

May 10, 2021

Senator Stacy Brenner and Representative Ralph Tucker  
Chairs, Committee on Environment and Natural Resources  
Cross Building, Room 216  
100 State House Station  
Augusta, ME 04333  
Via <https://www.mainelegislature.org/testimony>

**Re: CTA Comments LD 1541 – An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money - OPPOSE**

Dear Chair Brenner, Chair Tucker, and Members of the Committee:

The Consumer Technology Association™ (CTA) respectfully submits these comments to express our concerns and opposition regarding [Legislative Document No. 1541 \(LD 1541\)](#) which establishes a stewardship program for packaging in Maine.

CTA is the trade association representing the U.S. consumer technology industry. Our members are the world's leading innovators – from startups to global brands – helping to support more than 18 million American jobs. CTA's members have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency, and product and packaging stewardship.

CTA supports Maine's interest in identifying and evaluating additional opportunities for the management of packaging in the state. However, **CTA does not believe the structure proposed in this legislation is the right path forward nor is LD 1541 consistent with the concept of "product stewardship" and the associated role producers can play in taking responsibility for the packaging used to deliver consumer electronics safely and securely to Maine's consumers.**

**Experience with producer responsibility / stewardship programs**

For over a decade, the consumer electronics industry has implemented and complied with state-level extended producer responsibility (EPR) laws for electronics in Maine and 23 other jurisdictions. In Maine, producers of electronics are not involved in the system other than writing checks totaling more than \$2 million annually to private "consolidators"/recyclers selected and approved by the Maine Department of Environmental Protection (DEP) and at prices set by the DEP. The result is state-mandated high prices and low quality – for example electronics manufacturers must subtract out pounds paid to Maine consolidators when reporting to the [U.S. EPA's Sustainable Materials Management Electronics Challenge](#) because DEP's recycler qualifications do not meet EPA's threshold criteria for third party recycler certification, an unfortunate situation that causes embarrassment both to electronics manufacturers and

to the state of Maine. Information on higher recycling costs charged to manufacturers is included in CTA's comments provided to this Committee for [LD 1208](#) which was considered earlier this month, with additional detail provided in a follow-on letter to Senator Bennett. The existing e-waste program is a "producer pays" system with no producer responsibility other than financial, and it is implemented as a state-mandated tax levied on one private party (manufacturers) paid to another private party (consolidators/recyclers) without any role for producers as stewards for the electronics that are sold in Maine.

The e-waste program example underscores the need to consider the long-term sustainability and stability of whatever packaging system is ultimately enacted in Maine. Since 2018 CTA and our members have pushed for reforms to the current e-waste program to give producers a more active role in the system – first through administrative changes, and most recently through support for statutory reforms in LD 1208. Our industry's primary objection to the current e-waste system is the same fundamental flaw in LD 1541: the state is establishing a private tax where one set of private entities (producers) must pay another private entity (a DEP-selected "stewardship organization" which is really a state contractor with a 10- year DEP contract) to perform services to the benefit of Maine residents and the environment (collection and recycling). To correct the "private taxation" flaw in current e-waste law, LD 1208 would have authorized the industry to utilize a Producer Responsibility Organization (PRO) referred to as the "manufacturer clearinghouse" to coordinate with municipalities and third-party certified recyclers to collect and recycle electronics in an environmentally responsible manner. The intent of LD 1208 was to align the administration of the program with producer responsibility without changing the breadth of the current collection system nor the current financial responsibility of electronics manufacturers. Although LD 1208 died in committee after DEP announced new regulations to try to address some of these issues, CTA is skeptical that the underlying statute provides the requisite authority for full producer responsibility performed according to an annual plan reviewed and closely overseen by DEP. CTA strongly recommends that the committee consider avoiding the private taxation construct inherent on both the existing e-waste law and in LD 1541.

### **Producers' role in a packaging system**

CTA embraces the same concept that we are advocating for in LD 1208 for any stewardship program for packaging. We want to build on our experience, not ignore it. Product stewardship (or producer responsibility) should mean that producers are involved and responsible in the system, not just writing checks. Unfortunately, that is not the structure embraced in LD 1541 in establishing a stewardship program for packaging. In fact, there is little to no "stewardship" for producers under LD 1541.

- **Transfer of costs with unclear system improvements.** LD 1541 proposes a blank check system in which DEP sets rates producers must pay its selected contractor (i.e., "stewardship organization") and determines investments in education and infrastructure. The proposal provides no actual stewardship role for producers. In all other jurisdictions around the world with packaging stewardship programs, the stewardship organization is the entity which sets the producer rate, not the government. As noted above, CTA's members have direct experience with DEP setting pricing under the e-waste program which has resulted in the highest electronics EPR recycling costs in the U.S.<sup>1</sup>

Under LD 1541, DEP also has sole control over investments made in consumer education and recycling system improvements. In other jurisdictions, the stewardship program also makes these strategic decisions many times in consultation with waste and recycling industry experts and

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<sup>1</sup> See CTA testimony on LD 1208 from Walter Alcorn dated May 3, 2021.

government representatives. There are no parameters for how the DEP will determine where to make investments and the lack of a needs assessment (see next bullet) is a crucial step that is missing in order to determine sound investment of producer funds.

- **Lack of a needs assessment.** A primary role of a stewardship organization should be to conduct a needs assessment to determine, based on data, where the needs of the system are best addressed through the use of producer funds. Based on the needs assessment, the stewardship organization can determine the appropriate level of funding to make strategic improvements to the system and then distribute those costs equitably among producers. LD 1541 involves no assessment of the needs of the recycling system in Maine meaning the system is likely to continue “as is” with no improvements while producers bear the costs of an already challenged system.
- **Double administrative fees for producers.** The stewardship organization has little control over any detail of the execution of the collection and recycling system in Maine. As a result, producers will incur the administrative costs of both the stewardship organization and the DEP. The stewardship organization should retain most of the authority to execute the packaging stewardship program with oversight role from DEP as it relates to plan approval and enforcement against non-compliant producers. As previously noted, there is essentially no “stewardship” role for producers under LD 1541.

Unfortunately, there was no engagement with impacted producers as to the structure of a stewardship program for packaging within Maine. Facilitating dialogue among stakeholders should have been the first step, especially for a structure that has not been adopted anywhere else in the U.S. Producers and trade associations like CTA have been involved in national discussions<sup>2</sup> on the role of producers and structure of a stewardship program for packaging. Unfortunately, none of those ideas are reflected in LD 1541 because producers were not consulted in its development.

A comment by Joachim Quoden, Managing Director of the Extended Producer Responsibility Alliance (Expra) in Europe, during his presentation to the Connecticut Task Force to Study Methods for Reducing Consumer Packaging that Generates Solid Waste on which I served as a Task Force member sums up CTA’s thoughts on LD 1541.<sup>3</sup> Mr. Quoden stated that all stakeholders in the value chain must agree on the program to avoid undermining of the product stewardship system. The necessary stakeholders have not yet reached such agreement in Maine. In fact, the necessary stakeholders haven’t even been convened for a discussion nor does the proposal in LD 1541 involve an active role for producers or embrace the concept of product “stewardship”.

#### **Additional challenges in LD 1541**

There are a multitude of challenges within the current language of LD 1541 including, but not limited to, the following:

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<sup>2</sup> See The Recycling Partnership’s Circular Economy Accelerator. <https://recyclingpartnership.org/accelerator/>

<sup>3</sup> The Connecticut Task Force released its recommendations in February 2018 after a year of stakeholder meetings, expert testimony and public comments. Ultimately, the Task Force did not recommend EPR for packaging in Connecticut. The Final Report of the Connecticut Task Force to Study Methods for Reducing Consumer Packaging that Generates Solid Waste can be found under the “Final Report” section of the “Meetings” portion of the Connecticut General Assembly website at [https://www.cga.ct.gov/env/taskforce.asp?TF=20170216\\_Task%20Force%20to%20Study%20Methods%20for%20Reducing%20Consumer%20Packaging%20that%20Generates%20Solid%20Waste](https://www.cga.ct.gov/env/taskforce.asp?TF=20170216_Task%20Force%20to%20Study%20Methods%20for%20Reducing%20Consumer%20Packaging%20that%20Generates%20Solid%20Waste). Additional meeting documents including presentations, written comments and meeting notes can also be found under the “Meetings” portion.

- **No role for shared responsibility or recycling system improvements.** CTA strongly supports “shared responsibility” as part of any product stewardship system. Under LD 1541, there is no role of shared responsibility for consumers or municipalities. Rather, this is a blank check from producers to municipalities at DEP set pricing. Producers’ funding should be used for improvement of the recycling system, and not merely for the subsidization of the municipality’s existing costs to manage packaging material. CTA does not support reimbursing municipalities for their costs. Producer funding is better utilized to make strategic improvements to the collection and recycling system and for consumer education. Determination of where producer funding is directed should be based upon data from a statewide needs assessment. The goal of any stewardship organization should be a healthy recycling system, not merely transferring costs from one entity to the next.
- **“Readily recyclable” is problematic.** CTA’s member companies have raised significant concerns regarding how “readily recyclable” will be determined for packaging. Concerns raised include that the definition creates a moving target that could result in big cost shifts year over year; hinders packaging innovation; and does not factor in fluctuations in the recycling markets.
- **Remove litter reduction programs.** While litter reduction is complimentary in nature to the recycling system, it should not be the focus of stewardship organization funds that need to be directed toward recycling system improvements. Additionally, not all litter is packaging (and vice versa). Litter programs should not be addressed through a packaging stewardship system.
- **Program goals outside scope of stewardship organization.** The stewardship organization should be focused on helping to ensure packaging material is recycled. Eco-modulation of fees paid by producers will address material types, amounts, reuse, and post-consumer recycled content; these are not best addressed via program goals. There may be unintended consequences of how goals and program execution operate together. For example, a producer may choose to transition from a non-readily recyclable material type to a readily recyclable material; this may actually increase the amount of packaging utilized (by volume, by weight, or both) which is inconsistent with the solid waste management hierarchy and works against any packaging reduction goals that could be established.

#### **Supporting a healthy recycling system.**

CTA’s members feel strongly that a major goal of any type of stewardship legislation should address the challenges in the recycling markets to support a healthy recycling system that can stand on its own and help contribute to a circular economy including helping producers reduce packaging and get recycled material back into the production system. This involves the strategic investment of producer funds in a way that improves the system, not just transfers costs from municipalities onto producers.

CTA is open to additional dialogue around the role of producers in a stewardship program in Maine, but LD 1541 is not the answer. We encourage the Committee to seriously consider the proposal in LD 1471 as a starting point for the discussion on real system improvements that involve an actual stewardship role for producers to encourage a healthy recycling system that will ultimately be able to stand on its own.

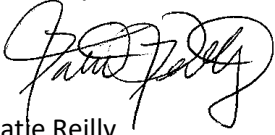
#### **Conclusion.**

CTA appreciates the opportunity to provide comments on LD 1541 and asks the Committee on Environment and Natural Resources to oppose. CTA welcomes further discussion with the Committee and

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other stakeholders including continuing to improve upon the foundation established in LD 1471. Please do not hesitate to contact me with any questions or requests for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Reilly', written in a cursive style.

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