

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1433

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H.P. 1043

House of Representatives, March 28, 2019

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### **An Act To Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging**

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

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

ROBERT B. HUNT  
Clerk

Presented by Representative FAY of Raymond.  
Cosponsored by Senator FOLEY of York and  
Representatives: INGWERSEN of Arundel, SHEATS of Auburn, SKOLFIELD of Weld,  
STEARNS of Guilford, ZEIGLER of Montville, Senators: MILLETT of Cumberland,  
SANBORN, L. of Cumberland.

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

2 **Sec. 1. 32 MRSA §1731**, as enacted by PL 1989, c. 849, §1, is amended to read:

3 **§1731. Purpose**

4 The purpose of this chapter is to reduce the toxicity of packaging and packaging  
5 waste without impeding or discouraging the expanded use of post-consumer materials in  
6 the production of packaging and its components. Under this chapter, reduction of the  
7 toxicity in packaging and packaging waste is accomplished by prohibiting the  
8 unnecessary addition of heavy metals, such as lead, mercury, cadmium and hexavalent  
9 chromium, and other chemicals of concern, such as PFAS and phthalates, in packaging  
10 and packaging components.

11 **Sec. 2. 32 MRSA §1732**, as amended by PL 1995, c. 656, Pt. A, §§7 and 8, is  
12 further amended to read:

13 **§1732. Definitions**

14 As used in this chapter, unless the context otherwise indicates, the following terms  
15 have the following meanings.

16 **1-A. Department.** "Department" means the Department of Environmental  
17 Protection.

18 **1-B. Chemical.** "Chemical" has the same meaning as in Title 38, section 1691,  
19 subsection 2.

20 **1-C. Chemical of concern.** "Chemical of concern" means a chemical with  
21 hazardous properties that has been listed by the department pursuant to Title 38, section  
22 1693 or that has been designated a chemical of concern by rule by the department  
23 pursuant to section 1733-A.

24 **2. Distributor.** "Distributor" means any person, firm or corporation that sells a  
25 packaged product to a retailer in this State or any person, firm or corporation that receives  
26 a shipment or consignment of, or in any other manner acquires, packaged products  
27 outside the State for sale to consumers in the State.

28 **2-A. Incidental presence.** "Incidental presence" means the presence of a regulated  
29 metal or other regulated chemical as an unintended or undesired ingredient of a package  
30 or packaging component.

31 **2-B. Intentional introduction.** "Intentional introduction" means the act of  
32 deliberately using a regulated metal or other regulated chemical in the formation of a  
33 package or packaging component when its continued presence is desired in the final  
34 package or packaging component to provide a specific characteristic, appearance or  
35 quality.

36 The use of a regulated metal or other regulated chemical as a processing agent or  
37 intermediate to impart certain chemical or physical changes during manufacturing, when

1 the incidental retention of a residue of the metal or chemical in the final package or  
2 packaging component is neither desired nor deliberate, is not considered intentional  
3 introduction for the purposes of this chapter.

4 The use of recycled materials as feedstock for the manufacture of new packaging  
5 materials, when a portion of the recycled materials may contain amounts of the regulated  
6 metals or other regulated chemicals, is not considered intentional introduction for the  
7 purposes of this chapter when the new package or packaging component is in compliance  
8 with section 1733.

9 **2-C. Food package.** "Food package" means a package that is designed for direct  
10 food contact. "Food package" includes, but is not limited to, plastic disposable gloves  
11 used in commercial or institutional food service.

12 **3. Manufacturer.** "Manufacturer" means any person ~~who~~ that manufactures a  
13 package or packaging component or applies a food package to a product for distribution  
14 or sale.

15 **4. Package.** "Package" means a container used in marketing, protecting or handling  
16 a product ~~and~~. "Package" includes a unit package and a shipping container defined by the  
17 American Society for Testing and Materials in its annual book of standards as ASTM,  
18 D996. ~~"Package" also includes such; a food package; and unsealed receptacles such~~ as  
19 carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films,  
20 bags and tubs.

21 **5. Packaging component.** "Packaging component" means any individual assembled  
22 part of a package such as, but not limited to, any interior or exterior blocking, bracing,  
23 cushioning, weatherproofing, exterior strapping, coatings, closures, inks and labels. Tin-  
24 plated steel that meets the American Society for Testing and Materials specification A-  
25 623 must be considered as a single package component. Electrogalvanized coated steel  
26 and hot-dipped coated galvanized steel that meets the American Society for Testing and  
27 Materials specifications A-525 and A-879 must be treated in the same manner as tin-  
28 plated steel.

29 **5-A. Perfluoroalkyl and polyfluoroalkyl substances.** "Perfluoroalkyl and  
30 polyfluoroalkyl substances" or "PFAS" means any member of the class of fluorinated  
31 organic chemicals containing at least one fully fluorinated carbon atom.

32 **5-B. Phthalates.** "Phthalates" means any member of the class of organic chemicals  
33 that are esters of phthalic acid containing 2 carbon chains located in the ortho position.

34 **5-C. Safer alternative.** "Safer alternative" has the same meaning as in Title 38,  
35 section 1691, subsection 12.

36 **6. Supplier.** "Supplier" means any person, firm or corporation that sells packages or  
37 packaging components to a distributor.

38 **Sec. 3. 32 MRSA §1733**, as enacted by PL 1989, c. 849, §1, is amended to read:

1           **§1733. Prohibitions; substitute materials**

2           **1. Prohibition of sale of packaging containing certain heavy metals.** A  
3 manufacturer, supplier or distributor may not offer for sale or for promotional purposes a  
4 package or packaging component that includes inks, dyes, pigments, adhesives,  
5 stabilizers, coatings or any other additives to which any lead, cadmium, mercury or  
6 hexavalent chromium has been intentionally introduced during manufacturing or  
7 distribution. This prohibition does not apply to the incidental presence of any of these  
8 elements.

9           **2. Prohibition of sale of product in packaging containing certain heavy metals.**  
10 A manufacturer or distributor may not offer for sale or for promotional purposes any  
11 product in a package that includes, in the package itself or any packaging components,  
12 inks, dyes, pigments, adhesives, stabilizers, coatings or any other additives to which any  
13 lead, cadmium, mercury or hexavalent chromium has been intentionally introduced  
14 during manufacturing or distribution. This prohibition does not apply to the incidental  
15 presence of any of these elements.

16           **3. Concentration levels of certain heavy metals.** ~~The~~ For the purposes of  
17 subsection 1 and 2, the sum of the concentration levels of lead, cadmium, mercury and  
18 hexavalent chromium present in any package or packaging component may not exceed:

- 19           A. Effective April 1, 1992, 600 parts per million by weight, or 0.06%;  
20           B. Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and  
21           C. Effective April 1, 1994, 100 parts per million by weight, or 0.01%.

22           **3-A. Prohibition of sale of food package containing phthalates.** Beginning  
23 January 1, 2022, a manufacturer, supplier or distributor may not offer for sale or for  
24 promotional purposes a food package or a packaging component of a food package that  
25 includes inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers or any other  
26 additives to which phthalates have been intentionally introduced in any amount greater  
27 than an incidental presence.

28           **3-B. Prohibition of sale of food package containing PFAS.** In accordance with the  
29 requirements of this subsection, the department may by rule prohibit a manufacturer,  
30 supplier or distributor from offering for sale or for promotional purposes a food package  
31 or a packaging component of a food package to which PFAS have been intentionally  
32 introduced in any amount greater than an incidental presence.

- 33           A. The department may not by rule prohibit the sale of a food package or a  
34 packaging component of a food package to which PFAS have been intentionally  
35 introduced in any amount greater than an incidental presence under this subsection  
36 unless the department has determined that a safer alternative to the use of PFAS in a  
37 specific application of PFAS to a food package or packaging component of a food  
38 package is available. To determine that a safer alternative is available, the  
39 department must find that a safer alternative is readily available in sufficient quantity  
40 and at a comparable cost and that the safer alternative performs as well or better than  
41 PFAS in a specific application of PFAS to a food package or packaging component  
42 of a food package.

1 B. If the department determines pursuant to paragraph A that a safer alternative to  
2 the use of PFAS in a specific application of PFAS to a food package or packaging  
3 component of a food package is available, the department may by rule prohibit the  
4 sale of a food package or a packaging component of a food package to which PFAS  
5 have been intentionally introduced in any amount greater than an incidental presence  
6 under this subsection, except that such prohibition may not take effect until January  
7 1, 2022 or 2 years following the date on which the department determines that a safer  
8 alternative is available, whichever is later.

9 **3-C. Prohibition of sale of food package containing designated chemical of**  
10 **concern.** Beginning 2 years after the designation by the department of a chemical of  
11 concern pursuant to section 1733-A, unless a later effective date is specified by the  
12 department, a manufacturer, supplier or distributor may not offer for sale or for  
13 promotional purposes a food package or a packaging component of a food package that  
14 includes inks, dyes, pigments, adhesives, stabilizers, coatings or any other additives to  
15 which a chemical of concern subject to a restriction under section 1733-A, subsection 3  
16 has been intentionally introduced during manufacturing or distribution in any amount  
17 greater than an incidental presence.

18 **3-D. Exemption to prohibition of sale of food package.** The prohibitions in  
19 subsections 3-A, 3-B and 3-C do not apply to a manufacturer of a food or beverage  
20 product that has annual national sales of all food and beverage products produced by the  
21 manufacturer of less than one billion dollars. A manufacturer that meets the requirements  
22 of this exemption shall submit a written request to the department for a determination that  
23 the manufacturer is exempt from the prohibitions in subsections 3-A, 3-B and 3-C, and  
24 the department shall provide a written determination to the manufacturer approving the  
25 exemption, denying the exemption or requesting additional information from the  
26 manufacturer. A 2-year exemption may be granted under this subsection, and that  
27 exemption may be renewed every 2 years.

28 **4. Substitute materials.** No material used to replace lead, cadmium, mercury or  
29 hexavalent chromium, phthalates, PFAS or a designated chemical of concern prohibited  
30 under subsection 3-C in a package or packaging component may be used in a quantity or  
31 manner that creates a hazard as great as or greater than the hazard created by the lead,  
32 cadmium, mercury or hexavalent chromium prohibited heavy metal or chemical.

33 **Sec. 4. 32 MRSA §1733-A** is enacted to read:

34 **§1733-A. Chemicals of concern**

35 The department may by rule designate a chemical of concern in a food package or a  
36 packaging component of a food package and, except as provided in subsection 4, impose  
37 one or more of the requirements in subsections 1 to 3.

38 **1. Disclosure.** The department may require a manufacturer of a food package or a  
39 packaging component of a food package to submit a written notice regarding the use of a  
40 designated chemical of concern in the food package or packaging component, which must  
41 include, but is not limited to, information on the amount and concentration of the  
42 chemical in the food package or packaging component; information on the type of food

1 package or packaging component; the intended purpose of the chemical; and the number  
2 of units of the food package or packaging component sold or distributed in the State or  
3 nationally.

4 **2. Alternatives.** The department may require a manufacturer of a food package or a  
5 packaging component of a food package to submit an assessment regarding the  
6 availability, cost, feasibility and performance, including the potential harm to human  
7 health and the environment, of alternatives to the designated chemical of concern and the  
8 reason the chemical is used in the manufacture of the food package or packaging  
9 component in lieu of identified alternatives. If a manufacturer required to produce an  
10 assessment under this subsection fails to timely provide the department with such  
11 assessment, the department may require the manufacturer to pay to the department a fee  
12 that represents the reasonable actual costs to the department of contracting for the  
13 preparation of an independent assessment under this subsection.

14 **3. Prohibition.** If the department determines that a safer alternative to a  
15 manufacturer's use of a designated chemical of concern in a food package or a packaging  
16 component of a food package is reasonably available, effective and affordable to the  
17 consumer, the department may require compliance by the manufacturer with the  
18 prohibition in section 1733, subsection 3-C.

19 **4. Exemption.** The requirements in subsections 1 to 3 may not be applied to a  
20 manufacturer of a food or beverage product that has annual national sales of all food and  
21 beverage products produced by the manufacturer of less than one billion dollars. A  
22 manufacturer that meets the requirements of this exemption shall submit a written request  
23 to the department for a determination that the manufacturer is exempt from the  
24 requirements in subsections 1 to 3, and the department shall provide a written  
25 determination to the manufacturer approving the exemption, denying the exemption or  
26 requesting additional information from the manufacturer. A 2-year exemption may be  
27 granted under this subsection, and that exemption may be renewed every 2 years.

28 **Sec. 5. 32 MRSA §1734**, as amended by PL 1995, c. 656, Pt. A, §9, is further  
29 amended to read:

30 **§1734. Exemptions**

31 All packages and packaging components are subject to the provisions of section 1733  
32 unless:

33 **1. Manufactured prior to April 1, 1992.** The package or packaging component has  
34 a code indicating a date of manufacture prior to ~~the effective date of this section~~ April 1,  
35 1992;

36 **2. Health and safety requirements; feasibility; post-consumer materials.** The  
37 manufacturer, supplier or distributor petitions the department for an exemption for a  
38 particular package or packaging component and the department grants an exemption for  
39 one or more of the following reasons.

1 A. The package or packaging component contains lead, cadmium, mercury or  
2 hexavalent chromium added in the manufacturing, forming, printing or distribution  
3 process in order to comply with health or safety requirements of state or federal law.

4 B. There is no feasible alternative to the use of lead, cadmium, mercury or  
5 hexavalent chromium in the package or packaging component. For the purposes of  
6 this section, "no feasible alternative" means a use in which the regulated substance is  
7 essential to the protection, safe handling or function of the package's contents.

8 C. The addition of post-consumer materials causes the package or packaging  
9 component to exceed the maximum concentration levels set forth in section 1733,  
10 subsection 3.

11 D. There is no safer alternative to the use of a chemical of concern prohibited under  
12 section 1733, subsection 3-C in a food package or packaging component of a food  
13 package that is reasonably available, effective and affordable to the consumer.

14 For packages or packaging components exempted under paragraph A ~~or~~, B or D, a 2-year  
15 exemption may be granted and that exemption may be renewed for an additional 2 years.  
16 An exemption granted under paragraph C is valid for 6 years; or

17 **3. Alcoholic beverages bottled prior to April 1, 1992.** The package or packaging  
18 component contains an alcoholic beverage bottled prior to April 1, 1992; ~~or~~.

19 **Sec. 6. 32 MRSA §1735, sub-§3** is enacted to read:

20 **3. Food package; limitation of scope of certificate.** A manufacturer subject to the  
21 prohibitions under section 1733, subsection 3-A, 3-B or 3-C shall develop a certificate of  
22 compliance under this section, except that the manufacturer may limit the scope of the  
23 certificate to the prohibitions in section 1733, subsection 3-A, 3-B or 3-C. A  
24 manufacturer that is exempt under section 1733, subsection 3-D or section 1733-A,  
25 subsection 4 is also exempt from the requirements of this subsection.

26 **Sec. 7. 32 MRSA §1737**, as amended by PL 1995, c. 656, Pt. A, §12 and PL 2011,  
27 c. 657, Pt. W, §5, is repealed and the following enacted in its place:

28 **§1737. Rules**

29 The department shall adopt rules necessary for the implementation, administration  
30 and enforcement of this chapter. Rules adopted pursuant to this section are routine  
31 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

32 **Sec. 8. 32 MRSA §1739**, as enacted by PL 1989, c. 849, §1, is repealed.

33 **SUMMARY**

34 This bill amends the laws regarding the reduction of toxics in packaging to prohibit  
35 the sale of food packaging to which phthalates have been intentionally introduced,  
36 effective January 1, 2022. It also authorizes the Department of Environmental Protection  
37 to by rule prohibit the sale of food packaging to which perfluoroalkyl and polyfluoroalkyl  
38 substances, or PFAS, have been intentionally introduced upon a determination by the



1 department that a safer alternative to the intentionally introduced PFAS is available,  
2 except that such prohibition may not take effect until January 1, 2022 or 2 years  
3 following the department's determination that a safer alternative is available, whichever is  
4 later.

5 The bill provides an exemption from these prohibitions for a manufacturer of a food  
6 or beverage product that has annual national sales of all food and beverage products  
7 produced by the manufacturer of less than one billion dollars. It also authorizes the  
8 department to designate additional chemicals of concern in food packaging; to require  
9 manufacturers of food packaging that use such designated chemicals to report regarding  
10 its use of the chemical and the availability of safer alternatives; and to prohibit the sale of  
11 food packaging to which a designated chemical of concern has been intentionally  
12 introduced if safer alternatives are reasonably available, effective and affordable to the  
13 consumer.