

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 351**

H. P. 344

House of Representatives, February 4, 1953.

On motion of Mr. Center of Standish tabled pending reference, tomorrow assigned and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Center of Standish.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-THREE

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**AN ACT Creating the Maine Food Law.**

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

**Sec. 1. R. S., c. 27, § 187, renumbered.** Section 187 of chapter 27 of the revised statutes, as amended, is hereby renumbered to be section 186-A of said chapter 27.

**Sec. 2. R. S., c. 27, §§ 186-B - 186-N, additional.** Chapter 27 of the revised statutes is hereby amended by adding thereto 13 new sections, to be numbered 186-B to 186-N, inclusive, to read as follows:

**'Maine Food Law**

**Sec. 186-B. Short title.** Sections 186-B to 186-N, inclusive, shall be known and may be cited as the "Maine food law."

**Sec. 186-C. Definitions.** As used in sections 186-B to 186-N, inclusive, the following words and phrases shall have the following meanings:

The term "food" means articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or

under authority of sections 186-B to 186-N, inclusive, that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

The term "immediate container" does not include the package liners.

The term "labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

The term "contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

The provisions of sections 186-B to 186-N, inclusive, regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale; and the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food establishment.

The term "Federal Act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.)

Sec. 186-D. Prohibitions. The following acts within this state are hereby prohibited:

I. The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.

II. The adulteration or misbranding of any food.

III. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

IV. The dissemination of any false advertisement.

V. The refusal to permit entry or inspection, or to permit the taking of a sample as authorized in section 186-N.

VI. The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom he received in good faith the food.

VII. The removal or disposal of a detained or embargoed article in violation of section 186-G.

VIII. The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being misbranded.

IX. Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of sections 186-B to 186-N, inclusive.

Sec. 186-E. Injunctions. In addition to the remedies hereinafter provided, the commissioner is hereby authorized to apply to any justice of the superior court or any justice of the supreme judicial court in term time or vacation and such justice shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 186-D.

Sec. 186-F. Penalty. Any person who violates any of the provisions of section 186-D shall be punished by a fine of not more than \$100 for the 1st offense, and a fine of not more than \$200 for each subsequent offense.

No person shall be subject to the penalties prescribed in the preceding paragraph for having violated the provisions of subsections I or III of section 186-D if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of sections 186-B to 186-N, inclusive, designating said sections.

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, shall be liable under the provisions of this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the commissioner to furnish the commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in this state who caused him to disseminate such advertisement.

Sec. 186-G. Articles detained, embargoed and condemned. Whenever a duly authorized agent of the commissioner finds or has probable cause to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of sections 186-B to 186-N, inclusive, he shall affix to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

When an article detained or embargoed under the provisions of the preceding paragraph has been found by such agent to be adulterated or misbranded, he shall petition the judge of a municipal or superior court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling

or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the commissioner that the article is no longer in violation of the provisions of sections 186-B to 186-N, inclusive, and that the expenses of such supervision have been paid.

Whenever the commissioner or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the commissioner or his authorized agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

Sec. 186-H. Notice. Nothing in sections 186-B to 186-N, inclusive, shall be construed as requiring the commissioner to report for the institution of proceedings under said sections, minor violations of said sections, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Sec. 186-I. Regulations. Whenever in the judgment of the commissioner such action will promote honesty and fair dealing in the interest of consumers, the commissioner shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the commissioner shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

Sec. 186-J. Adulteration. A food shall be deemed to be adulterated: (A) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause

if the quantity of such substance in such food does not ordinarily render it injurious to health; or (B) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 186-L; or (C) if it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or (D) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or (E) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (F) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(A) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (B) if any substance has been substituted wholly or in part therefor; or (C) if damage or inferiority has been concealed in any manner; or (D) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1%, harmless natural wax not in excess of four-tenths of 1%, harmless natural gum, and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than  $\frac{1}{2}$  of 1%, by volume of alcohol derived solely from use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

If it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

Sec. 186-K. Misbranded food. A food shall be deemed to be misbranded:

- I. If its labeling is false or misleading in any particular.
- II. If it is offered for sale under the name of another food.
- III. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.
- IV. If its container is so made, formed or filled as to be misleading.

V. If in package form, unless it bears a label containing (A) the name and place of business of the manufacturer, packer or distributor; (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided that under clause (B) of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the commissioner.

VI. If any word, statement or other information required by or under authority of sections 186-B to 186-N, inclusive, to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

VII. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 186-I unless it conforms to such definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food.

VIII. If it purports to be or is represented as:

- (A) A food for which a standard of quality has been prescribed by regulations as provided by section 186-I and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standards; or
- (B) A food for which a standard or standard of fill of container have been prescribed by regulations as provided by section 186-I, and it falls below the standard or fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

IX. If it is not subject to the provisions of subsection VII of this section, unless it bears labeling clearly giving (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from 2 or more ingredients, the common or usual name of each such ingredient; except that spices, flavoring and colorings, other than those sold as such, may be designated as spices, flavoring and colorings, without naming each; provided that to the extent that compliance with the requirements of clause (B) of this subsection is impractical or results in



deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner.

X. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the commissioner determines to be, and by regulation prescribed, as, necessary in order to fully inform purchasers as to its value for such uses.

XI. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the commissioner.

Sec. 186-L. Addition of certain substances limited. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause B of the 1st paragraph of section 186-J; but when such substance is so required or cannot be avoided, the commissioner shall promulgate regulations limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause B of the 1st paragraph of section 186-J. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause A of the 1st paragraph of section 186-J. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Sec. 186-M. Powers of commissioner. The authority to promulgate regulations for the efficient enforcement of sections 186-B to 186-N, inclusive, is hereby vested in the commissioner. The commissioner is hereby authorized to make the regulations promulgated under the provisions of said sections conform, in so far as practicable with those promulgated under the federal act.

Hearings authorized or required by the provisions of sections 186-B to 186-N, inclusive, shall be conducted by the commissioner, or such officer, agent or employee as the commissioner may designate for the purpose.

Before promulgating any regulations contemplated by sections 186-I and subsection X of section 186-K, the commissioner shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the commissioner, which date shall not be prior to 30 days after its promulgation. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the commissioner to such an extent as he deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date.

**Sec. 186-N. Access to factories, etc.** The commissioner, or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce for the purpose:

- I. Of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of sections 186-B to 186-N, inclusive, are being violated; and
- II. To secure samples or specimens of any food after paying or offering to pay for such sample. It shall be the duty of the commissioner to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of sections 186-B to 186-N, inclusive, is being violated.'

**Sec. 3. R. S., c. 27, § 4, amended.** Section 4 of chapter 27 of the revised statutes, as amended, is hereby further amended to read as follows:

**'Sec. 4. Hearing in case of violation.** When the commissioner becomes cognizant of the violation of any provision of sections 3 to 8, inclusive, 34 to 40, inclusive, 124 to 127, inclusive, 129, 157 to ~~187-H, inclusive, 187-I to 187-S, inclusive,~~ 186, inclusive, 186-A to 186-N, inclusive, 187-A to 187-S, inclusive, 196 to 211, inclusive, and 213 to 224, inclusive, he shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings, or, in case of a packer of food, a copy of the charge to be preferred, to be given to the person concerned and the person from whom the sample was obtained, and the person whose name appears upon the

label, (if a resident of the state), who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the said commissioner. When the hearing relates to the packing of apples, it shall be held in the county where the inspection was made.'

**Sec. 4. R. S., c. 27, § 158, amended.** Section 158 of chapter 27 of the revised statutes, as amended, is hereby further amended by repealing therefrom the paragraph relating to "food."

**Sec. 5. R. S., c. 27, § 168, sub-§§ V, VI, repealed.** Subsections V and VI of section 168 of chapter 27 of the revised statutes are hereby repealed.

**Sec. 6. R. S., c. 27, § 169, sub-§ V, repealed.** Subsection V of section 169 of chapter 27 of the revised statutes is hereby repealed.

**Sec. 7. R. S., c. 27, § 170, repealed.** Section 170 of chapter 27 of the revised statutes is hereby repealed.