

**LD289**

**COMMITTEE AMENDMENT**

Passed by the House (18 April), Senate (25 April), Governor (30 April)

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0213&item=2&snum=129>

(as replaced and amended by H-49 and H-55)

orig: [http://www.mainelegislature.org/legis/bills/bills\\_129th/billtexts/HP021301.asp](http://www.mainelegislature.org/legis/bills/bills_129th/billtexts/HP021301.asp)

49: [http://www.mainelegislature.org/legis/bills/bills\\_129th/billtexts/HP021302.asp](http://www.mainelegislature.org/legis/bills/bills_129th/billtexts/HP021302.asp)

55: [http://www.mainelegislature.org/legis/bills/bills\\_129th/billtexts/HP021306.asp](http://www.mainelegislature.org/legis/bills/bills_129th/billtexts/HP021306.asp)

[ ] indicates a footnote reference to existing law, not part of the bill, but provided on last page.

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**ENVIRONMENT AND NATURAL RESOURCES**

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**STATE OF MAINE**

**HOUSE OF REPRESENTATIVES**

**129TH LEGISLATURE**

**FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 213, L.D. 289, Bill, “An Act To Prohibit the Use of Certain Disposable Food Service Containers”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 38 MRSA c. 15-A is enacted to read:

**CHAPTER 15-A**

**DISPOSABLE FOOD SERVICE CONTAINERS**

**§1571. Definitions**

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

1. **Consumer.** "Consumer" means an individual who purchases or accepts food or beverages for use or consumption.
2. **Covered establishment.** "Covered establishment" includes, but is not limited to:
  - A. A food establishment, as defined in Title 22, section 2152, subsection 4-A [1];
  - B. An eating establishment as defined in Title 22, section 2491, except that "covered establishment" does not include a hospital licensed under Title 22, chapter 405 or a so-called meals on wheels establishment funded in whole or in part directly or indirectly by the Department of Health and Human Services to provide meals at dispersed locations from central kitchen facilities [2];
  - C. An agricultural fair as defined in Title 7, section 81, subsection 1;

- D. A farmers' market as defined in Title 7, section 415, subsection 1, paragraph A;
- E. A food pantry, church or community organization that provides food or beverages without charge; and
- F. A boarding home, a retirement home, an independent living place or a nursing home.

**3. Disposable food service container.** "Disposable food service container" means service ware designed for one-time use.

A. "Disposable food service container" includes service ware for take-out foods, packaged meat, eggs, bakery products and leftovers from partially consumed meals prepared by covered establishments.

B. "Disposable food service container" does not include polystyrene foam coolers or ice chests that are used for the processing or shipping of seafood.

**4. Political subdivision.** "Political subdivision" has the same meaning as in Title 14, section 8102, subsection 3. [3]

**5. Polystyrene foam.** "Polystyrene foam" means blown polystyrene and expanded or extruded foams using a styrene monomer.

**6. Service ware.** "Service ware" means a container, bowl, plate, tray, carton, cup, lid, sleeve, stirrer or other item designed to be used to contain, transport, serve or consume prepared foods.

**7. State.** "State" has the same meaning as in Title 14, section 8102, subsection 4. [4]

### **§1572. Prohibitions; exemptions**

**1. Prohibition.** Beginning January 1, 2021, a covered establishment may not process, prepare, sell or provide food or beverages in or on a disposable food service container that is composed in whole or in part of polystyrene foam.

**2. Plastic beverage stirrers.** A covered establishment providing beverages at a facility or function of the State or of a political subdivision may not provide beverage stirrers that are composed of plastic. For the purposes of this subsection, "beverage stirrer" means a device that is designed solely to mix liquids that are intended for internal human consumption and are contained in a single-serving container.

**3. Exemptions.** Notwithstanding subsection 1, a covered establishment may:

A. In an emergency for the immediate preservation of the public health or safety, as determined applicable by the department, process, prepare, sell or provide food or beverages in or on a disposable food service container that is composed in whole or in part of polystyrene foam;

B. Sell or provide food or beverages in or on a disposable food service container that is composed in whole or in part of polystyrene foam that a consumer brings to the covered establishment; and

- C. Sell at retail food or beverages in or on a disposable food service container that is composed in whole or in part of polystyrene foam that the covered establishment purchases prepackaged at wholesale.

**§1573. Penalty; rules**

- 1. **Penalty.** A violation of this chapter is a civil violation for which a fine of not more than \$100 may be adjudged.
- 2. **Rules.** The department may adopt rules to implement the provisions of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [5]

**Sec. 2. 38 MRSA c. 16-A**, as amended, is repealed.' [6]

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment, which is the majority report of the committee, replaces the bill, repeals the existing law regarding nondegradable food and beverage containers and enacts a new provision of law regarding disposable food service containers. Under the amendment, beginning January 1, 2021, a food establishment is prohibited, subject to certain exemptions, from processing, preparing, selling or providing food or beverages in or on a disposable food service container that is composed in whole or in part of polystyrene foam. The amendment also:

- 1. Excludes from the definition of "disposable food service container" polystyrene foam coolers and ice chests that are used for the processing or shipping of seafood;
- 2. Adds sleeves and stirrers to the definition of "service ware";
- 3. Excludes from the definition of "food establishment" hospitals licensed under the Maine Revised Statutes, Title 22, chapter 405 and so-called meals on wheels establishments funded in whole or in part directly or indirectly by the Department of Health and Human Services; and
- 4. Incorporates from the existing law, which was repealed in the amendment, regarding nondegradable food and beverage containers certain definitions, a penalty provision and a prohibition on the use of plastic beverage stirrers by food establishments providing or serving beverages at a facility or function of the State or of a political subdivision.

**FISCAL NOTE REQUIRED**

**(See attached)**

## References in this bill to existing law

1. <http://www.mainelegislature.org/legis/statutes/22/title22sec2152.html>

4-A. (TEXT EFFECTIVE 12/13/18) Food establishment. "Food establishment" means a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, held for introduction into commerce or sold. "Food establishment" includes a caregiver, as defined in section 2422, subsection 8-A, and a registered dispensary, as defined in section 2422, subsection 6, that prepare food containing marijuana for medical use by a qualifying patient pursuant to chapter 558-C. The following establishments are not considered food establishments required to be licensed under section 2167:

- A. Eating establishments, as defined in section 2491, subsection 7; [1995, c. 331, §1 (NEW).]
- B. Fish and shellfish processing establishments inspected under Title 12, section 6101, 6102 or 6856; [2005, c. 434, §13 (AMD).]
- C. Storage facilities for native produce; [1995, c. 331, §1 (NEW).]
- D. Establishments such as farm stands and farmers' markets primarily selling fresh produce not including dairy and meat products; [1997, c. 96, §1 (AMD).]
- E. Establishments engaged in the washing, cleaning or sorting of whole produce, provided the produce remains in essentially the same condition as when harvested. The whole produce may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; [2011, c. 407, Pt. A, §2 (AMD).]
- F. Establishments that are engaged in the drying of single herbs that are generally recognized as safe under 21 Code of Federal Regulations, Sections 182 to 189. The single herbs may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; and [2011, c. 407, Pt. A, §2 (AMD).]
- G. A caregiver, as defined in section 2422, subsection 8-A, conducting an activity allowed in section 2423-A for a qualifying patient who is a member of the family, as defined in section 2422, subsection 5-A, or member of the household, as defined in section 2422, subsection 5-B, of the caregiver. [2017, c. 452, §1 (AMD).]

2. <http://www.mainelegislature.org/legis/statutes/22/title22sec2491.html>

7. Eating establishment. "Eating establishment" means any place where food or drink is prepared and served or served to the public for consumption on the premises or prepared and served or served ready to eat to the public for consumption off the premises. "Eating establishment" includes places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments; correctional facilities; hospital cafeterias; mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where food is prepared for vending machines dispensing food other than in original sealed packages. "Eating establishment" does not include:

- A. A place preparing and serving food that is licensed pursuant to state law by a state agency other than the department as long the licensing of the place includes regular food safety inspections; [2017, c. 322, §3 (NEW).]
- B. A place serving food only to residents, such as a boarding home, a retirement home or an independent living place; and [2017, c. 322, §3 (NEW).]

C. A farm stand that offers only whole, uncut fresh fruits and vegetables. [2017, c. 322, §3 (NEW).]

3. <http://www.mainelegislature.org/legis/statutes/14/title14sec8102.html>

**3. Political subdivision.** "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapters 115 and 119, incorporated fire-fighting unit that is organized under Title 13-B and is officially recognized by any authority created by statute, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, school district of any type, an airport authority established pursuant to Title 6, chapter 10, any volunteer fire association as defined in Title 30-A, section 3151, a transit district as defined in Title 30-A, section 3501, subsection 1, a regional transportation corporation as defined in Title 30-A, section 3501, subsection 2, a transit district or regional transportation corporation formed under the laws of another state that would qualify as a transit district or regional transportation corporation under Title 30-A, chapter 163 if formed under the laws of this State and any emergency medical service.

4. [Ibid](#)

**4. State.** "State" means the State of Maine or any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State, including the Maine Turnpike Authority, the Maine Port Authority, the Northern New England Passenger Rail Authority, the Maine Community College System, the Maine Veterans' Homes, the Maine Public Employees Retirement System, the Maine Military Authority and all such other state entities.

5. <http://www.mainelegislature.org/legis/statutes/5/title5sec8071.html>

A. Routine technical rules are procedural rules that establish standards of practice or procedure for the conduct of business with or before an agency and any other rules that are not major substantive rules as defined in paragraph B. Routine technical rules include, but are not limited to, forms prescribed by an agency; they do not include fees established by an agency except fees established or amended by agency rule that are below a cap or within a range established by statute.

6. <http://www.mainelegislature.org/legis/statutes/38/title38ch16-Asec0.html>

- §1651: Defines "consumer", "food service, "political subdivision", "state"
- §1652: Contains an earlier polystyrene/plastic-stirrer prohibition for state and political facilities and functions
- §1653: Penalty: "A violation of this chapter is a civil violation for which a forfeiture of not more than \$100 may be adjudged."
- §1654: "This chapter is effective on January 1, 1990."