

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 936

H.P. 696

House of Representatives, March 8, 2011

An Act To Conform Maine Menu Labeling Laws to Federal Standards

Reference to the Committee on Health and Human Services suggested and ordered printed.

Handwritten signature of Heather J.R. Priest in cursive.

HEATHER J.R. PRIEST
Clerk

Presented by Representative STRANG BURGESS of Cumberland.
Cosponsored by Senator McCORMICK of Kennebec and
Representatives: FOSSEL of Alna, MALABY of Hancock, O'CONNOR of Berwick, Senators:
LANGLEY of Hancock, PLOWMAN of Penobscot, SULLIVAN of York, WOODBURY of
Cumberland.

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

2 **Sec. 1. 22 MRSA §2491, sub-§2-A**, as enacted by PL 2009, c. 395, §1 and
3 affected by §8, is repealed.

4 **Sec. 2. 22 MRSA §2491, sub-§7-A**, as enacted by PL 2009, c. 395, §3 and
5 affected by §8, is repealed.

6 **Sec. 3. 22 MRSA §2491, sub-§7-B**, as enacted by PL 2009, c. 395, §4 and
7 affected by §8, is repealed.

8 **Sec. 4. 22 MRSA §2491, sub-§7-C**, as enacted by PL 2009, c. 395, §5 and
9 affected by §8, is repealed.

10 **Sec. 5. 22 MRSA §2491, sub-§7-D**, as enacted by PL 2009, c. 395, §6 and
11 affected by §8, is repealed.

12 **Sec. 6. 22 MRSA §2500-A, sub-§1**, as enacted by PL 2009, c. 395, §7 and
13 affected by §8, is repealed.

14 **Sec. 7. 22 MRSA §2500-A, sub-§2**, as enacted by PL 2009, c. 395, §7 and
15 affected by §8, is repealed.

16 **Sec. 8. 22 MRSA §2500-A, sub-§3**, as enacted by PL 2009, c. 395, §7 and
17 affected by §8, is repealed.

18 **Sec. 9. 22 MRSA §2500-A, sub-§4**, as enacted by PL 2009, c. 395, §7 and
19 affected by §8, is repealed.

20 **Sec. 10. 22 MRSA §2500-A, sub-§5**, as enacted by PL 2009, c. 395, §7 and
21 affected by §8, is repealed.

22 **Sec. 11. 22 MRSA §2500-A, sub-§6**, as enacted by PL 2009, c. 395, §7 and
23 affected by §8, is repealed.

24 **Sec. 12. 22 MRSA §2500-A, sub-§7**, as enacted by PL 2009, c. 395, §7 and
25 affected by §8, is amended to read:

26 **7. Compliance; enforcement.** The department or an agent authorized to inspect an
27 eating establishment under section 2499 shall ensure compliance with the provisions of
28 ~~this section but is not required to verify the accuracy of the caloric information required~~
29 ~~by this section~~ the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section
30 343(2010). Upon request a chain restaurant shall provide to the department
31 documentation of the accuracy of the information required by ~~subsection 4~~ the Federal
32 Food, Drug, and Cosmetic Act, 21 United States Code, Section 343(2010). A violation of
33 ~~this section~~ the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section
34 343(2010) is a violation of the Maine Unfair Trade Practices Act, enforceable against the
35 owner or franchisee of the eating establishment, except that no private remedies exist
36 under Title 5, section 213. This section may not be construed to create or enhance any

1 claim, right of action or civil liability that did not exist under state law prior to the
2 effective date of this subsection or limit any claim, right of action or civil liability that
3 otherwise exists under state law. No private right of action arises out of this section. The
4 only mechanism for enforcing this section is as provided in this subsection.

5 **Sec. 13. 22 MRSA §2500-A, sub-§8**, as enacted by PL 2009, c. 395, §7 and
6 affected by §8, is amended to read:

7 **8. Uniformity of regulation; preemption.** ~~To the extent consistent with federal~~
8 ~~law, the regulation of disclosure of caloric and nutritional information is a matter of~~
9 ~~statewide concern, and state law governing that disclosure occupies the whole field of~~
10 ~~regulation regarding disclosure by chain restaurants of nutritional information and~~
11 ~~requirements regarding the content required to be posted on menus, menu boards and~~
12 ~~food display tags. The department shall adopt rules consistent with the requirements of~~
13 ~~the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section 343(2010), to~~
14 ~~enforce the provisions of that section. Rules adopted pursuant to this subsection are~~
15 ~~major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.~~ A local
16 government may not adopt an ordinance regulating the dissemination of caloric or
17 nutritional information ~~or requiring information to be placed on menus, menu boards or~~
18 ~~food display tags~~ by a chain restaurant, and any ordinance or regulation that violates this
19 subsection is void and has no force or effect.

20 SUMMARY

21 This bill repeals provisions of law regarding menu labeling that have been preempted
22 by the federal Patient Protection and Affordable Care Act, Public Law 111-148, Section
23 4205(2010), which creates a uniform national approach to nutrition labeling for restaurant
24 menus with a primary focus on caloric content. The bill retains the current statutory
25 definition of "chain restaurant" and directs the Department of Health and Human Services
26 to adopt major substantive rules to locally enforce the provisions of 21 United States
27 Code, Section 343(2010).