

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 505

H.P. 362

House of Representatives, January 31, 2019

An Act To Require the Use of Reusable Food Ware at Eating Establishments

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative RYKERSON of Kittery.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: FAY of Raymond, TERRY of Gorham, TUCKER of Brunswick.

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

2 **Sec. 1. 38 MRSA §1611** is enacted to read:

3 **§1611. Single-use disposable food ware**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Fluorinated chemicals" means the class of organic chemicals containing at least
7 one fully fluorinated carbon atom, including, but not limited to, perfluoroalkyl and
8 polyfluoroalkyl substances.

9 B. "Food ware" means a bag, sack, wrapper, paper or foil liner, container, bowl,
10 plate, tray, carton, box, cup, mug, utensil, straw or lid and any other implement or
11 item used to hold, serve or consume prepared food or in which prepared food is
12 placed or packaged on a prepared food vendor's premises for consumption on or off
13 the premises.

14 C. "Prepared food" means food or beverages that are prepared on a prepared food
15 vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing or other
16 processing and that require no further preparation by a consumer in order to be
17 consumed. "Prepared food" does not include raw meats or raw whole fruits or
18 vegetables.

19 D. "Prepared food vendor" means the operator of an eating establishment that sells
20 prepared food to customers to be consumed on or off the operator's premises.
21 "Prepared food vendor" includes, but is not limited to, a bakery, cafeteria, drive-in,
22 food products store, food service establishment, drugstore, theater, bar or mobile or
23 temporary food facility.

24 E. "Reusable food ware" means food ware that is composed of durable material and
25 is designed to be washed and sanitized after each use and reused multiple times over
26 an extended period of time.

27 F. "Single-use disposable food ware" means food ware that is not designed for
28 repeated use and is expected to be disposed of after a single use.

29 G. "Take-out food" means prepared food that is sold by a prepared food vendor to a
30 customer to be consumed off the vendor's premises. "Take-out food" includes
31 prepared food delivered to a customer by a prepared food vendor or a 3rd-party
32 delivery service.

33 H. "Take-out meal" means take-out food consisting of an entree, a full-size salad or a
34 breakfast, lunch or dinner item that is served in up to 3 items of food ware.

35 **2. Reusable food ware required for on-premises consumption.** Except as
36 provided in paragraphs B and C, a prepared food vendor may sell or provide prepared
37 food to a customer for consumption on the vendor's premises only if the prepared food is
38 served to the customer using reusable food ware.

1 A. Prior to providing prepared food to a customer, a prepared food vendor shall ask
2 the customer whether the customer intends to consume the food on or off the vendor's
3 premises. If the customer intends to consume the food on the premises, the prepared
4 food vendor shall serve the food using reusable food ware pursuant to this subsection.
5 If the customer intends to consume the food off the premises, the prepared food
6 vendor shall serve the food to the customer using single-use disposable food ware
7 that meets the requirements of subsection 3.

8 B. A prepared food vendor that is unable to wash, rinse and sanitize reusable food
9 ware in accordance with the requirements of the Maine Food Law and the rules
10 adopted pursuant to the Maine Food Law on or off the vendor's premises may request
11 from the department a waiver from compliance with the requirements of this
12 subsection.

13 (1) The department may grant a waiver under this paragraph if it determines that
14 the prepared food vendor is substantially unable to comply with the requirements
15 of this subsection due to space constraints within the vendor's premises or due to
16 financial hardship. A waiver granted by the department may not exceed a term of
17 3 years, and the department may not grant to a prepared food vendor multiple
18 waivers whose terms exceed 3 years in total.

19 (2) If a prepared food vendor is granted a waiver by the department under this
20 paragraph, the vendor is not required to comply with the requirements of this
21 subsection for the term of the waiver but shall comply with the requirements of
22 subsection 3 for all prepared food served on and off the vendor's premises.

23 (3) The department shall require a prepared food vendor granted a waiver under
24 this paragraph to periodically report to the department on the vendor's efforts to
25 achieve compliance with the requirements of this subsection on or before the date
26 the waiver expires.

27 C. A prepared food vendor may serve prepared food to a customer for consumption
28 on the vendor's premises using any of the following items of single-use disposable
29 food ware that comply with the requirements of subsection 3: food wrappers, foil
30 sheets, napkins and paper or foil basket and tray liners.

31 **3. Use of single-use disposable food ware for off-premises consumption.** A
32 prepared food vendor may sell or provide prepared food to a customer for consumption
33 off the vendor's premises using single-use disposable food ware only if the prepared food
34 is served to the customer using single-use disposable food ware that has been approved
35 by the department pursuant to this subsection.

36 A. The department shall develop, maintain and annually update on its publicly
37 accessible website a list of approved items of single-use disposable food ware and the
38 manufacturers or sellers from which those approved items may be obtained. All
39 items of single-use disposable food ware approved by the department under this
40 paragraph:

41 (1) Must be accepted for recycling or composting by a majority of the recycling
42 or composting collection programs in the State;

1 (2) If compostable, must be certified as compostable by a 3rd-party certifying
2 entity recognized by the department; and

3 (3) Beginning January 1, 2022, and with respect to single-use disposable food
4 ware composed wholly of paper or other natural fiber material, must be free of all
5 intentionally added fluorinated chemicals as certified by a 3rd-party certifying
6 entity recognized by the department.

7 B. The department may require that certain approved items of single-use disposable
8 food ware be composed wholly or in part of post-consumer recycled materials.

9 **4. Fees for single-use disposable food ware.** Except as provided in paragraph C, a
10 prepared food vendor selling or providing take-out food to a customer for consumption
11 off the vendor's premises shall require payment by the customer of a fee of 25¢ for each
12 item of single-use disposable food ware in which the customer's take-out food is served or
13 a fee of 25¢ for each take-out meal served to the customer, whichever is less.

14 A. A prepared food vendor shall ensure that any fee required under this subsection
15 appears as a separate item on a sales receipt provided to a customer.

16 B. The fees collected by a prepared food vendor under this subsection are retained by
17 the vendor.

18 C. The fees required under this subsection do not apply to:

19 (1) Prepared food served to but not fully consumed by a customer on a prepared
20 food vendor's premises that is packaged in items of single-use disposable food
21 ware for the customer to take off the vendor's premises;

22 (2) Any of the following items of single-use disposable food ware made
23 available by a prepared food vendor in accordance with subsection 3: straws,
24 stirrers, cup spill plugs, napkins, condiment packets, utensils and cups; or

25 (3) A purchase made by a customer with a food instrument distributed by the
26 Department of Health and Human Services under the supplemental nutrition
27 assistance program pursuant to Title 22, section 3104 or the Women, Infants and
28 Children Special Supplemental Food Program of the federal Child Nutrition Act
29 of 1966.

30 D. A prepared food vendor may not charge a customer a fee under this subsection for
31 any of the items of single-use disposable food ware listed in paragraph C,
32 subparagraph (2) and shall provide those items to a customer at the request of the
33 customer or make those items available at a self-service station.

34 E. The department shall develop and make available on its publicly accessible
35 website a brief statement describing the requirements of this subsection and shall
36 publish guidelines for the posting or provision of that statement by prepared food
37 vendors selling take-out food.

38 F. A prepared food vendor selling take-out food shall post in a conspicuous location
39 at all points of purchase within the vendor's premises the statement developed by the
40 department in accordance with paragraph E.

1 G. A prepared food vendor selling take-out food shall include on the vendor's printed
2 and electronically available menus the statement developed by the department in
3 accordance with paragraph E.

4 H. A 3rd-party delivery service that facilitates the delivery of take-out food from a
5 prepared food vendor to a customer shall include on an electronic sales platform used
6 by the delivery service the statement developed by the department in accordance with
7 paragraph E.

8 I. A prepared food vendor selling take-out food shall ensure that customers placing
9 telephone orders for take-out food are informed of the fees that may be required
10 under this subsection.

11 **5. Customer-provided food ware; prepackaged prepared food.** Nothing in this
12 section prohibits a prepared food vendor from allowing a customer to bring to the
13 vendor's premises single-use disposable food ware that does not meet the requirements of
14 this section for the customer to use for the consumption of prepared food on or off the
15 vendor's premises. A prepared food vendor that purchases from a seller located outside
16 of the State items of prepared food that are prepackaged in single-use disposable food
17 ware that does not meet the requirements of this section is not required to repackage those
18 items prior to resale to customers in the State.

19 **6. State compliance.** A prepared food vendor or other food service providing or
20 serving prepared food to customers at a state facility or state function shall comply with
21 the requirements of this section.

22 **7. Administration and enforcement; emergency suspension of requirements;**
23 **rules.** The department shall administer and enforce the requirements of this section. The
24 department may on a temporary basis suspend the application of all or some of the
25 requirements of this section as necessary for the immediate preservation of public health
26 or safety. The department may adopt rules to implement this section. Rules adopted
27 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
28 subchapter 2-A.

29 **Sec. 2. Effective date.** This Act takes effect January 1, 2021.

30 **SUMMARY**

31 This bill requires that a prepared food vendor may sell or provide prepared food to a
32 customer for consumption on the vendor's premises only if the prepared food is served to
33 the customer using reusable food ware. The bill also requires that a prepared food vendor
34 may sell or provide prepared food to a customer for consumption off the vendor's
35 premises using single-use disposable food ware only if the prepared food is served to the
36 customer using single-use disposable food ware approved by the Department of
37 Environmental Protection as recyclable or compostable.

38 The bill also requires that a prepared food vendor selling take-out food to a customer
39 for consumption off the vendor's premises must require payment by the customer of a fee,
40 retained by the prepared food vendor, of 25¢ for certain items of single-use disposable

1 food ware in which the customer's take-out food is served or for each take-out meal
2 served to the customer, whichever is less. The provisions of this bill also apply to a
3 prepared food vendor or other food server providing or serving prepared food to
4 customers at a state facility or state function.

5 This legislation takes effect January 1, 2021.