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TESTIMONY BEFORE THE JOINT STANDING COMMITTEE ON
AGRICULTURE, CONSERVATION AND FORESTRY

NEITHER FOR NOR AGAINST LD 2091

*An Act Regarding Businesses' and Consumers' Use of Returnable, Reusable and Refillable
Containers for Food, Beverages and Nonfood Items*

January 22, 2024

Senator Ingwersen, Representative Pluecker, and members of the Joint Standing Committee on Agriculture, Conservation and Forestry, my name is Celeste Poulin. I am the Director of the Quality Assurance and Regulation Division of the Department of Agriculture, Conservation and Forestry (DACF), speaking Neither for Nor Against the food-related provisions of LD 2091.

DACF is responsible for ensuring a safe food supply. That includes ensuring licensed facilities and retail establishments follow appropriate steps to maintain a sanitary environment and prevent contamination. In particular, the Quality Assurance and Regulation Division (QAR) enforces the Maine Food Code, which requires that foods be packaged, processed, prepared, and stored in a sanitary and safe manner.

The Department recognizes that food packaging results in a great deal of waste and that many consumers would prefer to utilize more environmentally friendly packaging. More often than not, food packaging is made from non-recyclable materials. The Department supports the desire to reduce waste and to utilize packaging that can be reused. However, we also must balance that desire with our statutory responsibility to prevent contamination and foodborne illness.

Currently, the Maine Food Code, which incorporates sections of the Federal Model Food Code, allows take-home containers for foods to be refilled so long as they are not filled with Potentially Hazardous Foods and have been appropriately cleaned. (Section 3-304.17). Further, beverage containers may be reused, provided they are appropriately cleaned. (Sections 3-304.17; 4-603.17).

This means the Maine Food Code prohibits using reusable containers for Potentially Hazardous Foods. Those include temperature-controlled foods (meat, poultry, seafood, deli meats, salad bars) and temperature-controlled ready-to-eat foods (cooked and presented at a consistent temperature, like soups and hot bars). This category of potentially hazardous foods is most

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likely to present the risk of cross-contamination from allergens as well as the potential to introduce foodborne illnesses, such as salmonella, listeria, and other dangerous pathogens.

In addition, existing consumer protection laws relating to the accurate weight and measurements of commercial goods must be considered. As you know, many items are priced based on their weight, as measured by the retailer (such as a deli counter or at the check-out counter). These weight calibrations must consider the weight of the packaging itself (the "tare" weight), and retailers must ensure that the proper tare amount is subtracted from the final price charged to the customer. Retailers must be willing to work with customers and train staff in weighing containers and subtracting proper tare amounts from final prices. This is not an insurmountable obstacle, and QAR remains committed to working with retailers who want to offer a reusable container option for shelf-stable foods voluntarily.

The Department has already created guidance for retailers that allows bulk container use for shelf-stable foods, and it is posted on our website. This guidance explains the best practices for reusable container usage for shelf-stable foods with the goal of reducing waste and meeting customer demand.

Thank you for your time. I would be happy to answer questions now and provide more detailed information during the work session, and we look forward to continuing working with the sponsor on this legislation