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April 17, 2019

The Honorable Brownie Carson
Joint Committee on Environment and Natural Resources, Chair
Maine Senate
3 State House Station
Augusta, ME 04333

The Honorable Ralph Tucker
Joint Committee on Environment and Natural Resources, Chair
Maine House of Representatives
3 State House Station
Augusta, ME 04333

RE: Opposition to L.D. 1431 (Devin) – Resolve, To Support Municipal Recycling Programs

Dear Chairman Carson and Tucker,

On behalf of the Consumer Healthcare Products Association (CHPA), the 138-year-old trade association representing the leading manufacturers of over-the-counter (OTC) medicines, I'm writing to express strong opposition to Legislative Document 1431, unless amended. This legislation would require the Department of Environmental Protection (DEP) to develop legislation to establish a new product stewardship program requiring producers of packaging to assist Maine municipalities in managing and financing packaging waste disposal and recycling programs in the state. The proposed legislation is purported to incentivize producers of consumer products to design packaging to be recycled or made of recycled content to strengthen the recycling markets.

Packaging of OTC Medications

Packaging of OTC medications differs from other consumer products in that it's often dictated by federal rules and regulations. The federal government has created packaging protocols to ensure among other things that medications are protected from adulteration, that they communicate vital information, and that product is stored to withstand temperature changes during transportation and shipping that may compromise the integrity of the medication itself. Furthermore, unlike other consumer goods, OTC medications are meant to be contained within the product packaging until the medication is no longer in use. A consumer accesses OTC medicine from its original packaging container and stores it for future use within the same container as well.

L.D. 1431 and Existing Federal Law Lack Alignment

The Poison Prevention Packaging Act (PPPA), enacted in 1970, is intended to prevent children

from exposure to household products, including OTC drugs and certain cosmetics.¹ The Consumer Product Safety Commission has the authority to require child-resistant packaging for many drugs. Therefore, it would be impossible for manufacturers governed under these rules to alter their packaging due to the requirement of the PPPA.

Similarly, the Food and Drug Administration (FDA) requires all ingested OTC drugs to include tamper-evident packaging to help protect consumers against adulteration of those drugs. Tamper-evident packaging most frequently involves plastic packaging features which are removed after the consumer brings the product home. Manufacturers are required to strictly follow federal packaging regulations for OTC products. Any attempt by the State of Maine to require limited packaging per L.D. 1431 could cause conflict between state and federal requirements.

Amendment Request

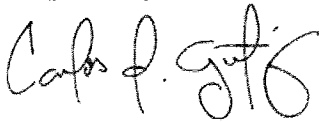
Our core issue with L.D. 1431 is vagueness in language and lack of clarity, particularly as it relates to the scope the proposed law. The terms “consumer product” and “consumer good packaging,” lack clear definition. As a result, these terms could be interpreted to include FDA regulated OTC’s, medical devices, or dietary supplements.

To gain clarity and avoid potential conflict with federal law, CHPA recommends adding an exemption to L.D. 1431 under section (1) part (1) that makes clear the definition of the term “packaging” “does not include packaging containers that contain drugs, medical devices, or dietary supplements as defined in the federal food, drug and cosmetic act (21 U.S.C. Sec.301 et seq).”

Conclusion

On behalf of CHPA, I thank you for the opportunity to comment on L.D. 1431 and respectfully request you give careful consideration of our concerns. Please feel free to contact me directly with any questions or concerns.

Respectfully submitted,



Carlos I. Gutierrez
Vice President, State & Local Government Affairs
Consumer Healthcare Products Association
cgutierrez@chpa.org | 202-429-3521

cc: Joint Standing Committee on Environment and Natural Resources

¹ <https://www.cpsc.gov/s3fs-public/384.pdf>