

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1371

H.P. 949

House of Representatives, April 1, 1991

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

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

EDWIN H. PERT, Clerk

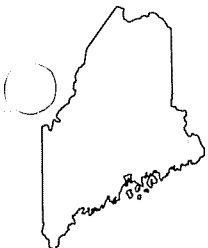
Presented by Representative TREAT of Gardiner.

Cosponsored by Senator TITCOMB of Cumberland, Representative ADAMS of Portland and Representative WENTWORTH of Arundel.

STATE OF MAINE

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

An Act to Establish Environmental Standards for Packaging.



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

4 Sec. 1. 32 MRSA §1736, sub-§3 is enacted to read:

6 3. Enforcement of consumer packaging laws. The Department
8 of Agriculture, Food and Rural Resources shall enforce the
10 provisions of Title 38, chapter 17, subchapter V and for the
12 purposes of this section may be referred to as "the department."
14 The department may inspect packaging to determine whether the
16 packaging meets the standards established in Title 38, chapter
17, subchapter V. Beginning January 1, 1996, the department
shall inspect annually a random sampling of different types of
packaging to determine whether that packaging complies with the
requirements of Title 38, chapter 17, subchapter V. The
department shall inspect packaging when requested to do so by a
petition signed by at least 10 residents of the State.

18 If, on the basis of an inspection under this section, or any
20 other information, the department determines that any packager
22 has violated or is in violation of any requirement of Title 38,
24 chapter 17, subchapter V, or of any regulation adopted or order
26 issued under that subchapter, the department shall issue an order
28 requiring compliance, or assessing a civil administrative penalty
for the violation, or both. In any enforcement action taken
pursuant to this subsection, the packager shall supply all
information required under Title 38, chapter 17, subchapter V.
If the packager has not maintained such information, the packager
has the burden of proving compliance with the requirements of
Title 38, chapter 17, subchapter V.

30 The department may request the Attorney General to seek equitable
32 or injunctive relief to enforce any order issued under this
34 subsection.

36 Sec. 2. 38 MRSA c. 17, sub-c. V is enacted to read:

38 SUBCHAPTER V

40 RECYCLING AND REUSE OF CONSUMER PACKAGING

42 §1761. Definitions

44 As used in this subchapter, unless the context otherwise
indicates, the following terms have the following meanings.

46 1. Additives. "Additives" means any substance added to a
48 material for the purpose of imparting color, but which alone can
not be made into packaging.

50 2. Commodity. "Commodity" means an article of trade.

2 3. Composting. "Composting" means a method of processing a
material in which organic materials are biologically decomposed
4 under controlled, aerobic or anaerobic conditions.

6 4. Container. "Container" means a vessel, covering,
wrapping, box or device in which a material or product is
8 protected, stored, treated, handled or transported.

10 5. Director. "Director" means the Executive Director of
the Maine Waste Management Agency.

12 6. Discard. "Discard" means to landfill, incinerate or
14 otherwise dispose of a material in such a way that the material
can not be recycled or composted.

16 7. Environmentally acceptable packaging. "Environmentally
18 acceptable packaging" means packaging that complies with one or
more of the standards established in this subchapter for
20 recyclability, reusability or recycled content.

22 8. Material category. "Material category" means a category
of material that is collected, marketed and used as secondary
24 material feedstock in place of a virgin source of that material.

26 9. Packager. "Packager" means:

28 A. For products packaged outside the State, the first
person who takes possession of the product in the State;

30 B. For products packaged in this State, the person who
32 places the product in the package; and

34 C. For products packaged at the point of sale, the retail
seller.

36 10. Packaging. "Packaging" means a container providing a
38 means of marketing, protecting or handling a product, including a
unit package, an intermediate package and a shipping container as
40 defined in ASTM D9996. "Packaging" also means unsealed
42 receptacles such as carrying cases, crates, cups, pails, rigid
foil trays and other trays, wrappers and wrapping films, bags and
tubs.

44 11. Person. "Person" means any individual, public or
46 private corporation, political subdivision, government agency,
state authority or bureau of the State, municipality, industry,
48 copartnership, association, firm, trust estate, or any other
legal entity.

50 12. Preconsumer material. "Preconsumer material" means
52 waste material generated during any step in the production of an
end product, but does not include any waste material or

2 by-product that can be reused or has been normally reused within
3 the same plant or another plant of the same parent company.

4 13. Postconsumer material. "Postconsumer material" means
5 only those products or packages generated by a business or a
6 consumer that have served their intended end use and have been
7 separated or diverted from solid wastes. Wastes generated during
8 production of an end product, such as printers' waste,
9 undistributed finished products or lathe wastes, are not
10 postconsumer materials.

12 14. Primary recycling. "Primary recycling" means the
13 recycling of a material for a use that retains the integrity of
14 the material so that it is available for further recycling after
15 that use.

16 15. Product. "Product" means any commodity that is sold in
17 commerce.

18 16. Recycle. "Recycle" means to collect, process and
19 return to commerce or manufacturing a material that otherwise is
20 discarded, except that burning of a material does not constitute
21 recycling.

22 17. Recycled or recycled content. "Recycled" or "recycled
23 content" means that portion of a package or product weight that
24 is composed of secondary materials as demonstrated by an annual
25 mass balance of all feedstocks and outputs of the manufacturing
26 process.

27 18. Recycling rate. "Recycling rate" means that percentage
28 by weight of a given material category sold or distributed for
29 sale in the State that is otherwise destined for disposal,
30 including postconsumer and preconsumer material, that is
31 collected or otherwise returned and processed or refabricated
32 into marketable end products other than fuels for producing heat
33 or power by burning.

34 19. Secondary material. "Secondary material" means that
35 portion of a package or product weight attributable to either
36 preconsumer material, postconsumer material or both.

37 §1762. Conditions of sale

38 After July 1, 1996, a person may not sell or offer for sale
39 any consumer packaging unless:

40 1. Reusable packaging. The packaging manufacturer
41 demonstrates that the packaging is being refilled or reused at
42 least 5 times for the same purpose by the manufacturer,
43 distributor or retailer prior to recycling or disposal;

2 2. Recycled content. The director determines that the
packaging is composed of at least 51% secondary content, which
4 applies to either preconsumer or postconsumer standards, or both,
and at least 35% postconsumer content; or

6 3. Recycling standards. The director determines that:

8 A. Each material category from which the product is made
has attained a statewide recycling rate during the previous
10 year of at least 35% by July 1, 1996, 50% by July 1, 2001
and 65% by July 1, 2006; or

12 B. Ready access to community recyclable recovery programs
for that material category is available to no less than 75%
14 of the population of the State. For the purpose of this
subsubsection, access includes curbside collection.

18 By July 1, 2010, the director shall establish the recycling rate
that will apply after July 1, 2011. This rate may not be less
20 than 65%.

22 §1763. Determination of recycling rates

24 1. Categories of materials. Beginning in 1992, the
director shall annually determine and publish a statewide
26 recycling rate for each material covered by this subchapter. In
determining recycling rates, the director shall establish
28 categories of materials based on distinctions commonly made on
the basis of chemical composition and molecular structure.

30 A. The list of material categories established by the
director must include but is not limited to the following
32 material categories:

- 34 (1) Container glass;
- 36 (2) Green container glass;
- 38 (3) Amber container glass;
- 40 (4) Paper - newspaper;
- 42 (5) Paper - corrugated containers;
- 44 (6) Paper - high-grade printing and writing paper;
- 46 (7) Paper - paperboard;
- 48 (8) Paper - coated;
- 50 (9) Paper - kraft;

52

- 2 (10) Plastic - PET (polyethylene terephthalate);
4 (11) Plastic - HDPE (high-density polyethylene);
6 (12) Plastic - PVC (polyvinyl chloride);
8 (13) Plastic - LDPE (low-density polyethylene);
10 (14) Plastic - PP (polypropylene);
12 (15) Plastic - PS (polystyrene);
14 (16) Ferrous metal food and beverage containers;
16 (17) Ferrous metal - excluding food and beverage
 containers;
18 (18) Aluminum food and beverage containers;
20 (19) Aluminum - excluding food and beverage containers;
22 (20) Copper; and
24 (21) Lead-acid batteries.

26 B. For the purposes of this subchapter, additives are not
28 considered a component material in packaging.

30 2. Determination of recycling rate. In determining the
32 recycling rate of a material, the director shall consider all
34 uses of the material not just packaging uses. The recycling rate
36 of a material is represented as a fraction in which the numerator
38 is the weight, in pounds, of the material that is collected in
 the State and the denominator is the numerator plus the weight,
 in pounds, of the material that is either disposed of or
 composted. A material generated as a by-product of a
 manufacturing process that is reused within the same process may
 not be included in this calculation as a recycled material.

40 3. Survey required. To determine recycling rates, the
42 director shall survey collectors, processors, marketers,
44 exporters and other handlers of discarded material located in the
46 State and make reasonable efforts to obtain information from
 collectors and processors located outside the State who receive
 materials originally discarded within the State. Refusal to
 provide available information when requested is a violation of
 this subchapter.

48 §1764. Restrictions on disposal of packaging materials

50 After July 1, 2001, a person may not discard a material
52 covered by this subchapter unless the material can not be

2 recycled or, in the case of organic materials, composted using
3 commonly available technologies.

4 **§1765. General exemptions**

6 The following types of packaging are exempt from the
7 provisions of this subchapter:

8
9 1. Tamper-proof seals. Packaging in the form of wraps or
10 wrappers used to provide tamper-proof seals on over-the-counter
11 drugs and other medicine not requiring a physician's prescription;

12
13 2. Transfers of products. Packaging associated with
14 products produced or brought into the State that are stored in
15 the State prior to being shipped for sale to other destinations
16 outside of the State and remains with the products upon shipment;
17 and

18
19 3. Federal compliance. Packaging for which compliance with
20 federal law, including, but not limited to, rules promulgated by
21 the Food and Drug Administration, directly precludes compliance
22 with the provisions of this subchapter.

24 **§1766. Hardship exemption**

26 The director may grant a packager a conditional exemption
27 from this subchapter, if the director determines that the
28 requirements of this subchapter, when applied to a particular
29 type of packaging used in association with a specific product,
30 impose an undue hardship on the residents of the State. A
31 packager applying for a conditional exemption under this section
32 shall bear the burden of proof in establishing undue hardship on
33 residents of the State. Increased packaging costs do not
34 constitute a basis for making a finding of undue hardship.

36 A packager applying for a conditional exemption under this
37 section shall submit a written application to the director and
38 shall pay an annual application fee established by the director.
39 Fees established by the director under this section may not
40 exceed the amount necessary to cover the agency's cost of
41 processing the application. Prior to granting a conditional
42 exemption, the director shall make a written finding of undue
43 hardship. A conditional exemption must be renewed annually and
44 may not be renewed if the basis of finding of undue hardship is
45 no longer applicable.

46
47 **§1767. Packaging logo**

48
49 By January 1, 1992, the director shall adopt an official
50 logo that indicates the packaging to which the logo is affixed is
51 environmentally acceptable packaging as defined in this
52 subchapter. The director shall specify the manner in which the

2 logo may be affixed to packaging. The presence of the logo on a
3 package is certification by the packager that the packaging meets
4 the standards established in this subchapter. Use of the logo on
5 a package that does not meet the standards in this subchapter is
6 a violation of this subchapter.

7 1. Optional use of logo. Prior to July 1, 1996, a packager
8 may affix the logo to environmentally acceptable packaging.

10 2. Mandatory use of logo. On and after July 1, 1996, a
11 packager shall affix the logo to environmentally acceptable
12 packaging.

14 **§1768. Rules**

16 By January 1, 1992, the director shall adopt rules to
17 implement this subchapter, and may, from time to time, adopt such
18 additional rules necessary to carry out the intent and purpose of
19 this subchapter. The rules must include but are not limited to:

20 1. Recycling rates. Procedures for calculating,
21 classifying and publishing recycling rates for packaging
22 materials;

24 2. Compliance. Requirements for continuance of proof by
25 packagers of compliance with this subchapter and procedures for
26 verifying compliance with the standards of this subchapter;

28 3. Exemptions. Guidelines for hardship exemption
29 applications and annual review of any conditional exemptions
30 granted under section 1766; and

32 4. Fees. A schedule of annual application fees to be
33 collected from packagers requesting exemptions under this
34 subchapter. These fees must be in an amount necessary to recover
35 the director's costs in administering the exemption program.

38 **§1769. Enforcement**

40 The Department of Agriculture, Food and Rural Resources
41 shall enforce the provisions of this subchapter pursuant to Title
42 32, section 1736.

44 **§1770. Penalty**

46 Any violation of this subchapter constitutes a violation of
47 Title 5, chapter 10, the Maine Unfair Trade Practices Act.

48 **§1771. Packaging standards advisory committee**

50 The Packaging Standards Advisory Committee is established to
51 analyze the prospective impact of environmentally acceptable
52 packaging.

2 packaging standards on labor and employment in the State and to
3 recommend measures to provide retraining for displaced workers,
4 to attract new packaging and recycling businesses to the State
5 and to otherwise assist the State's labor force in adapting to
6 the provisions of this subchapter.

7 1. Membership. Membership consists of 10 members as
8 follows:

9 A. The Governor shall appoint 2 representatives of the
10 business community, including one representative from the
11 packaging industry and one representative from the retail
12 industry; one representative of organized labor; and one
13 public member.

14 B. The President of the Senate shall appoint one
15 representative from organized labor, one representative from
16 a consumer or an environmental organization and one public
17 member.

18 C. The Speaker of the House of Representatives shall
19 appoint one representative from organized labor, one
20 representative from a consumer or an environmental
21 organization and one public member.

22 D. The Commissioner of Labor and the Executive Director of
23 the Maine Waste Management Agency shall serve ex officio and
24 do not vote on committee matters.

25 2. Terms. All members shall serve until April 1, 1994 at
26 which time this committee shall cease to exist.

27 3. Report. The committee shall report its findings and
28 recommendations to the joint standing committee of the
29 Legislature having jurisdiction over labor matters and the joint
30 standing committee of the Legislature having jurisdiction over
31 natural resource matters on January 1, 1993 and on April 1, 1994.

32 **§1772. Preemption**

33 This subchapter does not preclude or in any way limit the
34 right of local jurisdictions to restrict or otherwise regulate
35 packaging more stringently than this subchapter.

36 **§1773. Nonreusable utensils**

37 On and after January 1, 1995, a restaurant may not provide
38 nonreusable knives, forks, spoons, chopsticks or packaging for
39 food or beverages sold for consumption on the premises of the
40 restaurant. For the purposes of this section, "food" includes
41 condiments.

