶B, as enacted by PL 1975, c.
24 499, §1, is amended to read:

26 B. Sells, offers or exposes for sale, or delivers less than
28 the represented quantity of any commodity or service. The
30 term "represented quantity of commodity" includes the volume
32 of product relative to the package size, regardless of
34 whether the package contains a disclaimer that the product
36 is sold by weight, not volume;

38 Sec. 6. 22 MRSA §2152, sub-§7-C is enacted to read:

40 7-C. Nonfunctional slack-filled package. "Nonfunctional
42 slack-filled package" means a package that is filled to
44 substantially less than its capacity for reasons other than
46 protection of the contents of the package or the requirements of
48 machines used for enclosing the contents in the package.

50 Sec. 7. 22 MRSA §2157, sub-§4 is amended to read:

52 4. Misleading container. If its container is so made,
formed or filled as to be misleading. "Misleading filling"
includes nonfunctional slack-filled packages even when the
package contains a disclaimer that the product is sold by weight,
not volume;

Sec. 8. 22 MRSA §2157, sub-§5, ¶B is amended to read:

B. An accurate statement of the quantity of the contents in
terms of weight, measure or numerical count. Reasonable
variations shall be are permitted, and exemptions as-to for
small packages shall must be established by regulations
rules prescribed by the commissioner; and

Sec. 9. 22 MRSA §2157, sub-§5, ¶C is enacted to read:

C. A notice if required by Title 7, section 525.

Sec. 10. Effective date. Sections 2 to 8 of this Act take
effect July 1, 1993.

2

STATEMENT OF FACT

4

6 This bill addresses the recent practice of food product
8 manufacturers of reducing the content of product while
maintaining the package size or of increasing the package size
while not increasing the content of product.

10

Specifically, the bill does the following:

12

1. Requires the manufacturer to place a notice of these
changes either on the package or on the shelf next to the package;

14

16 2. Revises the Maine Weights and Measures Law, the Maine
Criminal Code concerning fraud and the Maine Food Law to clarify
18 that current provisions concerning deceptive packaging in these
laws include slack-filled packages, that is, those in which
20 volume contents are significantly less than the package size
allows even though the package states that the package is sold by
weight not volume; and

22

24 3. Requires that the Department of Agriculture, Food and
Rural Resources provide information for the consumer concerning
where to make complaints regarding slack-filled packages.

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