



**Testimony in Opposition to LD 1471,
An Act To Establish a Stewardship Program for Packaging**
Sarah Nichols, NRCM Sustainable Maine Director, May 10, 2021

Senator Brenner, Representative Tucker, and members of the Joint Standing Committee on Environment and Natural Resources, my name is Sarah Nichols, and I am the Sustainable Maine Director for the Natural Resources Council of Maine (NRCM). I appreciate this opportunity to testify in strong opposition to LD 1471.

This is a deeply flawed and wholly inadequate proposal to establish a stewardship program for packaging. The bill would do nothing to improve our waste crisis, allowing business as usual to continue, or worse. We believe that, if enacted, LD 1471 would ultimately move Maine in the wrong direction on recycling and waste reduction. We urge the Committee to reject this bill outright for the following four primary reasons:

LD 1471 proposes a highly problematic governance structure for a packaging stewardship program that would not work for Maine, and therefore renders the bill unworkable.

- Section 2 of the bill would allow producers of packaging to form one or more packaging stewardship organizations. This proposed structure is in direct conflict with former [Maine DEP Commissioner Jerry Reid's testimony on LD 2104](#), which defended the use of a competitive bidding process for selection of a single stewardship organization by the Department. Then Commissioner Reid stated that an “...*EPR program for packaging is much broader in scope and far more complex than other stewardship programs currently in place in Maine (e.g., lamps, electronic waste). In part, this is due to the important role of municipalities in the program and the need to work closely with them to ensure accurate data and proper reimbursements. The stewardship organization for packaging would also be taking on a key role in the statewide development of education and infrastructure to improve recycling outcomes in Maine. The simpler model of a producer(s) stepping forward to take on a stewardship organization role is not the best path forward in this case. A competitive bidding process will ensure transparency, a range of potential candidates, and equitable consideration of their qualifications.*”
- Section 3 of the bill relates to the submission to and approval of a stewardship plan by DEP. Again, this proposed structure conflicts with then-Commissioner Reid's testimony on LD 2104, which made clear that in lieu of a stewardship plan, the statute must “*ensure that the stewardship organization is not engaging in decision-making or performing functions that are regulatory in nature and therefore properly reserved to the State*” by undergoing rulemaking for key details of the program instead of approving a plan by the stewardship organization. His testimony went on to explain: “*This change eliminates ambiguities and potential legal problems in the draft bill that arise from ill-defined Department approval processes.*”
- Section 4 of the bill describes how producers could assess fees on themselves, to at least cover the administrative aspects of the program. It allows the stewardship organization to determine its own budget, necessary to meet the goals that it proposes to set for itself in

Section 3. Any fees that would incentivize their selected favorable environmental outcomes (which are also inadequate) would not begin until year five of the program. This structure would allow the fox to guard the henhouse, would not encourage any meaningful change on behalf of producers, and suggests that there may not be funding to help municipalities in any given year.

LD 1471 would not guarantee any meaningful assistance to Maine’s municipalities.

- Section 6 would grant the stewardship organization broad discretion to not provide much help, if any, to Maine’s municipalities that are struggling to fund recycling programs in Maine.
- Based on a “recycling needs assessment” done by the producers of packaging, with non-binding input from stakeholders in the state, there is a possibility of having little to no funding available in any given year.
- Payments would be made only to “eligible entities” that would have to comply with unknown best practices to be determined by the stewardship organization. This means that Maine’s municipalities would have to jump through unknown hoops to receive funding.
- Payments would be fixed, and offset some costs of recycling, but would fail to cover the most expensive part of recycling programs: household collection costs.
- There might be some grants given to eligible entities. Grants would first prioritize end-market development and technology; then composting (which is outside the scope of packaging stewardship); and, lastly, recycling access and education for the people of Maine.
- Section 3, part 7 of the bill describes how the stewardship organization would only provide technical assistance to municipalities with fewer than 2,500 residents that meet unspecified standards. And, once only half of these municipalities meet these unknown standards, all technical assistance would cease. It also states that there may or may not be funds for technical assistance anyway.

LD 1471 does not protect Maine’s small businesses.

- It is common practice in packaging stewardship laws throughout the world to have a small producer exemption for businesses that earn a low annual gross revenue or that produce a low volume of packaging materials. LD 1471 provides no such protections for Maine’s small businesses.
- Instead, LD 1471 aims to protect large corporations that sell drugs and toxic chemicals. The definition of “packaging material” covered by the program excludes an unjustifiable amount of packaging from paying fees, but the material would still require management by Maine’s municipalities and paid for by either participating producers or Maine taxpayers. This is not only unfair, but also would be very difficult to implement since it would be nearly impossible to determine which material in Maine’s waste stream was in or out of the program. I have attached to my testimony an appendix that reveals the vast and unjustified exemptions in LD 1471.

LD 1471 would not provide any incentive for producers to create less or better packaging.

- Greenwashing is when a company or organization attempts to manipulate public opinion about the environmental performance of an organization through marketing, false claims, or fabricated public support, rather than on actually minimizing their environmental impacts.

LD 1471 has many instances of greenwashing, where it may appear that the stewardship organization's mission would be to improve environmental outcomes but would just allow companies to continue to operate business as usual.

- Section 1 of the bill contains several particularly misleading definitions:
 - “Compostable” and “Composting rate” creates an illusion that the bill would help with composting of food waste in the state. “Composting rate” as defined does not mean composted, but rather the rate of compostable material *sold and discarded*. Compostable packaging is very problematic for both Maine’s recycling programs and for Maine’s composters, and this program could increase the prevalence of compostable packaging without regard for how that material would be managed or how consumers would learn the proper disposal methods for it.
 - The definition of “Recycling rate” is particularly concerning. It refers to the percent of material that is sold and discarded in the state, not recovered, and used as an input into a new product. It further corrupts the term by loosely referring to a “sold and discarded” material’s value as “usable” or “marketable” to count toward the recycling rate calculation, which opens the door to burning or for use in a landfill. There also is a proposed off-ramp for producers in Section 4 F, where if they achieve an 80% or greater recycling rate (meaning sold and discarded rate) then they do not have to pay fees to the stewardship organization.
 - “Reusable” is also loosely defined by saying that the package is reusable if it is “capable of and designed to be reused and refilled.” This definition fails to consider how many times that package should be designed to be reused, whether it’s designed to be sanitized, or the rate at which it is in fact collected and reused as part of a producer take-back program. These details are particularly important because reusable packaging would be exempt from paying fees into the stewardship fund.
- Section 3, A, 8, is where the stewardship organization would set very problematic performance goals for itself that would ensure the program could do essentially nothing.
 - It proposes goals for recycling rate, which we know is not referring to actual recycling, but material sold; and composting rate, which means compostable material sold—not composted (and is outside the scope of packaging stewardship anyway).
 - It refers to rewarding certain greenhouse gas emissions reductions, which is code for paving the way for more non-recyclable flexible packaging or non-marketable film plastics, which is the environmental standard that the producers hang their hats on with self-funded and misleading life-cycle analyses that tend to downplay other critical environmental damage.
 - It further intends to reward a material’s “highest and best use,” which means that if a package is not recyclable, then it should be burned for energy recovery. This, of course, is not recycling but rather destroying materials and wasting the embodied energy that went into making that material. This ultimately means that there is no reason for a producer to make a package that is truly reusable or recyclable.

For these four primary reasons, and many more shortcomings, we urge the Committee to swiftly vote ought not to pass on LD 1471 and instead keep the focus of any packaging stewardship discussions on an effective, equitable, and sustainable EPR proposal, LD 1541, An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money. Thank you for your consideration of these comments, and I’d be happy to answer any questions that you have.

Appendix: Examples of the Sweeping Exemptions for Packaging Fees Proposed

Materials used to contain and distribute beverages: Section (1)(E)(1) would exempt “material used for or associated with the containment, protection, delivery, presentation, or distribution of the beverage container.” This would include cases, trays and shrink wrap for multi-pack, or “fridge pack” beverages.

Over-the-counter drugs: Section (1)(E)(5) would exempt any material “that is used for the containment, protection, delivery, presentation, or distribution of a drug, as that term is defined under Section 321 of the Federal 32 Food, Drug, and Cosmetic Act, as regulated by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.”

This could mean exemption for thousands of products across a range of product categories with active ingredients regulated by the FDA, including but not limited to:

Over-the-counter Drug Categories	Brand Example
Antacids	Tums
Antiemetics	Dramamine
Antihistamines	Allegra
Anti-itch products	Benadryl
Anti-fungal products	Lotrimin
Antimicrobials	Hydrogen Peroxide
Antiseptics	Neosporin
Aspirins	Bayer
Cold medicines	Robitussin
Dandruff shampoo	Selsun Blue
Digestive aids	Pepto Bismol
Hand sanitizers	Purell
Skin care	Stridex
Sleep aid	Unisom
Sunscreen	Coppertone
Toothpaste	Crest

Exemptions for child-resistant packaging: Section (1)(E)(7) would exempt material “that is used for the containment, protection, delivery, presentation, or distribution of an over-the-counter human drug product for which tamper-evident packaging is required, as regulated by the United States Food and Drug Administration under 21 Code of Federal Regulations, Section 211.132.”

Child-resistant packaging is required for a large family of products that includes cleaners, fuels, body care products, and dietary supplements, in addition to over-the-counter drugs. Below are some examples of products that require child-resistant packaging.

Family of Products Requiring Child-safe Packaging	Product or Brand Example
Aspirin, Naproxen	Bayer, Aleve
Furniture polish	Pledge
Sodium and/or potassium hydroxide	Drain cleaners
Turpentine	Paint thinners
Kindling (lighter fluid, fuel)	Kingsford Lighter Fluid

Prescription drugs	Ambien
Ethylene glycol	Antifreeze
Dietary supplements	Fiber One
Acetaminophen, Diphenhydramine, Ibuprofen	Tylenol, Benadryl, Advil
Glue removers	Goo Gone
Mouthwash	Listerine
Lidocaine	Gold Bond
Minoxidil	Rogaine
Hazardous substances	Most household cleaners

Exemption for medical devices: Section (1)(E)(6) provides exemption for anything “that is a medical device or a biological product, or is used for the containment, protection, delivery, presentation, or distribution of a medical device or a biological product, as regulated by the United States Food and Drug Administration under 21 Code of Federal Regulations, Parts 200, 300, and 800.”

Medical devices are defined, in part, as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals.

A large searchable database of medical devices can be found on the FDA website.¹ Some examples from the search include:

Examples of Medical Devices or Biological Products
Bandages
Canes and accessories
Compression leggings
Condoms
Contact lenses and accessories
Dental floss
External braces
Facemasks
Hearing aids
Humidifiers
Menstrual products
Mouthguards
Pregnancy test kits
Thermometers
Toothbrushes

¹ Medical Device Definition: <https://www.fda.gov/medical-devices/classify-your-medical-device/how-determine-if-your-product-medical-device>

Searchable Database: <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPCD/classification.cfm>