



Maine Grocers &
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Monday, May 10, 2021

NEITHER FOR NOR AGAINST – LD 1471 “An Act To Establish a Stewardship Program for Packaging”

IN OPPOSITION – LD 1541 “An Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money”

Dear Senator Brenner- Chair, Representative Tucker - Chair, and Members of the Committee On Environment and Natural Resources,

My name is Christine Cummings and I am the Executive Director of the Maine Grocers & Food Producers Association (MGFPA). The Maine Grocers & Food Producers Association is a business trade association representing Maine’s food community; Main Street businesses, including independently owned and operated grocery stores and supermarkets, food and beverage producers and processors, manufacturers, wholesalers, distributors, and supportive service companies.

The Maine Grocers and Food Producers Association has been a part of the EPR policy discussion since LD 1431 was presented in the first session of the 129th legislature. We have actively shared information with our membership, attended stakeholder meetings, held individual meetings with the DEP and our members, and over the last year have remained engaged with the efforts that have brought us the two parallel efforts – LD 1471 and LD 1541. We appreciate the industry’s willingness to bring forth a solution that they feel is pragmatic and the attempts at collaboration that have gone into both of these proposals. Based on continued conversations with our members, colleagues and coalition of interested partners we find ourselves testifying with reservation to fully support an EPR program based on the complexity, remaining unknowns and the magnitude of impact on Maine’s businesses and consumers.

Feedback from our members is that there is genuine concern that this will result in product manufacturers choosing not to do business here in Maine. Maine is a small, singular market in comparison to the United States or international market. This proposal undoubtedly will disrupt the flow of goods and increase the costs of products being made and sold into Maine. Maine will be an outlier in the patchwork of state packaging regulations. Companies may simply opt to not distribute their goods here in an effort to avoid the added complexities and requirements of Maine’s EPR program. Maine cannot single-handedly coerce a redesign of the entire consumer packaging market.

The program is complex, in fact no other state in the country has passed an EPR program for packaging, although many have tried. A *York University* study extrapolated data from Canadian EPR models in comparison to New York state data to analyze the projected impact of EPR on consumer-packaged goods. The study concluded that a similar program in New York would increase the ‘basket of good’ pricing (packaged goods) ranging from 4.01% to 6.35% (independent of inflation). This would equate to a \$36 - \$57 per month increase in grocery costs. Increased costs disproportionately hurt those on fixed incomes including our state’s elderly and those already negatively affected by the pandemic.

A traditional grocery store carries anywhere from 5,000 to 60,000 SKUs. In speaking with our members, one of Maine’s largest independent grocery store wholesalers, works with more than 1,150 vendors and they intake thousands of new products each year. They have within their system more than 27,940 active items. These numbers are for small grocers, only one sector that would be affected by this program (of the entire consumer packaged goods industry). In speaking with a large, prominent Maine food producer about these policies, they were very perplexed as they said it would be impossible to calculate what of their products were sold into the Maine market. They send their products to a distribution company and their product is sold across the country. The supply chain is complex and while there is some data available from larger retailers and distributors in terms of business-to-business sales as well as business-to-consumer sales it is not necessarily in the details of the packaging of the product itself. How will this be calculated, communicated, billed, collected, and what will be the level of expected responsibility and ownership along the “chain of custody” for packaged goods?

There will be substantial administrative costs to determine the necessary data for compliance, plus added management with product changes, sales increases/decreases and other market changes that are important to report out. Unknown costs especially once they surpass the low-volume and/or small business exemption is concerning especially as there is no cap nor true understanding of the cost of the program.

Food packaging must meet food safety requirements, ensure quality and consistency, safeguard the goods during distribution, resist tampering, and guarantee a sustainable shelf life. Putting recycling as the highest priority, companies will have to sacrifice other factors which ultimately may not put the needs of protecting the consumer first. We express an overall concern for any mandate that may cause an imbalance for our producers to comply while still offering safe, quality, and reasonably priced products. The reality is that some products, especially food items, have limited packaging material options (for example: ice cream or milk), these producers will find it the most challenging to reduce their fees and will be handcuffed equating to certain items seeing price increases.

In Governor Mills' 10-year Economic Development Strategy, 'Food' was identified as one of the four 'thematic areas' in which Maine has current strengths, there is growing global demand, and there is a potential for job creation. "From aquaculture to traditional seafood harvesting to value-added food production, growth is anticipated in these food industries and Maine can benefit greatly by growing our capacity to meet these markets." In addition, recognizing the opportunities our state has to grow the food production industry, FocusMaine (a private-sector-led initiative to accelerate the creation of quality jobs in Maine) is specifically focusing on the scaling-up of small and medium food and beverage businesses based in agriculture and aquaculture. Policies should be passed that seek to aid in growth and development, not increase costs and create restrictions. How do we encourage Maine brands to grow with a policy that acts as a ceiling with real financial effects if surpassed?

Comments on the details of the bills:

- The assessment, metrics and stakeholder committee from LD 1471 is imperative. These unknowns make the program hard to fully support. "The stewardship organization will establish a state stewardship plan committee to conduct a statewide recycling needs assessment and to develop a stewardship program plan." The Committee consisting of "at a minimum, representation from responsible parties, manufacturers of packaging material, retailers, municipalities, waste and recycling collectors and transporters, recycling and composting facilities and other entities, which may include consultants" is critical to the program's success opposed to leaving a majority of the program to DEP rulemaking (with requested stakeholder input). This will provide a blueprint for Maine's current recycling infrastructure, help us understand who has access to what, where there are efficiencies, the gaps, and opportunities for improved access and processing. In turn, this will be the basis of the program's financial details. How much is needed to fund the program and therefore what is the financial responsibility of the brand owners. We would advocate that an actuarial study be done before the formalities of an EPR program. Secondly, the assessment provides metrics and requirements for reporting to ensure the goals of the program are being met and if they are not being met what changes are necessary.
- In LD 1541 "Packaging material" is defined as "at the time that the product leaves a point of sale with or is received by the consumer of the product." In LD 1471 "Packaging material" is defined as "means the material used for or associated with the containment, protection, delivery, presentation or distribution of a covered product at the time the covered product is received by the consumer of the covered product at a retail location in the State or at the consumer's residence." We feel that there needs to be further clarity as to whether or not the consumer is also a business consumer. Does this cover secondary packaging along the supply chain? For example, a food manufacturer receives a pallet of ingredients boxed in branded cardboard boxes, is the ingredient manufacturer responsible for contributing to the fund? Or another example, a small pizza store receives in cans of bulk tomato sauce to customize their pizza sauces, is the tomato sauce company responsible for the cans as the consumer was the pizza store? Potentially the confusion lies in the "responsible party or brand owners" definitions as well but we ask for further clarity as this is the basis of the program.
- In LD 1541 "'Readily recyclable' means, with respect to a type of packaging material, that the type of packaging material, as determined by the department by rule" (1) can be sorted (2) Has a consistent market for purchase, meaning "entities processing recyclable material are willing to purchase full bales of that type of fully sorted packaging

material in quantities equal to or in excess of the supply of that fully sorted packaging material.” We question the term, bales. While we appreciate the added details within the definition of a transitional period between the determination and time in which it's effective for calculation, in comparison to LD 2104, the fluid market, access to materials and producer's unlikeliness to change their materials frequently to accommodate market changes, causes pause. There is no predictability in the lead time/what the transitional period would be. LD 1471's "Recyclable" definition aligns with "national and international recyclability standards" and will be further defined by the advisory committee. In addition, how will the municipalities equally brace and prepare for market changes in the collection and recycling efforts?

- LD 1541 and LD 1471 contrast in their willingness to reimburse municipalities for landfilling. MGFPFA favors the producers' fees to improve infrastructure over paying for goods to be landfilled at the discretion of the municipality.
- Composability considerations are given within LD 1471. While we understand there may not currently be adequate end-of-life management for compostable materials now, we think it's important to incorporate referencing compostability as infrastructure development improves and the materials are processed correctly paired with consumer education.
- We are merely a year out from one of the most historic events in our history. We witnessed the havoc a national emergency placed on our supply chains. We would ask that there is an emergency waiver included so that Maine would never be subject to any unintended consequence of limited product inventory (if companies were not paying contributors to Maine's EPR packaging program). This would allow for wholesalers, and therefore stores, to source openly without hesitation during an emergency.
- As within LD 1467, we ask for a consideration of a waiver provision. "Anomalous market conditions; disruption in, or lack of, supply of readily certain packaging types" as the packaging material industry may change more suddenly than on a yearly basis. The manufacturer would not be subjected to inflated or unreasonable fees as a victim of a volatile packaging material market.
- Small business exemptions: Feedback from the membership has been mixed as to what is the appropriate strategy for Maine's producer and brand owner businesses. We value LD 1541's small business exemptions in an attempt to narrow the scope of the responsible parties, however, there are some members who believe that there should be a nominal entry level fee that all brand owners must pay to be a part of the program - so that everyone has some "skin in the game." MGFPFA is conflicted on what the right answer is in regard to exemptions. If everyone is helping move the needle there would be more contributors helping to fund the program but it also is concerning for Maine's small businesses that would be economically challenged to contribute.

Striking the right balance for Maine's consumers, business and environment is critical. We wholeheartedly respect the momentum and interest in waste reduction and preserving our state, but it cannot be done without a full understanding of the details, and most importantly the costs. We continue to advocate for opportunities to coordinate with regional partners as it would result in efficiencies and consistencies for brands, distributors, access to recycling resources, and sought-after end markets. The Maine Grocers & Food Producers Association stands ready to continue to improve the proposed program and would value time to refine the details to fully support a program with known fees, set goals and a plan for waste reduction.

Thank you for the opportunity to provide testimony.

Christine Cummings

Christine Cummings
Executive Director