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Legislative Document

No. 680

H.P. 461

House of Representatives, March 3, 2015

An Act To Reduce Waste from Disposable Bags

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 RYKERSON of Kittery.

Cosponsored by Representatives: BEAVERS of South Berwick, BLUME of York, DEVIN of Newcastle, HARLOW of Portland, HYMANSON of York, McCREIGHT of Harpswell.

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

2 **Sec. 1. 38 MRSA §1605**, as repealed and replaced by PL 1991, c. 475, §1, is
3 repealed.

4 **Sec. 2. 38 MRSA §§1605-A and 1605-B** are enacted to read:

5 **§1605-A. Single-use disposable bags**

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

8 A. "Plastic" means an organic or petroleum-derivative synthetic or semisynthetic
9 organic solid that is moldable.

10 B. "Retailer" means a person that offers consumer goods for sale at retail in the State.

11 C. "Reusable bag" means a bag with handles that is specifically designed and
12 manufactured for multiple reuse and is made of cloth, fiber, other machine-washable
13 fabric or durable plastic.

14 D. "Single-use disposable bag" means a bag made from plastic or kraft paper and
15 designed for one-time use to carry consumer goods in a retail transaction. "Single-
16 use disposable bag" does not include:

17 (1) Bags used by consumers inside stores to package bulk items, such as fruit,
18 vegetables, nuts, grains, candy or small hardware items; to contain or wrap frozen
19 foods, meat or fish, whether prepackaged or not; to contain or wrap flowers,
20 potted plants or other items where dampness may be a problem; and to contain
21 unwrapped prepared foods or bakery goods;

22 (2) Bags provided by pharmacists to contain prescription drugs;

23 (3) Newspaper bags, door-hanger bags, laundry or dry-cleaning bags or bags
24 sold in packages containing multiple bags intended for use as garbage, pet waste
25 or yard waste bags;

26 (4) Bags provided by an eating establishment licensed under Title 22, chapter
27 562 to customers to take food away from the eating establishment; or

28 (5) Reusable bags.

29 **2. Use of single-use disposable bags by retailer.** A retailer may not use single-use
30 disposable bags at the point of retail sale, or otherwise make single-use disposable bags
31 available to customers, unless the following provisions are met:

32 A. Single-use disposable bags made from plastic are 100% recyclable, display the
33 phrase "Please recycle this bag" or a substantially similar phrase in a highly visible
34 manner on the bag exterior and are made of high-density polyethylene film marked
35 with the Society of the Plastics Industry resin identification code 2 or low-density
36 polyethylene film marked with the Society of the Plastics Industry resin identification
37 code 4, or such standards as are established by a successor organization;

1 B. Single-use disposable bags made from kraft paper are 100% recyclable, display
2 the phrase "Please recycle this bag" or a substantially similar phrase in a highly
3 visible manner on the bag exterior and contain a minimum of 40% post-consumer
4 recycled content;

5 C. The retailer locates inside the retailer's store or within 20 feet of the main entrance
6 to the store a receptacle for collecting any used single-use disposable bags and
7 ensures that the bags collected are recycled or delivered to a person engaged in
8 recycling plastics or kraft paper; and

9 D. The retailer collects a fee as required by subsection 3.

10 **3. Single-use disposable bag fee and carryout program.** A retailer shall collect a
11 fee of 5¢ from a customer for each single-use disposable bag distributed to the customer
12 at the point of retail sale. The retailer:

13 A. Retains 1¢ of each 5¢ fee collected to cover administrative costs, except as
14 provided in paragraph B;

15 B. In addition to the amount retained under paragraph A, may elect to retain 1¢ of
16 each 5¢ fee collected, for a total of 2¢ retained of each 5¢ fee collected, to implement
17 and support a carryout program that credits a customer no less than 5¢ for each bag
18 provided by the customer at the point of retail sale for packaging purchases,
19 regardless of whether the bag is kraft paper, plastic or reusable material. The retailer
20 has the sole discretion of determining the amount of the credit due to a customer at
21 the point of retail sale; and

22 C. Shall provide an itemized sales receipt documenting the amount of the fee paid by
23 a customer or, if applicable, the carryout program credit under paragraph B. The
24 retailer shall prominently display at each point of retail sale a sign describing the fee
25 required under this subsection and, if applicable, the carryout program.

26 The retailer shall document all fees collected under this subsection on a form determined
27 by the commissioner and on a monthly basis submit to the department the completed
28 form and fees collected, less the fee portions retained under paragraph A and, if
29 applicable, under paragraph B. Fees remitted to the department under this subsection
30 must be credited to the Plastics and Paper Recycling Fund established in section 1605-B.

31 The assessment of a fee under this subsection is not considered a sale of tangible personal
32 property or taxable services under Title 36, section 1811, and the fees retained by the
33 retailer are not considered revenue and are considered tax-exempt under Title 36, Part 8.

34 **4. Reusable bags.** A retailer shall provide reusable bags for purchase by customers.

35 **5. Enforcement and penalties for violation.** If the commissioner determines that a
36 retailer has violated this section, the commissioner shall initiate an enforcement action
37 pursuant to section 347-A to recover any unpaid fees required under subsection 3 and
38 may impose an additional penalty on the retailer consistent with section 349. No more
39 than one penalty may be imposed upon a retailer within a 7-day period. Revenues
40 collected by the department from penalties assessed under this subsection must be
41 credited to the Plastics and Paper Recycling Fund established in section 1605-B.

1 **6. Rules.** The department may adopt rules to implement the provisions of this
2 section. Rules adopted pursuant to this subsection are routine technical rules as defined
3 in Title 5, chapter 375, subchapter 2-A.

4 **§1605-B. Plastics and Paper Recycling Fund**

5 The Plastics and Paper Recycling Fund, referred to in this section as "the fund," is
6 established within the department for the purpose of promoting recycling efforts related
7 to plastics and paper, including establishing statewide or county programs to promote
8 plastics and paper recycling and to educate the public about plastics and paper recycling
9 and about the benefits of the alternate use of reusable bags and establishing other
10 programs that carry out the purposes of the fund as determined by the commissioner.
11 Revenues in the fund may also be used to provide reusable bags to residents of the State,
12 with priority distribution to elderly and low-income residents. The commissioner shall
13 administer the fund. The fund is funded from fees collected under section 1605-A,
14 subsection 3. Any unexpended money in the fund may not lapse, but must be carried
15 forward to the next fiscal year. Revenues in the fund must be used for carrying out the
16 purposes of the fund after reasonable costs for the administration of the fund by the
17 department are deducted.

18 **Sec. 3. Department of Environmental Protection; public information and**
19 **outreach campaigns.** By January 1, 2016, the Department of Environmental
20 Protection shall develop and conduct an intensive public information campaign aimed at
21 educating the public on the importance of reducing the number of single-use disposable
22 bags entering the waste stream and the impact of such bags on the environmental health
23 of the State. By January 1, 2016, the department shall develop and implement an
24 outreach campaign that includes a public-private partnership to provide reusable bags to
25 residents of the State and, working with service providers that assist elderly and low-
26 income residents, to distribute information and reusable bags to elderly and low-income
27 households. The department may use funds in the Plastics and Paper Recycling Fund
28 established under the Maine Revised Statutes, Title 38, section 1605-B to cover the costs
29 of developing and implementing these campaigns.

30 **SUMMARY**

31 This bill requires a retailer to assess a 5¢ fee for a single-use disposable plastic or
32 kraft paper bag distributed to a customer at the point of retail sale. The retailer retains 1¢
33 from each 5¢ fee for administrative costs and may elect to retain an additional 1¢ from
34 each 5¢ fee to provide a carryout program that credits a customer no less than 5¢ for each
35 bag provided by the customer at the point of retail sale for packaging purchases. The
36 revenues from the fee, less the portion retained by the retailer for administrative costs
37 and, if applicable, the carryout program, are credited to the Plastics and Paper Recycling
38 Fund administered by the Department of Environmental Protection for the purpose of
39 promoting recycling efforts in the State related to plastics and paper. A retailer must
40 provide reusable bags for purchase by customers. This bill authorizes the Department of
41 Environmental Protection to enforce these laws and impose penalties for violations. This
42 bill also directs that, by January 1, 2016, the Department of Environmental Protection
43 must conduct a public information campaign relating to plastics and paper and their

1 impact on the environment and must implement an outreach campaign aimed at providing
2 reusable bags to residents of the State, especially to elderly and low-income households.