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May 10, 2021

Senator Stacy Brenner, Chair  
Representative Ralph Tucker, Chair  
Members of the Environment and Natural Resources Committee

**RE: Testimony in NEITHER FOR NOR AGAINST LD 1471, An Act To Establish a Stewardship Program for Packaging, and Testimony in OPPOSITION to LD 1541, An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money**

Dear Senator Brenner, Representative Tucker and members of the Environment and Natural Resources Committee,

My name is Curtis Picard and I am the President and CEO of the Retail Association of Maine. I am a resident of Topsham. We have more than 350 members statewide and represent retailers of all sizes. Maine's retailers employ more than 85,000 Mainers. I am here today to provide input on both LD 1471 and LD 1541.

On the heels of the most difficult 15 months that any of us have experienced, we have significant concerns with supporting any program that is going to result in higher prices for consumers. Supply chain disruptions have continued, and it's not hard to find news stories about a number of goods that seeing significant price increases<sup>12</sup>. Although both bills look to shift the cost of the end-of-life management of consumer facing packaging, we understand the political interest in this issue, and the desire to make Maine the first state in the nation to pass a law.

While we do not expect any law to be perfect, we do expect that a complex policy proposal like this will listen carefully to the input from all stakeholders, and make a solid effort to improve the bill. It is unfortunate that the public hearing for these bills is happening in May.

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<sup>1</sup> <https://www.cnn.com/2021/05/05/business/lumber-prices-home-building-costs/index.html>

<sup>2</sup> <https://www.nbcnews.com/business/consumer/get-ready-higher-grocery-bills-rest-year-n1263897>

Additionally, retailers are significantly impacted by these proposals so it is critical that we continue to stay involved as stakeholders throughout the process.

We have some important questions to raise:

- In LD 1541, the product stewardship organization (PSO) shall provide a list of producers that are participating in the program, and, if known, a list of producers not complying. Even small retailers carry 3,000+ SKU's (stock keeping units). Larger stores, like a Renny's, may have 25,000 different SKU's, and a large format retailer carries 100,000 SKU's. We question how the PSO would even begin to maintain such a compliance list. In fact, the Agriculture Conservation and Forestry Committee is considering a bill, LD 808, to repeal a fee on the sale of pesticides at retail. Why? Because it is impossible to determine which products the fee applies to and that's a list of 12,000 products. I had an opportunity to ask Ms. Nichols of NRCM about this provision, and she replied that other product stewardship programs are self-enforcing. Our e-waste program, which has a limited universe of producers, or Maine's bottle bill, where all producers have to register their labels with the state, is not a fair comparison of how this will work. What about wholesalers? If there are penalties, who is penalized? The retailer for selling, the wholesaler for supplying or the producer for producing?
- The list will be on the DEP's website and updated regularly. The department shall conduct outreach to the retailers to provide notifications of any changes in information. What is regularly? How will updates be communicated to retail? How will they maintain appropriate contacts at 9,000+ retailers? What happens if a producer goes from compliant to non-compliant? Would retailers need to remove products from shelves?
- During the pandemic, retailers scrambled to find alternative producers of toilet paper, hand sanitizer, etc. Many supply disruptions remain which is why you are still seeing some unfamiliar brands on store shelves. What would happen in a situation where retailers needed to find new supply chains that may or may not be compliant? Would retailers have the ability to sell-through existing inventory? The list of compliant and non-compliant products is by far our #1 issue with LD 1541.
- We raised concerns in LD 2104 with the definition of "readily recyclable", and we are raising it again. Under the proposal bill, the list of what is considered "readily recyclable" would be determined yearly. So, a material that is on the list this year, may not be next year. This is a significant concern for producers as it can take years sometimes to change the manufacturing process. They may be doing everything right, but then the next year, they are penalized. LD 1471 details that recyclability looks to ASTM International standards. The committee needs to look at this definition closely.
- How much is this program going to cost? NRCM bill is saying \$16 to \$18 million. Extrapolating the cost of some of the Canadian programs to Maine's population shows

the cost increasing to \$32 million plus. A recent York University study of a similar proposal in New York is estimating that cost of groceries will increase 4-6%.<sup>3</sup> LD 1471 proposes a needs assessment as a logical first step and we agree. We deserve to know how much this program is going to cost. It is also disingenuous to say that LD 1541 is going to save taxpayer money. There is no evidence that the Canadian programs have lowered taxes, property or otherwise. Both of these bills are shifting who is paying, and the costs will be ultimately placed on consumers.

- Both of these bills will shift the costs on to producers. In LD 1541, producer is defined as:
  - *N. "Producer" means a person that:*
    - *(1) Has legal ownership of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material; or*
    - *(2) Imports into the State for sale, offer for sale or distribution for sale in or into the State a product contained, protected, delivered, presented or distributed in or using packaging material that is branded by a person that meets the requirements of subparagraph (1) and has no physical presence in the United States.*
  - *"Producer" includes a low-volume producer and a franchisor of a franchise located in the State, but does not include the franchisee operating that franchise. "Producer" does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3).*
- However, I dug back into my files of LD 2104 and some of the presentations we've heard. One of our main concerns was from a statement Victor Bell of Lorax made during his presentation to the ENR Committee during the 129<sup>th</sup> Legislature. **He stated that the largest fee payers are retailers under this concept.** We understand that retailers who have private label products are considered producers, but that does not fully explain his statement. The reason that retailers end up paying most of the fees is because regulators can more easily track down a brick-and-mortar retailer vs an out-of-state manufacturer, distributor, or importer. The responsibility simply travels down the line to Maine's retailers to pay up.
- We are concerned that the rulemaking throughout LD 1541 is proposed to be routine technical rulemaking. We believe that many of the provisions in the bill fall within the accepted definition of major substantive rulemaking: *"Major substantive" rules are rules that, in the judgment of the Legislature, either (1) require the exercise of significant*

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<sup>3</sup> <https://wastewiki.info.yorku.ca/study-examining-the-economic-impacts-of-epr-legislation-for-packaging-waste-in-new-york-state/>

*agency discretion or interpretation in drafting or (2) are reasonably expected to result in a significant increase in the cost of doing business, significant reduction in property values, significant reduction of government benefits or services, serious burden on the public or serious burden on units of local government.*<sup>4</sup>

- If Maine establishes a program like this, it is likely that other states will follow. As the committee knows, one of the biggest challenges Maine always faces is our small population yet large geography. That often makes statewide programs more expensive and logistically challenging. In a perfect world, a proposal like this would be regional in nature so that other New England states can work collaboratively. This would be especially helpful for retailers that sell in multiple states. While this is not in either proposal, we would like to see a trigger that if two other New England states establish an EPR Packaging program that a specific effort is undertaken to synchronize the programs for consistency.
- We do appreciate the small producer exceptions in LD 1541 including what we are calling the “Marden’s” exemption. We understand that LD 1471 was supposed to include a small producer flat fee, but we do not see it in the drafted bill.
- Time frame: We would like clarity of when both of these proposals will take effect. It is difficult to determine from each bill the earliest date that a program will be in place and when producers will need to start paying in to a system. We ask that this be clarified so that all parties are clear of the time frame.

In closing, we ask the committee to spend some time comparing both LD 1471 and LD 1541. There are some charts that I’ve seen that do a side-by-side comparison that may be helpful,

Thank you for the opportunity to share our concerns with you.

Sincerely,

Curtis Picard, CAE  
President and CEO

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<sup>4</sup> <http://legislature.maine.gov/doc/5052>