



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 505

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H.P. 362

House of Representatives, January 31, 2019

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

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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 "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 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.