

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1149

S.P. 426

In Senate, April 4, 1995

**An Act to Enhance Export Markets for Maine Sardines and Other
Canned Herring Products by Clarifying the Maine Sardine Law.**

(EMERGENCY)

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script, reading "May M. Ross", is positioned above the printed name of the Secretary of the Senate.

MAY M. ROSS
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.
Cosponsored by Representative: LOOK of Jonesboro.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the packing of sardines and other canned herring products is one of the most important industries of the State; and

Whereas, the Maine Sardine Council and the Maine Sardine Industry is seeking the statutory authority to revise the council's regulations in support of its mandatory product quality control program in order to enhance export opportunities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 32 MRSA §4153, as amended by PL 1993, c. 14, §1, is further amended to read:

§4153. License required

Ne A person, firm, corporation, association or society shall may not pack sardines, kippers ~~or~~, steaks or other canned herring products within the State for sale without having first filed with the Commissioner of Agriculture, Food and Rural Resources an application for license, accompanied with a fee of \$50, upon receipt of which application the commissioner shall issue to the person, firm, corporation, association or society making such application a license to pack sardines, kippers, steaks or other canned herring products. Each such license covers one group of buildings constituting a packing plant in one location. The license runs from January 1st and expires in a manner consistent with the provisions of the Maine Administrative Procedure Act as to license expiration or on December 31st of each year, whichever is later, unless sooner revoked and must be renewed annually thereafter. Before issuing such license or renewing it, the commissioner may by adequate inspection determine that the laws and regulations relating to the packing of sardines, kippers ~~or~~, steaks or other canned herring products and the operation of packing plants for sardines, kippers ~~or~~, steaks or other canned herring products are being observed.

Sec. 2. 32 MRSA §4154, as amended by PL 1977, c. 694, §627, is further amended to read:

§4154. Repeal, revocation or refusal; appeals

2 The Commissioner of Agriculture shall, Food and Rural
3 Resources, in a manner consistent with the Maine Administrative
4 Procedure Act, have has the power to refuse to issue and to
5 refuse to renew, and the Administrative Court, in a manner
6 consistent with the Maine Administrative Procedure Act, shall
7 have has the power to revoke or to suspend any license issued
8 under this chapter whenever any of the provisions of said the
9 chapter or rules or regulations promulgated or established
10 thereunder under the chapter have been violated. Any A person,
11 firm, corporation, association or society whose license has been
12 so revoked or suspended shall discontinue the packing of
13 sardines, kippers, steaks or other canned herring products until
14 this chapter has been complied with and a new license issued or
15 the suspension removed. The Administrative Court may revoke or
16 suspend such the license temporarily until there is a compliance
17 with this chapter or permanently for the unexpired period of such
18 the license.

20 **Sec. 3. 32 MRSA §4160** is amended to read:

22 **§4160. Penalties**

24 Any A person, firm, corporation, association or society who
25 ~~shall--pack~~ packs sardines, kippers, steaks or other canned
26 herring products in the State for sale without the license
27 provided for in section 4153, or who ~~shall-violate~~ violates any
28 of the provisions of this chapter, or ~~neglect~~ neglects or ~~refuse~~
29 refuses to comply with any of the provisions required in this
30 chapter or in any way ~~violate~~ violates any of its provisions may
31 be punished by a fine not exceeding \$500 or by imprisonment for
32 not more than 6 months, or by both for each and every offense.

34 **Sec. 4. 32 MRSA §4165**, as enacted by PL 1991, c. 446, Pt. C,
35 §3, is amended to read:

36 **§4165. Purpose**

38 The packing of sardines, kippers, steaks and other canned
39 herring products is one of the most important industries of the
40 State, and this subchapter will protect the public health and
41 welfare, stabilize the industry and conserve and promote the
42 prosperity and welfare of the State by fostering and promoting
43 better methods of production, packing, merchandising and
44 advertising in the sardine industry of this State.

46 **Sec. 5. 32 MRSA §4166, sub-§2, ¶A**, as enacted by PL 1991, c.
47 446, Pt. C, §3, is amended to read:

50 A. One hundred cans when the stated net weight of the
contents ~~in~~ is under 7 ounces; or

2 **Sec. 6. 32 MRSA §4166, sub-§5**, as amended by PL 1993, c. 14,
3 §3, is further amended to read:

4 5. Packer. "Packer" means any person, association, firm,
5 corporation or society licensed under section 4153 to pack
6 sardines, kippers ~~or~~ steaks or other canned herring products.

7 **Sec. 7. 32 MRSA §4166, sub-§7**, as enacted by PL 1991, c. 446,
8 Pt. C, §3, is amended to read:

9 7. Steaks. "Steaks" means all laterally cut or
10 cross-sectioned portions packed in hermetically sealed containers
11 that are not classified as sardines but are predominantly herring.

12 **Sec. 8. 32 MRSA §4167, sub-§1**, as amended by PL 1993, c. 585,
13 §5, is further amended to read:

14 1. Council established as an incorporated public
15 instrumentality of the State. Effective July 1, 1994, the Maine
16 Sardine Council, referred to in this subchapter as the "council,"
17 is a body corporate and politic and an incorporated public
18 instrumentality of the State and the exercise of powers conferred
19 by this Part is held to be the performance of essential
20 government functions. For the purposes of the budget, accounts
21 and control, purchasing or other provisions of Title 5, Part 4
22 the council may not be construed to be a state agency. The
23 council consists of not more than 9 nor fewer than 3 members to
24 be appointed by the Commissioner of Marine Resources. Fifty-one
25 percent of the members of the council constitutes a quorum and
26 the affirmative vote of at least 51% of the members is necessary
27 for the transaction of all business and the carrying out of the
28 duties of the council. A quorum of council members may be
29 determined through the use of proxy voting and telephone polls.
30 The members must be sardine packers operating within the State
31 who have been actively engaged in packing sardines, kippers ~~or~~ steaks or other canned herring products for not less than 2 years
32 and must remain so while in office. A person is considered to be
33 actively engaged in packing sardines, kippers ~~or~~ steaks or other
34 canned herring products if that person has derived, during the
35 period, a substantial portion of income from packing sardines,
36 kippers ~~or~~ steaks or other canned herring products or has been
37 the director or manager of an entity that derives a substantial
38 portion of its income from packing sardines, kippers ~~or~~ steaks
39 or other canned herring products.

40 **Sec. 9. 32 MRSA §4167-A**, as enacted by PL 1993, c. 14, §4, is
41 amended to read:

42 **§4167-A. Council authority; code plans, embargo and petitions**

2 The council shall certify the quality and grade of sardines,
kippers and steaks and other canned herring products packed in
4 this State. The quality or grade certified by the council is
prima facie evidence of the quality or grade of the lot.

6
1. **Code plan required.** Prior to packing sardines, kippers
8 or, steaks or other canned herring products in any container for
which the council has established grades, a packer must have a
10 code plan on file with the council. A code plan filed with the
council must indicate the location of the plant, the lot number,
12 and the calendar year of packing and may include other
information provided by the packer.

14
A code plan filed with the council remains in effect until
16 amendments to that code plan are submitted to the council by the
packer. A packer may not pack, process, manufacture, sell, ship,
18 deliver, consign or possess sardines, kippers or, steaks or other
canned herring products for which a code plan is required unless
20 that packer's code appears legibly and permanently upon the
container and the shipping case containing the sardines, kippers
22 or, steaks or other canned herring products.

24 **2. Embargo authority.** The council shall embargo any lot
of sardines, kippers or, steaks or other canned herring products
26 that is not labeled in conformance with section 4168, subsection
5 or section 4169, subsection 1. The council shall immediately
28 notify a packer of an embargo action and shall place a tag on
each lot subject to embargo. Except as permitted by the council
30 or as ordered by the court under subsection 3, a packer may not
destroy, ~~move~~ distribute, sell, or offer to sell any product
32 under embargo by the council. An embargo by the council
constitutes a final agency action for the purposes of judicial
34 review under Title 5, chapter 375, subchapter VII.

36 A. The council shall lift an embargo imposed on substandard
grade products that do not conform to the labeling
38 provisions of section 4168, subsection 5 only if the council
determines that the embargoed products:

40 (1) Will be destroyed by the packer. Prior to
42 destroying any lot, the packer must notify the council
in writing of the packer's intent to destroy the lot;

44 (2) Will be offered for sale in the domestic market as
46 substandard grade products and are labeled in
conformance with section 4168, subsection 5; or

48 (3) Will be offered for sale in the export market and
50 are in compliance with all provisions of paragraph B.

2 B. The council shall lift an embargo imposed on export
4 products that do not conform to the export provisions of
6 section 4169 only if the embargoed products will be
destroyed by the packer with the knowledge of the council or
the council determines that:

8 (1) The embargoed products will be exported, will not
be reimported into the domestic market and are in
10 compliance with the requirements of section 4169;

12 (2) The packer is bonded in compliance with section
14 4169, subsection 4; and

16 (3) The packer has, in writing, notified the council
of the value of the embargoed products and the export
18 destination.

Not later than 45 days after the export of any products
20 embargoed under this subsection, the packer shall provide
the council with a copy of the shipping manifest bearing the
22 name of the export destination.

24 **3. Petition to courts; retrieval or condemnation.** The
council may petition the District Court for an order to retrieve
26 or condemn any lot of sardines, kippers or steaks or other
canned herring products embargoed by the council. If the court
28 determines a lot of sardines, kippers or steaks or other canned
herring products to be in violation of section 4168, subsection 5
or section 4169, the court may, at the packer's expense:

32 A. Order the packer to destroy the embargoed sardines,
kippers or steaks or other canned herring products;

34 B. Order the packer to retrieve and properly label the
36 embargoed sardines, kippers or steaks or other canned
herring products as substandard grade products for sale in
38 the domestic market if:

40 (1) The packer is able to retrieve and properly label
the embargoed sardines, kippers or steaks or other
42 canned herring products as substandard grade products
for sale in the domestic market; and

44 (2) The packer has posted a bond payable to the
46 council in the event of noncompliance with an order of
the court issued under this paragraph. The bond amount
48 may not be less than twice the value of the sardines,
kippers or steaks or other canned herring products to
50 be retrieved and properly labeled; or

2 C. Permit the packer to export the sardines, kippers ~~or~~,
steaks or other canned herring products if:

4 (1) The packer certifies that the sardines, kippers
6 ~~or~~ steaks or other canned herring products do not
8 violate laws of the foreign country to which they will
be exported;

10 (2) The council determines that the packer has
properly labeled the sardines, kippers ~~or~~ steaks or
12 other canned herring products for export; and

14 (3) The packer is bonded in compliance with section
4169, subsection 4.

16 Any action taken by a packer to comply with an order of the court
18 issued under this subsection must be taken under the supervision
of the council. If the court determines a packer to be in
20 violation of section 4168, subsection 5 or section 4169, the
court shall order the packer to pay all court costs, fees and
22 expenses associated with the petition filed by the council.

24 Sec. 10. 32 M.R.S.A. §4168, sub-§2, as enacted by PL 1991, c. 446,
Pt. C, §3, is amended to read:

26 2. Packing mediums. In The packing medium for packing
28 sardines, kippers and, steaks,--the--packing--medium and other
canned herring products must meet the following minimum standards
30 if applicable to the type of packing medium used.

32 A. The vegetable salad oil must be a pure, edible vegetable
oil that is clear and thoroughly refined. It must be a
34 deodorized oil free from rancidity and objectionable flavor
and must satisfactorily stand the 5-hour cold test,
36 so-called. Its color may not be darker than 7 lovibond
units. The oil must have a free fatty acid content of not
38 more than .07% and must retain a satisfactory flavor after
heating to 400 degrees Fahrenheit.

40 B. The olive oil must possess a typical greenish to light
42 yellow color and must possess a free fatty acid content,
calculated as oleic, of not more than 1.4%. The olive oil
44 must be free of defects and possess a good typical odor and
a good typical flavor.

46 C. The tomato sauce used must possess a fairly good red
48 tomato color and must be free of defects and must possess a
fairly good tomato puree, tomato pulp flavor. It must have

2 not less than 8.37% salt-free tomato solids and a specific
gravity of not less than 1.035.

4 **Sec. 11. 32 MRSA §4168, sub-§3**, as amended by PL 1993, c. 585,
§7, is further amended to read:

6
8 **3. Grades.** The council may adopt rules establishing
official grades for sardines, kippers and, steaks and other
10 canned herring products packed in the State, whether packed for
consumption in the United States or packed for export and for the
12 marking, branding or labeling of sardines, kippers and, steaks
and other canned herring products and the use of the grades.
Prior to adopting rules under this section, the council shall
14 hold public hearings in places reasonably convenient for the
packers. Notice of the hearings and of the final action must be
16 sent, by certified mail, to all license holders under section
4153. The council may use the seal of the State of Maine in
18 support of all quality control and promotion activities.

20 A. The grades may specify the number of fish per container;
the amount, quality and nature of the packing medium or
22 fill; the quality, appearance, odor, character, taste and
texture of the fish packed; the style of pack, the quality
24 of the packing and arrangement in the container; the quality
of the substances contained in the container; the size and
26 type of the container; and tolerances allowing for
reasonable variation from grades.

28
30 B. When adopting rules under this section, the council may
consider packing practices in the State and in other
jurisdictions, consumer expectancy, habits and desires, the
32 types of fish available, conditions of sanitation, tastes
and preferences of varying parts of the consumer public,
34 marketing practices and market experience.

36 **Sec. 12. 32 MRSA §4168, sub-§5**, as amended by PL 1991, c. 784,
§14, is further amended to read:

38
40 **5. Substandard grade.** Except as provided in section 4169,
sardines, kippers and, steaks and other canned herring products
that are officially designated as substandard grade, for which a
42 certificate is issued, may not be sold for consumption in the
United States unless each can in the lot has the words
44 "Substandard Grade, Good Food - Not High Quality" so placed as to
be easily seen when the name of the product or pictorial
46 representation thereof of the product is viewed and appear
conspicuously enough to be seen under ordinary conditions of
48 purchase. The words "Substandard Grade, Good Food - Not High
Quality" must be printed in 2 lines across the cover of all cans
50 in letters not less than 1/8 inch in height and be enclosed in

lines that are not less than 1/32 inch in width. This wording must be printed on all wrappers, labels, cartons or other outer coverings of the cans with a permanent type of indelible ink or by means of other approved procedure. The words "Substandard Grade" must appear in letters not less than one inch high on both ends of the shipping container.

Sec. 13. 32 M.R.S.A. §4169, as amended by PL 1993, c. 14, §§6 to 8, is further amended to read:

§4169. Sardines for export; exempt from quantity provisions of Maine Sardine Law

Sardines, kippers ~~or~~, steaks or other canned herring products that satisfy the requirements of the Maine Food Law, but not the requirements of the Maine Sardine Law, may be exported by complying with the shipping carton marking and bonding provisions of this section. Sardines packed in cans containing fewer than 4 fish must be graded as "Good Food" if not officially designated as substandard grade. Sardines officially designated as "Good Food" must be embargoed by the council, pursuant to section 4167-A, until exported. Not later than 45 days after the export of sardines officially designated as "good food," the packer shall provide the council with a copy of the shipping manifest bearing the name of the export destination. For the purposes of this section, the term "exported" includes shipments of sardines, kippers ~~or~~, steaks or other canned herring products to the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the trust territory of Palau. A packer may not import into the United States any sardines, kippers ~~or~~, steaks or other canned herring products exported under this subchapter.

1. Labels. The cover of each can of sardines, kippers, steaks or other canned herring products that satisfy the requirements of the Maine Food Law but not the requirements of the Maine Sardine Law must be labeled with the name of the packer or distributor. Each shipping carton must be marked plainly and conspicuously with the words "FOR EXPORT" in letters not less than 1/2 inch high.

3. Military procurement. Shipments to United States military procurement agencies of sardines, kippers, steaks or other canned herring products that do not meet market requirements within the United States, its territories and possessions as specified by the Maine Sardine Law are not deemed ~~to be~~ considered exported to a foreign country.

4. Bonding requirements prior to engaging in export trade. A packer must be bonded prior to engaging in the export of

2 sardines, kippers or steaks or other canned herring products.
Such bond or bonds must be payable to the council upon the court
4 finding the packer in violation of the export provisions of this
subchapter. Prior to exporting any sardines, kippers or steaks
6 or other canned herring products, a packer must submit a copy of
the bond to the council. The bond amount may not be less than
8 twice the value of the sardines, kippers or steaks or other
canned herring products to be exported, except that a packer
10 regularly engaged in export activities may post a bond for
\$10,000 to cover all exports in one calendar year. For the
12 purposes of this subsection, the term "a packer regularly engaged
in export activities" means a packer who exports 2 or more
14 shipments of sardines, kippers or steaks or other canned herring
products in a calendar year.

16 **Sec. 14. 32 MRSa §4170**, as amended by PL 1993, c. 14, §9, is
further amended to read:

18 **§4170. Cans to be sealed; lined**

20 On all cans used for packing sardines, kippers or steaks or
22 other canned herring products there must be a compound-lined
gasket or other adequate gasket that will hermetically seal the
24 container. All cans used for packing sardines, kippers or steaks
or other canned herring products must be enamel-lined.

26 **Sec. 15. 36 MRSa §4692-A, sub-§1**, as enacted by PL 1991, c.
28 446, Pt. B, §3, is amended to read:

30 **1. Case.** "Case" means either of the following number of
cans of sardines, kippers, steaks or other canned herring
32 products, regardless of the packing medium:

34 A. One hundred cans when the stated net weight of the
contents is under 7 ounces; or

36 B. Forty-eight cans when the stated net weight of the
38 contents is 7 ounces or over.

40 **Sec. 16. 36 MRSa §4692-A, sub-§4**, as amended by PL 1993, c.
14, §11, is further amended to read:

42 **4. Packer.** "Packer" means any person, partnership,
44 association, firm, corporation or society licensed under Title
32, section 4153 to pack sardines, kippers or steaks or other
46 canned herring products.

48 **Sec. 17. 36 MRSa §4692-A, sub-§6**, as enacted by PL 1991, c.
446, Pt. B, §3, is amended to read:

50

6. Steaks. "Steaks" means all laterally cut or
cross-sectioned portions packed in hermetically sealed containers
that are not classified as sardines but are predominantly herring.

Sec. 18. 36 MRSA §4695, as amended by PL 1991, c. 446, Pt. B,
§§5 and 6, is further amended to read:

§4695. Rate of tax

The packing of sardines, kippers, steaks or other canned
herring products is declared to constitute the introduction of
sardines, kippers, steaks or other canned herring products into
the channels of trade.

An excise tax of 35¢ per case is levied and imposed upon the
privilege of packing sardines and an excise tax of 15¢ per case
is levied and imposed upon the privilege of packing kippers and
steaks or other canned herring products.

~~Sardines that are packed specifically for export under Title~~
~~32, chapter 61, subchapter II are exempt from this section.~~

Sec. 19. 36 MRSA §4696, as amended by PL 1977, c. 694, §720,
is further amended to read:

§4696. Packers' applications

Every packer shall file an application with the State Tax
Assessor on forms prescribed and furnished by the State Tax
Assessor, which ~~shall~~ must contain the name under which ~~such~~ the
packer is transacting business within the State, the place or
places of business where packing is taking place, the names and
addresses of the several persons constituting a firm or
partnership, and, if a corporation, the corporate name and the
names and addresses of its principal officers and agents within
the State. The State Tax Assessor ~~will~~ shall then issue a
certificate to the packer and no packer shall may pack any
sardines, kippers, steaks or other canned herring products until
such the certificate is furnished as required by this section.
The certificate ~~shall~~ is not be deemed ~~to be~~ considered a license
within the meaning of that term in the Maine Administrative
Procedure Act.

Sec. 20. 36 MRSA §4697, as repealed and replaced by PL 1991,
c. 824, Pt. D, §5, is amended to read:

§4697. Reports of production and payment of tax

Every packer shall, on or before the last day of each month,
report to the State Tax Assessor the quantity of sardines,
kippers ~~or~~ steaks or other canned herring products packed by the

2 packer during the preceding calendar month, on forms furnished by
the State Tax Assessor, and pay to the State Tax Assessor the tax
4 of 35¢ per case on all sardines reported as packed and 15¢ per
case on all kippers ~~or~~, steaks or other canned herring products
6 reported as packed. If the State Tax Assessor determines that
overpayment of tax has been made, the State Tax Assessor shall
8 make a refund. In making additional assessment or refund
determinations, the State Tax Assessor shall rely on the records
10 of the Maine Sardine Council concerning the quantity of sardines,
kippers ~~or~~, steaks or other canned herring products packed in
12 each sardine plant that is for sale and suitable for human
consumption. Any packer may pay to the State Tax Assessor in
14 advance a sum of money based on an estimate of the packer's tax
for a given number of months and this sum is a credit against
future monthly reports of that packer.

16 **Sec. 21. 36 MRSA §4698**, as amended by PL 1991, c. 446, Pt. B,
18 §8, is further amended to read:

20 **§4698. Inspections**

22 The State Tax Assessor or a duly authorized agent has
24 authority to enter any place of business of a packer, or any car,
boat, truck or other conveyance in which sardines, kippers ~~or~~,
26 steaks or other canned herring products are to be transported,
and duly inspect any books or records of any packer for the
28 purpose of determining what sardines, kippers ~~or~~, steaks or other
canned herring products are taxable, or for the purpose of
determining the truth or falsity of any statement or return made
30 by any packer, and the assessor has authority to delegate those
powers to the Maine Sardine Council, its deputies, agents,
32 servants or employees, and to the Commissioner of Marine
Resources, or any of the commissioner's deputies, agents,
34 servants or employees.

36 **Sec. 22. 36 MRSA §4699, sub-§2, ¶¶A and C**, as amended by PL
1991, c. 446, Pt. B, §8, are further amended to read:

38 A. For the purpose of merchandising and advertising Maine
40 sardines, kippers ~~or~~, steaks or other canned herring
products for food under the direction of the Maine Sardine
42 Council;

44 C. For gathering, studying, classifying and distributing
information and data concerning quality, grades, standards,
46 methods of packing and character of the manufactured
sardine, kipper and, steak and other canned herring
48 products, in order to determine and improve their quality
and aid in merchandising and advertising them under the
50 direction of the Maine Sardine Council.

Sec. 23. 36 MRSA §4699-A, as amended by PL 1991, c. 446, Pt. B, §9, is repealed.

Sec. 24. 36 MRSA §4700, as repealed and replaced by PL 1981, c. 364, §64, is amended to read:

§4700. Suspension of licenses or certificate

If a packer is liable for penalties under chapter 7, his the packer's wholesale seafood license and state license to pack sardines, kippers, steaks or other canned herring products are subject to suspension by the Administrative Court in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and his the packer's certificate shall--be is suspended by the State Tax Assessor until the penalties and related tax are paid in full.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

STATEMENT OF FACTS

In recent years, the Maine Sardine Council and the Maine Sardine Industry has asked the Legislature to clarify the Maine sardine laws to enhance its programs, including the operation of the industry's mandatory product quality grading program. This bill reflects the 1994 recommendations of the council's export committee, organized to review the Maine sardine laws so that they may be made consistent with the intent of the revision of the grading rules, which the council is ready to adopt. With the exception of some technical and conforming amendments, this bill amends the Maine sardine laws to enhance the export of higher quality sardines, and other canned herring products, by clarifying certain provisions. The bill contains an emergency preamble so that the council's revised grading rules can be adopted as soon as the statutory clarifications can be made.