

Maine Recycling Law Could Spark Wave Of Policies Across US

By **Clark Mindock**

Law360 (July 28, 2021, 12:17 PM EDT) -- A new Maine law could signal a fresh era of recycling responsibility for businesses in America by requiring companies to pay to recycle the packaging on the products they sell, a policy that experts expect to be adopted in other parts of the country.

The new law positions the Pine Tree State as the unlikely pioneer in a growing effort to shift the responsibility for recycling the mounds of packaging tossed aside after a customer's latest online order lands on their doorsteps. Similar measures have been proposed in other states in a wave of legislation aimed at forcing companies to rethink what and how much packaging they rely on to fill those orders in the first place.

Many of the legislative proposals for the recycling change, known as "extended producer responsibility" are intended to put the burden on companies, rather than local governments and individuals, to deal with product packaging that cities and consumers have relatively little control over.

The new law's strategy could mark a major paradigm shift as Maine and other states retool their plans to handle waste and analyze how they might increase recycling rates, said Marc Goldstein, the managing principal at Beveridge & Diamond PC's Boston office.

"Maine's not the biggest marketplace for lots of companies, I'm sure, but the reality is I think Maine is a canary in the coal mine for what's happening on EPR, which is to say Maine is not going to be alone for very long," Goldstein said. "I think companies are going to keep an eye on it carefully, but they're going to have to start thinking about what the impacts are."

The Maine law is now set to undergo specific rulemaking to hammer out how the law will be implemented, but will broadly include fees placed on producers with the hope that those fees will get companies to ship in less potential waste and make sure those companies are taking a relatively active role in ensuring waste is recycled or disposed of properly. The program will be overseen by a stewardship organization picked and contracted by Maine's Department of Environmental Protection, which will operate the program.

Factors that will influence the rates Maine charges companies for recycling includes the tonnage of waste that the producers create, among other things and smaller producers will see different requirements. The law will also not impact Maine's bottle and can recycling program, which is already subject to a deposit scheme.

Cities and consumers have felt a heavy burden from recycling in recent years, particularly when China abruptly stopped buying most of the United States' recycling five years ago. That led to dozens of local governments suspending or dramatically weakening the programs they had implemented to deal with waste without simply sending it to a landfill. And cities had grown frustrated over facing that burden with relatively little control over what materials arrive in stores, how much of it is used or even whether there are adequate ways to recycle the materials in the first place.

Though Maine was the first state to pass an EPR law for packaging, it's far from alone in taking a look at the strategy. Roughly a dozen states have recently considered similar EPR plans to hold behemoths of the retail industry like Amazon and Walmart accountable for the waste associated with their products, including an effort in Oregon that has already passed through the state Legislature

and is waiting on a signature from the governor there. Proposals have also been floated in New York, Massachusetts and California in recent years.

"I do think this is going to be model legislation," said Peter Blair, an attorney with the Conservation Law Foundation. "The question isn't really, 'is there going to be a domino effect?' It's 'How fast do the other dominoes fall?'"

This might be the first use of EPR to try to improve a state's recycling rates, but it's far from the first EPR law in the country. Americans might know EPR systems more commonly because batteries, lightbulbs and paint all require specialized disposal methods, for instance, and that responsibility is largely left up to manufacturers of those products.

And there's an international precedent to leverage EPR to improve recycling. The strategy is used by nearly all European Union member states, five Canadian provinces, Japan and South Korea. After those policies were put into place in Europe — in some cases, decades ago — many of the countries and governments saw soaring recycling and collection rates, with many now achieving rates as high as between 60% and 80%, according to an analysis by the Product Stewardship Institute last year.

Among the success stories has been Ireland, which saw recycling rates jump from 19% in 2000 to 65% in 2017. The Institute estimates that industry is contributing approximately \$5.5 billion a year for the collection, sorting and recycling of packaging across Europe as a result of EPR laws.

The recycling rate in the U.S., by contrast, sat at 32% in 2018, the most recent year that data was available from the Institute. Other estimates indicate that the recycling rate for residential packaging and paper products in the U.S. is closer to 50%, and has been stagnant for roughly two decades.

In countries with EPR laws on the books, companies have also responded by innovating to change their packaging and reduce waste. In Italy, for instance, companies have made design changes for relatively innocuous products like ice creams to have less raw materials in their packaging, changes to bottle composition for laundry detergent and more refined bottles for milk, among other design changes to products. Italy's packaging and paper products recycling rate jumped from 38% to 67% between the early 2000s and late 2010s alongside the implementation of its EPR laws, the Institute says.

In Maine, several business groups opposed the legislation while it was debated. The Manufacturers Association of Maine told lawmakers the fee amounts to a business tax that would divert funds from investments in research and development, innovation and potentially human capital. The Maine Jobs Council argued that the bill would ultimately shift the costs to Maine consumers and that it would hurt both workers who are statistically poorly paid compared to the rest of the nation and the state in general, which it said already has high energy, health care and tax costs.

MAME told Law360 that the group is still reviewing the specifics of the law, now that it has passed.

"MAME and our members are good stewards of the environment and are proud of our environmental records. We strongly advocate for policies which promote sustainability while maintaining the natural beauty of our state," Amy Volk, the director of communications and public relations for the group, said in a statement to Law360.

But the measure has ardent support in Maine too. Chrissy Adamowicz, the sustainable Maine outreach coordinator for the Natural Resources Council of Maine, told Law360 the types of packaging changes seen in Italy and other EPR countries show that businesses can adapt to new rules in order to make better and more sustainable products for consumers. And, with municipalities struggling to handle the recycling load on their own, the need is clearer than ever, she said.

"Really the time is now to implement these sustainable solutions that have really been proven in other places already," Adamowicz said. "Yes, it's a shift. It says you're responsible for making sure that this package that you're putting into these communities is recyclable in the first place. And it gives states the tools they need to really hold these brands accountable."

--Editing by Alyssa Miller.

