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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. 1043, L.D. 1433, Bill, "An Act To Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging"

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

'Sec. 1. 32 MRSA §1731, as enacted by PL 1989, c. 849, §1, is amended to read:

§1731. Purpose

The purpose of this chapter is to reduce the toxicity of packaging and packaging waste without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components. Under this chapter, reduction of the toxicity in packaging and packaging waste is accomplished by prohibiting the unnecessary addition of heavy metals certain chemicals, such as lead, mercury, cadmium and hexavalent chromium, PFAS and phthalates, in packaging and packaging components.

Sec. 2. 32 MRSA §1732, as amended by PL 1995, c. 656, Pt. A, §§7 and 8, is further amended to read:

§1732. Definitions

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

1-A. Department. "Department" means the Department of Environmental Protection.

1-B. Alternative. "Alternative" means a substitute process, product, material, chemical, strategy or combination of these that serves a functionally equivalent purpose to a chemical in a package or packaging component.

1-C. Chemical. "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown

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1 products of the substance or substances that form through decomposition, degradation or
2 metabolism.

3 **2. Distributor.** "Distributor" means any person, firm or corporation that sells a
4 packaged product to a retailer in this State or any person, firm or corporation that receives
5 a shipment or consignment of, or in any other manner acquires, packaged products
6 outside the State for sale to consumers in the State.

7 **2-A. Incidental presence.** "Incidental presence" means the presence of a regulated
8 metal or other regulated chemical as an unintended or undesired ingredient of a package
9 or packaging component.

10 **2-B. Intentional introduction.** "Intentional introduction" means the act of
11 deliberately using a regulated metal or other regulated chemical in the formation of a
12 package or packaging component when its continued presence is desired in the final
13 package or packaging component to provide a specific characteristic, appearance or
14 quality.

15 The use of a regulated metal or other regulated chemical as a processing agent or
16 intermediate to impart certain chemical or physical changes during manufacturing, when
17 the incidental retention of a residue of the metal or chemical in the final package or
18 packaging component is neither desired nor deliberate, is not considered intentional
19 introduction for the purposes of this chapter.

20 The use of recycled materials as feedstock for the manufacture of new packaging
21 materials, when a portion of the recycled materials may contain amounts of the regulated
22 metals or other regulated chemicals, is not considered intentional introduction for the
23 purposes of this chapter when the new package or packaging component is in compliance
24 with section 1733.

25 **2-C. Food package.** "Food package" means a package that is designed for direct
26 food contact. "Food package" includes, but is not limited to, a food or beverage product
27 that is contained in a food package or to which a food package is applied, a packaging
28 component of a food package and plastic disposable gloves used in commercial or
29 institutional food service.

30 **3. Manufacturer.** "Manufacturer" means any person ~~who~~ that manufactures a
31 package or packaging component.

32 **4. Package.** "Package" means a container used in marketing, protecting or handling
33 a product ~~and~~. "Package" includes a unit package and a shipping container defined by the
34 American Society for Testing and Materials in its annual book of standards as ASTM,
35 D996. ~~"Package" also includes such; a food package; and unsealed receptacles such as~~
36 carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films,
37 bags and tubs.

38 **5. Packaging component.** "Packaging component" means any individual assembled
39 part of a package such as, but not limited to, any interior or exterior blocking, bracing,
40 cushioning, weatherproofing, exterior strapping, coatings, closures, inks and labels. Tin-
41 plated steel that meets the American Society for Testing and Materials specification A-
42 623 must be considered as a single package component. Electrogalvanized coated steel
43 and hot-dipped coated galvanized steel that meets the American Society for Testing and

1 Materials specifications A-525 and A-879 must be treated in the same manner as tin-
2 plated steel.

3 **5-A. Perfluoroalkyl and polyfluoroalkyl substances; PFAS.** "Perfluoroalkyl and
4 polyfluoroalkyl substances" or "PFAS" means any member of the class of fluorinated
5 organic chemicals containing at least one fully fluorinated carbon atom.

6 **5-B. Phthalates.** "Phthalates" means any member of the class of organic chemicals
7 that are esters of phthalic acid and that contain 2 carbon chains located in the ortho
8 position.

9 **5-C. Safer alternative.** "Safer alternative" means an alternative that, when
10 compared to a chemical that it could replace, would reduce the potential for harm to
11 human health or the environment or that has not been shown to pose the same or greater
12 potential for harm to human health or the environment as that chemical.

13 **6. Supplier.** "Supplier" means any person, firm or corporation that sells packages or
14 packaging components to a distributor.

15 **Sec. 3. 32 MRSA §1733**, as enacted by PL 1989, c. 849, §1, is amended to read:

16 **§1733. Prohibitions; substitute materials**

17 **1. Prohibition of sale of packaging containing certain heavy metals.** A
18 manufacturer, supplier or distributor may not offer for sale or for promotional purposes in
19 the State a package or packaging component that includes inks, dyes, pigments,
20 adhesives, stabilizers, coatings or any other additives to which any lead, cadmium,
21 mercury or hexavalent chromium has been intentionally introduced during manufacturing
22 or distribution. This prohibition does not apply to the incidental presence of any of these
23 elements.

24 **2. Prohibition of sale of product in packaging containing certain heavy metals.**
25 A manufacturer or distributor may not offer for sale or for promotional purposes in the
26 State any product in a package that includes, in the package itself or any packaging
27 components, inks, dyes, pigments, adhesives, stabilizers, coatings or any other additives
28 to which any lead, cadmium, mercury or hexavalent chromium has been intentionally
29 introduced during manufacturing or distribution. This prohibition does not apply to the
30 incidental presence of any of these elements.

31 **3. Concentration levels of certain heavy metals.** ~~The~~ For the purposes of
32 subsections 1 and 2, the sum of the concentration levels of lead, cadmium, mercury and
33 hexavalent chromium present in any package or packaging component may not exceed:

34 A. Effective April 1, 1992, 600 parts per million by weight, or 0.06%;

35 B. Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and

36 C. Effective April 1, 1994, 100 parts per million by weight, or 0.01%.

37 **3-A. Prohibition of sale of food package containing phthalates.** Beginning
38 January 1, 2022, a manufacturer, supplier or distributor may not offer for sale or for
39 promotional purposes in the State a food package that includes inks, dyes, pigments,
40 adhesives, stabilizers, coatings, plasticizers or any other additives to which phthalates
41 have been intentionally introduced in any amount greater than an incidental presence.

1 The prohibition in this subsection does not prevent a manufacturer that is located in the
2 State from offering for sale or for promotional purposes outside the State a food package
3 to which phthalates have been intentionally introduced in any amount greater than an
4 incidental presence.

5 **3-B. Prohibition of sale of food package containing PFAS.** In accordance with the
6 requirements of this subsection, the department may by rule prohibit a manufacturer,
7 supplier or distributor from offering for sale or for promotional purposes in the State a
8 food package to which PFAS have been intentionally introduced in any amount greater
9 than an incidental presence.

10 A. The department may not by rule prohibit the sale of a food package to which
11 PFAS have been intentionally introduced in any amount greater than an incidental
12 presence under this subsection unless the department has determined that a safer
13 alternative to the use of PFAS in a specific application of PFAS to a food package is
14 available. To determine that a safer alternative is available, the department must find
15 that a safer alternative is readily available in sufficient quantity and at a comparable
16 cost and that the safer alternative performs as well as or better than PFAS in a
17 specific application of PFAS to a food package.

18 B. If the department determines pursuant to paragraph A that a safer alternative to
19 the use of PFAS in a specific application of PFAS to a food package is available, the
20 department shall by rule prohibit the sale of a food package to which PFAS have been
21 intentionally introduced in any amount greater than an incidental presence under this
22 subsection, except that such a prohibition may not take effect until January 1, 2022 or
23 2 years following the date on which the department determines that a safer alternative
24 is available, whichever is later.

25 The prohibition in this subsection does not prevent a manufacturer that is located in the
26 State from offering for sale or for promotional purposes outside the State a food package
27 to which PFAS have been intentionally introduced in any amount greater than an
28 incidental presence.

29 Rules adopted pursuant to this subsection are major substantive rules as defined in Title
30 5, chapter 375, subchapter 2-A.

31 **3-C. Exemption to prohibition of sale of food package.** The prohibitions in
32 subsections 3-A and 3-B do not apply to a manufacturer of a food or beverage product
33 that is contained in a food package or to which a food package is applied as long as that
34 manufacturer has less than \$1,000,000,000 of total annual national sales of food and
35 beverage products.

36 **4. Substitute materials.** No material used to replace lead, cadmium, mercury or,
37 hexavalent chromium, phthalates or PFAS in a package or packaging component may be
38 used in a quantity or manner that creates a hazard as great as or greater than the hazard
39 created by the lead, cadmium, mercury or hexavalent chromium prohibited heavy metal
40 or chemical.

41 **Sec. 4. 32 MRSA §1734,** as amended by PL 1995, c. 656, Pt. A, §9, is further
42 amended to read:

1 **§1734. Exemptions**

2 All packages and packaging components are subject to the provisions of section 1733
3 unless:

4 **1. Manufactured prior to April 1, 1992.** The package or packaging component has
5 a code indicating a date of manufacture prior to ~~the effective date of this section~~ April 1,
6 1992;

7 **2. Health and safety requirements; feasibility; post-consumer materials.** The
8 manufacturer, supplier or distributor petitions the department for an exemption for a
9 particular package or packaging component and the department grants an exemption for
10 one or more of the following reasons.

11 A. The package or packaging component contains lead, cadmium, mercury or
12 hexavalent chromium added in the manufacturing, forming, printing or distribution
13 process in order to comply with health or safety requirements of state or federal law.

14 B. There is no feasible alternative to the use of lead, cadmium, mercury or
15 hexavalent chromium in the package or packaging component. For the purposes of
16 this section, "no feasible alternative" means a use in which the regulated substance is
17 essential to the protection, safe handling or function of the package's contents.

18 C. The addition of post-consumer materials causes the package or packaging
19 component to exceed the maximum concentration levels set forth in section 1733,
20 subsection 3.

21 For packages or packaging components exempted under paragraph A or B, a 2-year
22 exemption may be granted and that exemption may be renewed for an additional 2 years.
23 An exemption granted under paragraph C is valid for 6 years; or

24 **3. Alcoholic beverages bottled prior to April 1, 1992.** The package or packaging
25 component contains an alcoholic beverage bottled prior to April 1, 1992; ~~or.~~

26 **Sec. 5. 32 MRSA §1735, sub-§3** is enacted to read:

27 **3. Food package; limitation of scope of certificate.** A manufacturer subject to the
28 prohibitions under section 1733, subsection 3-A or 3-B shall develop a certificate of
29 compliance under this section, except that the manufacturer may limit the scope of the
30 certificate to the prohibitions in section 1733, subsection 3-A or 3-B. A manufacturer
31 that is exempt under section 1733, subsection 3-C is also exempt from the requirements
32 of this subsection.

33 **Sec. 6. 32 MRSA §1737**, as amended by PL 1995, c. 656, Pt. A, §12 and PL 2011,
34 c. 657, Pt. W, §5, is repealed and the following enacted in its place:

35 **§1737. Rules**

36 The department shall adopt rules necessary for the implementation, administration
37 and enforcement of this chapter. Except as otherwise provided in this chapter, rules
38 adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter
39 375, subchapter 2-A.

40 **Sec. 7. 32 MRSA §1739**, as enacted by PL 1989, c. 849, §1, is repealed.

1 **Sec. 8. 32 MRSA c. 26-B** is enacted to read:

2 **CHAPTER 26-B**

3 **TOXIC CHEMICALS IN FOOD PACKAGING**

4 **§1741. Definitions**

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

7 **1. Alternative.** "Alternative" has the same meaning as in section 1732, subsection
8 1-B.

9 **2. Board.** "Board" means the Board of Environmental Protection.

10 **3. Chemical.** "Chemical" has the same meaning as in section 1732, subsection 1-C.

11 **4. Commissioner.** "Commissioner" means the Commissioner of Environmental
12 Protection.

13 **5. Credible scientific evidence.** "Credible scientific evidence" means the results of
14 a study, the experimental design and conduct of which have undergone independent
15 scientific peer review, that are published in a peer-reviewed journal or in a publication of
16 an authoritative federal or international governmental agency, including but not limited to
17 the United States Department of Health and Human Services, National Toxicology
18 Program, Food and Drug Administration and Centers for Disease Control and Prevention;
19 the United States Environmental Protection Agency; the World Health Organization; and
20 the European Union, European Chemicals Agency.

21 **6. De minimis level.** "De minimis level" means:

22 A. For a food contact chemical of high concern or priority food contact chemical that
23 is an intentionally added chemical in a food package, the practical quantification
24 limit; or

25 B. For a food contact chemical of high concern or priority food contact chemical that
26 is a contaminant present in a food package, a concentration of 100 parts per million.

27 **7. Department.** "Department" means the Department of Environmental Protection.

28 **8. Distributor.** "Distributor" has the same meaning as in section 1732, subsection 2.

29 **9. Food contact chemical of high concern.** "Food contact chemical of high
30 concern" means a chemical identified by the department pursuant to section 1742.

31 **10. Food package.** "Food package" has the same meaning as in section 1732,
32 subsection 2-C.

33 **11. Intentionally added chemical.** "Intentionally added chemical" means a
34 chemical that was added during the manufacture of a product or product component to
35 provide a specific characteristic, appearance or quality or to perform a specific function.

36 **12. Manufacturer.** "Manufacturer" means any person who manufactured a food
37 package or whose brand name is affixed to a food package. In the case of a food package
38 that was imported into the United States, "manufacturer" includes the importer or first

1 domestic distributor of the food package if the person who manufactured or assembled
2 the food package or whose brand name is affixed to the food package does not have a
3 presence in the United States.

4 **13. Practical quantification limit.** "Practical quantification limit" means the lowest
5 concentration of a chemical that can be reliably measured within specified limits of
6 precision, accuracy, representativeness, completeness and comparability during routine
7 laboratory operating conditions. The practical quantification limit is based on
8 scientifically defensible, standard analytical methods. The practical quantification limit
9 for a given chemical may be different depending on the matrix and the analytical method
10 used.

11 **14. Priority food contact chemical.** "Priority food contact chemical" means a
12 chemical designated by the commissioner pursuant to section 1743.

13 **15. Safer alternative.** "Safer alternative" has the same meaning as in section 1732,
14 subsection 5-C.

15 **§1742. Identification of food contact chemicals of high concern**

16 In accordance with the requirements of this section, the department shall publish and
17 may revise a list of no more than 10 food contact chemicals of high concern.

18 **1. Criteria.** A chemical may be included on the list under this section only if:

19 A. The chemical is included on the list of chemicals of concern published by the
20 department in accordance with Title 38, section 1693 or the chemical has been
21 identified by an authoritative governmental entity on the basis of credible scientific
22 evidence as being:

23 (1) A carcinogen, a reproductive or developmental toxicant or an endocrine
24 disruptor;

25 (2) Persistent, bioaccumulative and toxic; or

26 (3) Very persistent and very bioaccumulative;

27 B. The department determines that there is strong credible scientific evidence that
28 the chemical is a reproductive or developmental toxicant, endocrine disruptor or
29 human carcinogen; and

30 C. The department determines that there is strong credible scientific evidence that
31 the chemical meets one or more of the following additional criteria:

32 (1) The chemical has been found through biomonitoring studies to be present in
33 human blood, human breast milk, human urine or other human bodily tissues or
34 fluids;

35 (2) The chemical has been found through sampling and analysis to be present in
36 a food or beverage product; or

37 (3) The chemical has been added to or is present in a food package.

38 **2. Revisions.** The commissioner shall review the list published pursuant to this
39 section at least every 3 years and shall remove from the list any food contact chemical of

1 high concern that has been designated as a priority food contact chemical pursuant to
2 section 1743 or that no longer meets the criteria of subsection 1. The commissioner may
3 add to the list additional food contact chemicals of high concern that meet the criteria of
4 subsection 1, except that the list under this section may not at any one time include more
5 than 10 food contact chemicals of high concern.

6 **§1743. Designation of priority food contact chemicals**

7 The commissioner may designate a food contact chemical of high concern as a
8 priority food contact chemical if:

9 **1. Chemical included on list of food contact chemicals of high concern.** The food
10 contact chemical of high concern is included on the list of food contact chemicals of high
11 concern published by the department in accordance with section 1742; and

12 **2. Additional criteria.** The commissioner finds that the food contact chemical of
13 high concern:

14 A. Has been found through biomonitoring to be present in human blood, including
15 umbilical cord blood, breast milk, urine or other human bodily tissues or fluids;

16 B. Has been found through sampling and analysis to be present in a food or beverage
17 product; or

18 C. Is present in a food package.

19 **§1744. Disclosure of information on priority food contact chemicals**

20 **1. Reporting of chemical use.** A person who is a manufacturer or distributor of a
21 food package for sale in the State that contains a priority food contact chemical in any
22 amount greater than a de minimis level shall notify the department in writing unless
23 waived by the commissioner pursuant to this section. This written notice must be made
24 within 180 days after a priority food contact chemical is designated. If the sale in the
25 State of a food package by a manufacturer or distributor does not commence until after
26 the 180-day reporting period ends, this written notice must be made within 30 days of
27 sale of the food package in the State. This written notice must identify the food package,
28 the number of units sold or distributed for sale in the State or nationally, the priority food
29 contact chemical or chemicals contained in the food package, the amount of such
30 chemicals in each unit of the food package and the intended purpose of the chemicals in
31 the food package.

32 **2. Supplemental information.** The manufacturer or distributor of a food package
33 that contains a priority food contact chemical shall provide the following additional
34 information if requested by the department:

35 A. Information on the likelihood that the priority food contact chemical will be
36 released from the food package to the environment during the food package's life
37 cycle and the extent to which users of the food package are likely to be exposed to the
38 chemical;

39 B. Information on the extent to which the priority food contact chemical is present in
40 the environment or human body; and

1 C. An assessment of the availability, cost, feasibility and performance, including
2 potential for harm to human health and the environment, of alternatives to the priority
3 food contact chemical and the reason the chemical is used in the manufacture of the
4 food package in lieu of identified alternatives. If an assessment acceptable to the
5 department is not timely submitted, the department may assess a fee on the
6 manufacturer or distributor to cover the costs to prepare an independent report on the
7 availability of safer alternatives by a contractor of the department's choice.

8 The manufacturer or distributor of a food package that contains a priority food contact
9 chemical may provide additional information to the department regarding the potential
10 for harm to human health and the environment from specific uses of the chemical.

11 **3. Waiver of reporting; fee; extension of deadline.** The commissioner may waive
12 all or part of the notification requirement under subsection 1 for one or more specified
13 uses of a priority food contact chemical if the commissioner determines that substantially
14 equivalent information is already publicly available, that the information is not needed for
15 the purposes of this chapter or that the specified use or uses are minor in volume. The
16 department may assess a fee payable by the manufacturer or distributor upon submission
17 of the notification to cover the department's reasonable costs in managing the information
18 collected. The department may extend the deadline for submission of the information
19 required under subsection 1 for one or more specified uses of a priority food contact
20 chemical in a food package if it determines that more time is needed by the manufacturer
21 or distributor to comply with the submission requirement or if the information is not
22 needed at that time.

23 **4. Failure to provide notice.** A food package containing a priority food contact
24 chemical may not be sold, offered for sale or distributed for sale in the State if the
25 manufacturer or distributor has failed to provide the information required in this section
26 by the date required in this section. The commissioner shall exempt a food package from
27 this prohibition if, in the commissioner's judgment, the lack of availability of the food
28 package could pose an unreasonable risk to public health, safety or welfare.

29 **5. Rulemaking to determine fees.** If the department assesses a fee pursuant to
30 subsection 2, paragraph C or subsection 3, the department shall determine the appropriate
31 fee through major substantive rulemaking, as defined in Title 5, chapter 375, subchapter
32 2-A.

33 **§1745. Sales prohibition; rules; safer alternatives to priority food contact chemicals**

34 **1. Authority.** The board may adopt rules prohibiting the manufacture, sale or
35 distribution in the State of a food package containing a priority food contact chemical in
36 an amount greater than a de minimis level if the board finds, after consideration of
37 information filed under section 1744 and other relevant information submitted to or
38 obtained by the board, that:

39 A. Distribution of the food package directly or indirectly exposes consumers to the
40 priority food contact chemical; and

41 B. One or more safer alternatives to the priority food contact chemical are available
42 at a comparable cost.

1 If there are several available safer alternatives to a priority food contact chemical, the
2 board may prohibit the sale of a food package that does not contain the safer alternative
3 that is least toxic to human health or least harmful to the environment.

4 A rule adopted pursuant to this subsection must specify the effective date of the
5 prohibition, which may not be sooner than 2 years after notice of the proposed rule is
6 published as required under Title 5, section 8053, subsection 5.

7 Rules adopted pursuant to this subsection are major substantive rules as defined in Title
8 5, chapter 375, subchapter 2-A.

9 **2. Alternatives assessment; presumptions.** For the purpose of determining
10 whether a safer alternative is available under subsection 1, paragraph B, the board may, in
11 the absence of persuasive evidence to the contrary:

12 A. Presume that an alternative is a safer alternative if the alternative does not satisfy
13 the criteria under section 1742, subsection 1, paragraph A;

14 B. Presume that a safer alternative is available if the sale of the food package
15 containing the priority food contact chemical has been banned by another state within
16 the United States based on the availability of a safer alternative; and

17 C. Presume that a safer alternative is available if the alternative is sold in the United
18 States.

19 **3. Implementation.** No later than 180 days prior to the effective date of a
20 prohibition adopted pursuant to subsection 1, the manufacturer or distributor of a food
21 package that contains the priority food contact chemical and that is subject to the
22 prohibition at the time of adoption shall file a compliance plan with the commissioner or
23 seek a waiver under subsection 5. A compliance plan must:

24 A. Identify the food package that contains the priority food contact chemical;

25 B. Specify whether compliance will be achieved by discontinuing the sale of the
26 food package in the State or by substituting a safer alternative in the food package;
27 and

28 C. If compliance is achieved by substitution of a safer alternative in the food
29 package, identify the safer alternative and the timetable for substitution.

30 **4. Responsibility.** The manufacturer or distributor of a food package that contains a
31 priority food contact chemical shall notify persons that offer the food package for sale or
32 distribution in the State of the requirements of this chapter.

33 **5. Waiver for specific uses.** The manufacturer or distributor of a food package that
34 contains a priority food contact chemical and that is subject to a prohibition adopted
35 pursuant to subsection 1 may apply to the commissioner for a waiver for one or more
36 specific uses of the priority food contact chemical. The waiver application must, at a
37 minimum:

38 A. Identify the specific use or uses of the food package for which the waiver is
39 sought;

40 B. Identify the alternatives considered for substitution of the priority food contact
41 chemical;

- 1 C. Explain the basis for concluding that the use of an alternative is not feasible; and
- 2 D. Identify the steps that have and will be taken to minimize the use of the priority
- 3 food contact chemical.

4 The commissioner may grant a waiver with or without conditions upon finding that there
5 is a need for the food package in which the priority food contact chemical is used and
6 there are no technically or economically feasible alternatives for the use of that chemical
7 in the food package. A waiver may be granted for a term not to exceed 5 years and may
8 be renewed for one or more additional 5-year terms upon written application
9 demonstrating that technically or economically feasible alternatives remain unavailable.
10 The commissioner shall deny or grant a waiver request within 60 days after receipt of a
11 completed waiver application.

12 **6. Petitions.** If rulemaking to prohibit the sale of a food package that contains a
13 priority food contact chemical is initiated by petition under Title 5, section 8055, the
14 department shall consider the information submitted in support of the petition but is not
15 obligated to conduct a search of other sources of information on the chemical or its uses.
16 The petitioner bears the burden of demonstrating that the criteria under subsection 1 for
17 adoption of rules are met.

18 **§1746. Applicability**

19 The provisions of this chapter do not apply to:

20 **1. Industry.** A chemical used in or for industry or manufacturing, including
21 chemicals processed or otherwise used in or for industrial or manufacturing processes;

22 **2. Retailers.** A retailer of a food package unless the retailer knowingly sells a food
23 package that contains a priority food contact chemical after the effective date of its
24 prohibition under section 1745 for which that retailer has received prior notification from
25 a manufacturer, a distributor or the State;

26 **3. Contaminants.** A chemical that occurs in a food package only as a contaminant
27 as long as the manufacturer had in place a manufacturing control program and exercised
28 due diligence to minimize the presence of the contaminant in the food package; or

29 **4. Certain manufacturers.** A manufacturer of a food or beverage product that is
30 contained in a food package or to which a food package is applied as long as that
31 manufacturer has less than \$1,000,000,000 of total annual national sales of food and
32 beverage products.

33 **§1747. Implementation, administration and enforcement; rules; violations**

34 The department shall implement, administer and enforce this chapter and shall adopt
35 rules as necessary for the implementation, administration and enforcement of this chapter.

36 **1. Rules.** Except as otherwise provided in this chapter, rules adopted by the
37 department pursuant to this chapter are routine technical rules as defined in Title 5,
38 chapter 375, subchapter 2-A.

39 **2. Violations.** A person that violates any provision of this chapter is subject to
40 penalties in accordance with Title 38, section 349.

1 **3. Certificate of compliance.** If there are grounds to suspect that a food package is
2 being offered for sale in violation of this chapter, the department may request that the
3 manufacturer or distributor of the food package provide a certificate of compliance with
4 the applicable provisions of this chapter. Within 30 days of receipt of a request under this
5 subsection, the manufacturer or distributor shall:

6 A. Provide the department with the certificate attesting that the food package does
7 not contain the priority food contact chemical; or

8 B. Notify persons who sell the food package in this State that the sale of the food
9 package is prohibited and provide the department with a list of the names and
10 addresses of those notified.

11 **4. Regulatory efficiency.** The department may, in exercising its discretionary
12 authority under this chapter, consider the extent to which a food contact chemical of high
13 concern or a priority food contact chemical in a food package is adequately regulated by
14 the Federal Government or an agency of this State to reduce or prevent the same public
15 health threats that would be the basis for addressing the chemical under this chapter.'

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

18 SUMMARY

19 This amendment, which is the majority report of the committee, amends the bill as
20 follows.

21 1. It clarifies that the sales prohibitions on food packaging containing intentionally
22 introduced perfluoroalkyl and polyfluoroalkyl substances, or PFAS, and phthalates in any
23 amount greater than an incidental presence applies only to sales occurring in the State and
24 clarifies the scope of the exemption to those prohibitions for certain manufacturers of
25 food or beverage products.

26 2. It provides that any rulemaking by the Department of Environmental Protection to
27 prohibit the sale of food packaging containing intentionally introduced PFAS is major
28 substantive rulemaking and requires the department to adopt by rule such a prohibition
29 upon a determination that a safer alternative to the use of PFAS in a specific application
30 of PFAS to a food package is available.

31 3. It removes from the bill the provisions authorizing the department to designate by
32 rule additional chemicals of concern in food packaging and instead enacts a new chapter
33 to regulate the use of additional toxic chemicals in food packaging. That new chapter is
34 modeled after the toxic chemicals in children's products law in the Maine Revised
35 Statutes, Title 38, chapter 16-D and incorporates the definitions and criteria from that law
36 into the new chapter, as adapted for application to food packaging.

37 4. It includes a number of technical changes to the bill as necessary to incorporate
38 the other amendments to the bill described in this summary.

39 FISCAL NOTE REQUIRED

40 (See attached)