

**CORRECTED COPY**

**March 14, 2011**

(Please Destroy any copy of  
L.D. 936 that does not have  
the notation "Corrected Copy")



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

---

**Legislative Document**

**No. 936**

H.P. 696

House of Representatives, March 8, 2011

### **An Act To Conform Maine Menu Labeling Laws to Federal Standards**

---

Reference to the Committee on Health and Human Services suggested and ordered printed.

Handwritten signature of Heather J.R. Priest in cursive.

**HEATHER J.R. PRIEST**  
Clerk

Presented by Representative STRANG BURGESS of Cumberland.  
Cosponsored by Senator McCORMICK of Kennebec and  
Representatives: FOSSEL of Alna, MALABY of Hancock, O'CONNOR of Berwick, Senators:  
LANGLEY of Hancock, PLOWMAN of Penobscot, SULLIVAN of York, WOODBURY of  
Cumberland.

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

2 **Sec. 1. 22 MRSA §2491, sub-§2-A**, as enacted by PL 2009, c. 395, §1 and  
3 affected by §8, is repealed.

4 **Sec. 2. 22 MRSA §2491, sub-§7-A**, as enacted by PL 2009, c. 395, §3 and  
5 affected by §8, is repealed.

6 **Sec. 3. 22 MRSA §2491, sub-§7-B**, as enacted by PL 2009, c. 395, §4 and  
7 affected by §8, is repealed.

8 **Sec. 4. 22 MRSA §2491, sub-§7-C**, as enacted by PL 2009, c. 395, §5 and  
9 affected by §8, is repealed.

10 **Sec. 5. 22 MRSA §2491, sub-§7-D**, as enacted by PL 2009, c. 395, §6 and  
11 affected by §8, is repealed.

12 **Sec. 6. 22 MRSA §2500-A, sub-§1**, as enacted by PL 2009, c. 395, §7 and  
13 affected by §8, is repealed.

14 **Sec. 7. 22 MRSA §2500-A, sub-§2**, as enacted by PL 2009, c. 395, §7 and  
15 affected by §8, is repealed.

16 **Sec. 8. 22 MRSA §2500-A, sub-§3**, as enacted by PL 2009, c. 395, §7 and  
17 affected by §8, is repealed.

18 **Sec. 9. 22 MRSA §2500-A, sub-§4**, as enacted by PL 2009, c. 395, §7 and  
19 affected by §8, is repealed.

20 **Sec. 10. 22 MRSA §2500-A, sub-§5**, as enacted by PL 2009, c. 395, §7 and  
21 affected by §8, is repealed.

22 **Sec. 11. 22 MRSA §2500-A, sub-§6**, as enacted by PL 2009, c. 395, §7 and  
23 affected by §8, is repealed.

24 **Sec. 12. 22 MRSA §2500-A, sub-§7**, as enacted by PL 2009, c. 395, §7 and  
25 affected by §8, is amended to read:

26 **7. Compliance; enforcement.** The department or an agent authorized to inspect an  
27 eating establishment under section 2499 shall ensure compliance with the provisions of  
28 ~~this section but is not required to verify the accuracy of the caloric information required~~  
29 ~~by this section~~ the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section  
30 343(2010). Upon request a chain restaurant shall provide to the department  
31 documentation of the accuracy of the information required by ~~subsection 4~~ the Federal  
32 Food, Drug, and Cosmetic Act, 21 United States Code, Section 343(2010). A violation of  
33 ~~this section~~ the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section  
34 343(2010) is a violation of the Maine Unfair Trade Practices Act, enforceable against the  
35 owner or franchisee of the eating establishment, except that no private remedies exist  
36 under Title 5, section 213. This section may not be construed to create or enhance any

1 claim, right of action or civil liability that did not exist under state law prior to the  
2 effective date of this subsection or limit any claim, right of action or civil liability that  
3 otherwise exists under state law. No private right of action arises out of this section. The  
4 only mechanism for enforcing this section is as provided in this subsection.

5 **Sec. 13. 22 MRSA §2500-A, sub-§8**, as enacted by PL 2009, c. 395, §7 and  
6 affected by §8, is amended to read:

7 **8. Uniformity of regulation; preemption.** ~~To the extent consistent with federal~~  
8 ~~law, the regulation of disclosure of caloric and nutritional information is a matter of~~  
9 ~~statewide concern, and state law governing that disclosure occupies the whole field of~~  
10 ~~regulation regarding disclosure by chain restaurants of nutritional information and~~  
11 ~~requirements regarding the content required to be posted on menus, menu boards and~~  
12 ~~food display tags. The department shall adopt rules consistent with the requirements of~~  
13 ~~the Federal Food, Drug, and Cosmetic Act, 21 United States Code, Section 343(2010), to~~  
14 ~~enforce the provisions of that section. Rules adopted pursuant to this subsection are~~  
15 ~~major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.~~ A local  
16 government may not adopt an ordinance regulating the dissemination of caloric or  
17 nutritional information ~~or requiring information to be placed on menus, menu boards or~~  
18 ~~food display tags~~ by a chain restaurant, and any ordinance or regulation that violates this  
19 subsection is void and has no force or effect.

## 20 SUMMARY

21 This bill repeals provisions of law regarding menu labeling that have been preempted  
22 by the federal Patient Protection and Affordable Care Act, Public Law 111-148, Section  
23 4205(2010), which creates a uniform national approach to nutrition labeling for restaurant  
24 menus with a primary focus on caloric content. The bill retains the current statutory  
25 definition of "chain restaurant" and directs the Department of Health and Human Services  
26 to adopt major substantive rules to locally enforce the provisions of 21 United States  
27 Code, Section 343(2010).