



January 22, 2010

Senator Seth Goodall, Chair  
Representative Robert Duchesne, Chair  
Members of the Joint Standing Committee on Natural Resources  
State of Maine Legislature

**Re: Testimony in OPPOSITION of LD 1631, An Act to Provide Leadership Regarding the Responsible Recycling of Consumer Products**

Dear Senator Goodall, Representative Duchesne and members of the Natural Resources Committee:

I am here today to testify in OPPOSITION to LD 1631, An Act to Provide Leadership Regarding the Responsible Recycling of Consumer Products.

My name is Curtis Picard and I am the Executive Director of the Maine Merchants Association. The Maine Merchants Association, founded in 1933, represents the retailers and merchants of Maine. When the economy is better, our industry employs approximately 93,000 Mainers. However, more recently, Maine's retail sector is employing approximately 87,000 Mainers. That difference of 6,000 jobs is direct evidence of the challenge Maine's merchants are facing.

I would like to thank Representative Innes for taking the time to reach out to our association, explain her bill and ask for feedback on how to improve bill. Over several conversations, I was able to highlight some of our concerns with the bill. Her willingness to have a discussion and understand the concerns of the merchant community is much appreciated and we pledge to keep an open dialog throughout the process.

On Thursday afternoon, Representative Innes forwarded me an amended version of her bill. As I mentioned she had multiple conversations with our association as well as a number of other groups and attempted to address some of the concerns in her amended bill.

However, as time was short to review the amended version, I think it is best to direct our concerns to the original draft language.

First, LD 1631 is a very large, complex bill and this legislative session is moving along very swiftly. I believe that broad policy issues like this need to be given ample time to be discussed by various stakeholders and to consider all the impacts.

Our main concern, as you might expect, is for the impact that this bill could potentially have on the retail sector. Our association has testified on individual product stewardship bills in the past and our message is clear: We resist any mandate to have the responsibility or cost of collection passed on to the retail merchant establishment. This is an undue burden on retailers. Certainly, if a retailer chooses to participate voluntarily, we support that. I think we all have experience that when you buy a new appliance or mattress, the seller is often willing to take the old product away.

Although LD 1631 does not specify a retailer take back mandate, we do think there are scenarios in the bill that would enable that possibility. For example, Section 1771, paragraph 5 defines a "Producer" as a person that *"sells a product in the State at wholesale or retail, does not have legal ownership of the brand of the product and elects to fulfill the responsibilities of the producer of the product."*

Further, Section 1771, subsection 8 gives a very broad definition of Product Stewardship particularly the life-cycle impacts. According to the bill, *"life-cycle impacts include, but are not limited to, energy and materials consumption, air and water emissions, the amount of hazardous substances in the product, worker and consumer exposure and reuse, recycling and waste disposal."*

Section 1772 is particularly concerning as it is giving broad authority to the Maine Department of Environmental Protection, through rulemaking, to develop procedures for identifying products and products categories that are appropriate for product stewardship. *"Product categories"* is an extremely broad term and could include housewares? clothing? general merchandise? books? After all, many people were surprised to learn that when the federal Consumer Product Safety Improvement Act was first being implemented in 2009 that some books printed before 1985 contained unacceptable levels of lead.

Additionally, subsection 2, paragraph A of Section 1772 outlines the criteria that Department of Environmental Protection *shall* consider and lists eleven different criteria. Many of those criteria are subjective and overly broad. How would DEP measure *"public demand for product stewardship"*?

Further paragraph C of the same subsection 2, states DEP: *"Shall determine whether to designate a product's packaging as a product."* This is venturing into new territory where we are no longer talking about the product, but the packaging that comes with the product.

Section 1773 places the cost of the program on the producers and is clear that the costs cannot be passed on at the time of purchase or collected for recycling or disposal. However, LD 821 in the Health and Human Services passed a bill out of committee this week regarding the product stewardship of pharmaceuticals. In testimony in that committee, Maine Merchants asked specifically if there was any provision to prevent the costs of that program from being passed on to the pharmacy or the consumer and the answer was no.

Additionally, a product stewardship program is responsible to provide education and outreach *"to ensure that collection options are understood by covered entities"* and be subject to an annual third

party audit. I think the question that concerns the retail merchants is what is this program going to do for the ultimate cost of a product? Will it make certain products sold in Maine more expensive than other locations?

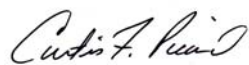
Section 1775 sketches out a scenario that everyone in Maine can relate to. Paraphrasing it says a retailer may not sell or offer for sale a product or product category unless the producer is participating in a product stewardship program. How would this bill impact a respected Maine retailer like Mardens? Mardens, as everyone knows, brings in merchandise of every shape and size from all over the United States to sell at their 14 Maine locations. Under this language, it is very likely they would be considered the producer by default. If they are the only seller of a product or product category in the state, they would be considered the de-facto manufacturer and now be responsible to product stewardship of that product.

Section 1781 outlines some very stiff penalties of \$10,000 per day for non-compliance and Section 1782 gives the DEP authority to establish fees.

At the end of the day, our association is not saying that the topic is not worthy of consideration, but LD 1631 is a very complex bill and the first of its kind in the United States. This bill is likely to have a number of unintended consequences and have a chilling effect on Maine's economic recovery. Maine's unemployment rate is between 8 and 9%. Businesses were recently told to absorb a \$53 million increase in the unemployment insurance rates this year. Our members keep asking us what are the pieces of legislation that will make it easier for them to get back to work, to once again expand their workforces and to help get Maine back on its feet? Enacting a bill like this sends the wrong message to the business community.

We strongly urge the committee to vote this bill ought-not-to-pass.

Sincerely,

A handwritten signature in cursive script that reads "Curtis F. Picard".

Curtis Picard  
Executive Director  
Maine Merchants Association