

Testimony of Ashley Luszczki
Before the Joint Standing Committees on Environment & Natural Resources
In support of L.D. 1423, An Act to Improve Recycling by Updating the Stewardship Program for
Packaging
April 23, 2025

Senator Tepler, Representative Doudera, and members of the Joint Standing Committee on Environment and Natural Resources, my name is Ashley Luszczki. I serve as a Government Relations Specialist for the Maine State Chamber of Commerce, which represents a network of more than 5,000 businesses of all sizes and sectors. Our mission is to promote a positive business climate and advance policies that foster long-term economic growth in Maine. I appreciate the opportunity to testify in support of L.D. 1423, An Act to Improve Maine's Extended Producer Responsibility Law for Packaging. I also want to recognize and thank Senator Baldacci for sponsoring this important legislation on behalf of Maine's business community.

The Chamber acknowledges the intent of the extended producer responsibility (EPR) law for packaging and recognizes the considerable effort made by the Department of Environmental Protection (Department) to develop Chapter 428, the rule implementing the Stewardship Program for Packaging (Program). However, throughout the rulemaking process, the Chamber has raised concerns - concerns that remain unresolved and are becoming more pressing as key components like the Packaging Material Type List and the Stewardship Organization (SO) Request for Proposal take shape.

Before I get into the specific details of why the Chamber is advocating in support of this legislation, I want to provide some historical context.

- **2019** - The Legislature directed the Department to develop legislation to establish an EPR program for packaging.
- **2020** - L.D. 2104 was presented by the Department but died when the Legislature adjourned due to the pandemic.
- **2021** - The Legislature enacted L.D. 1541 (P.L. 2021, c. 455), while a competing bill, L.D. 1471, was defeated.
- **2023/2024** - Chapter 428 rule was initiated and adopted by the Board of Environmental Protection in a 4-1 vote.
 - Chair Susan Lessard voted against adoption, citing challenges for municipalities and warning against claims that this will reduce costs — pointing out that the burden is merely shifting from property taxes to product prices. The Honorable Bob Duchesne, who voted in support

of adoption, noted his surprise during the rulemaking process that the rules were not considered 'major substantive' and predicted that four bills would be submitted this session.

L.D. 1423 is the product of collaboration by all sectors of Maine's economy. It offers a pragmatic path forward addressing concerns raised throughout rulemaking by providing clarity to foundational program definitions, alignment with programs in other states, and limiting unintended consequences that will burden businesses – ultimately, costing Maine consumers (individuals and businesses) more. This legislation is intended to make the program effective from the outset.

Under the current definition of a 'consumer', Maine's commercial and industrial businesses are both consumers and producers. This overly broad definition means that producers could be required to pay fees on packaging used exclusively in business-to-business transactions, resulting in double payments for packaging. First, on the packaging for products they use and then again on the packaging for products they produce and sell in Maine. L.D. 1423 addresses this concern by defining 'consumer' as a residential customer or residential household that receives packaging material. This change provides clarity, reduces the risk of a double tax on producers, and is consistent with nearly every other state who has an EPR packaging law.

EPR policies must clearly articulate who is responsible for paying. Recognizing today's complex supply chain, we believe the current definition of 'producer' lacks clarity when multiple entities in a supply chain contribute to packaging of a product. This can lead to inaccurate reporting, over or under payment, and enforcement challenges. L.D. 1423 proposes a definition for 'producer' that removes any ambiguity -promoting fairness that will make it easier to enforce while ensuring there isn't overpayment or underpayment into the Program.

Central to determining how recycling is funded under the law, the definition of 'manage', defined in rule, means to collect, transport, process, or otherwise prepare a packaging stream for recycling, reuse, composting, or disposal; to educate consumers about packaging material; or to pick up litter. However, the law outlines that municipal reimbursement be for costs of a municipality managing packaging material associated with the collection, transportation and processing of those materials. It does not include reimbursement for litter disposal or education.

To be clear, the law also states that the SO "shall make investments in education and infrastructure that support the recycling of packaging material in the State... the stewardship organization shall submit any proposed investment in education or infrastructure to the department for approval prior to making any expenditure." Aside from infrastructure, Chapter 428 wraps everything into the reimbursement formula – including education. The Department has said these other initiatives will be covered by overpayment. The Chamber has serious concerns that producers will now be paying for education and litter pickup as part of the reimbursement formula, which differs from the intent of the law and is a significant expansion from the law and the legislative intent.

Chapter 428 requires producers to evaluate packaging for thousands of substances, including some that are not intentionally added and may not be relevant to packaging at all. This will be a large burden on producers - particularly those who may not have in-house chemical testing. By focusing the definition

of 'toxics' on those that are intentionally added to packaging, it will slightly reduce the burden on producers while continuing to provide transparency.

As mentioned before, Maine is not alone in adopting an EPR for packaging law - California, Colorado, Maryland, Minnesota, and Oregon have passed their own, and Washington has a similar policy that is advancing through its legislature. Maine is set apart, however, in that it lacks harmonization with those states. L.D. 1423 creates alignment by recognizing products and packaging that are federally regulated and should not be subject to this state law as they have limited options for reduced packaging. For example, infant formula, surgical instruments, disinfectants, and chemical solvents clearly require specific packaging specifications.

Maine's law currently makes no such exceptions - placing businesses in the difficult position of having to comply with more onerous and costly requirements in our small market, even when those products are exempt in larger states like California. Since these products and the packaging they come in are federally regulated, producers could face steep financial penalties because they cannot move to a readily recyclable packaging type. This misalignment will drive up costs for consumers in Maine and disincentivize producers from selling or expanding into our state.

L.D. 1423 considers a flexible "off-ramp" option that would allow producers to demonstrate they are responsibly managing their materials and potentially receive exemptions or reduced obligations. This would reward proactive environmental stewardship without discouraging participation in Maine's market.

Finally, this legislation makes the law more responsive by allowing certain elements of the program to be modified based on data and performance, rather than being locked into rulemaking. It provides flexibility to the SO and Department to develop a process for assessing program performance, fees, and packaging material type – all of which are used to inform producer payments. This flexibility is critical to getting the costs right. If fees are inaccurately calculated or applied too broadly, it could result in disproportionate financial burdens on producers and increased costs for consumers. Ensuring flexibility for payments in order to reflect real-world costs and performance is critical.

As the first state in the country to pass an EPR for packaging law, Maine has an opportunity to lead on – but we must get it right from the start. We believe L.D. 1423 will help strengthen the effectiveness of the Program without significantly hindering Maine's economic competitiveness. I appreciate your consideration and urge you to support L.D. 1423.