



AMERIPEN™

The power of packaging in balance.™

Opposition S.1464 (Harckham)

AMERIPEN

American Institute for Packaging and the Environment Packaging Reduction and Recycling Infrastructure Act

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to submit comments on S.1464. AMERIPEN is writing to express continued opposition and the need to start from a true good-faith negotiation to establish an extended producer responsibility (EPR) program for packaging in New York. S.1464, does not create a workable EPR framework to improve recycling and packaging sustainability in New York. AMERIPEN supports EPR when it is structured in a balanced and equitable way, and we believe there needs to be a genuine opportunity for all stakeholders to work together to find a feasible and workable EPR approach for the State. In fact, we recently supported the compromise EPR bill that became law in **Minnesota**, last year and similar laws that have just been signed in **Maryland** and **Washington State** in the past 10-days.

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging industry trade association in the United States representing the entire packaging supply chain. The packaging industry in New York supports 58,621 jobs and accounts for more than \$20 billion in total economic output. Below, are critical issues and considerations we believe must be significantly amended from the current proposals to create a balanced packaging EPR program in the State.

- 1. Costs and Funding** - According to a recent study of S.1464, the cost of an average family of four's **grocery bill will increase, on average \$489 and could be up to \$732**. AMERIPEN believes that for EPR to be fair and effective, the funding mechanism must be constructed in a way that shares costs between producers and municipalities for fair and reasonable allocations of recovery and recycling services and costs. AMERIPEN opposes funding mechanisms, such as currently included in S.1464 that would provide for 100% cost reimbursement from producers to municipalities or private entities for collection, recovery, recycling, and processing of packaging materials. AMERIPEN also strongly opposes reimbursement for disposal costs, as S.1464 proposes to do. **No jurisdiction in the world reimburses for the disposal of packaging materials under approved EPR schemes** – since landfill disposal is already the cheapest option for materials management and reimbursing for this activity **will send more materials to landfill in New York**. ***AMERIPEN therefore asserts that funding under S.1464 must be a shared requirement between producers and municipalities and that funding must not reimburse for the disposal/landfilling of packaging materials.***

- 2. Enforcement and Office of Inspector General** – EPR systems must be efficient and effective, without undue administrative structures and unfair enforcement practices. The concept in S.1464 of creating an Office of Inspector General duplicates the existing authority that would be vested in the New York State Department of Environmental Conservation (DEC) and in some cases the State's Attorney General. Creating wholly punitive enforcement departments that duplicate existing enforcement mechanisms

serves no useful purpose and subtracts from funding that could be used to actually improve recycling in New York.

AMERIPEN recommends that all enforcement under any packaging EPR law remain vested in the Department of Environmental Conservation, and where necessary the Attorney General's Office.

- 3. Unrealistic Goals and Recyclable Criteria** – While they have been slightly modified, S.1464 still sets several sets of goals for recycling rates and source reduction that are simply not based on any factual analysis. Additionally, the 2-year recyclable packaging mandate is not feasible and will essentially ban many types of packaging products. Setting goals and standards that are achievable and support the development of a stronger recycling system will boost the recycling infrastructure more than goals and standards that are unachievable and may lead to failure of the EPR program.

AMERIPEN recommends that a proper needs assessment and rates study be performed and published prior to setting any mandatory performance goals within a packaging EPR program.
- 4. Packaging Reduction** – AMERIPEN understands and supports the desire to reduce packaging and packaging waste. However, setting unachievable packaging or source reduction goals in statute, like the 30-percent goal proposed in S.1464, will either result in the wholesale banning of products under the law or cause the law to fail under the inability to meet such mandates.

AMERIPEN therefore asserts that for any mandated source reduction goals, credit for historical efforts must be provided for and goals must be based on the needs assessment and developed in conjunction with producers, retailers and stakeholders.
- 5. Chemicals in Packaging** – An EPR proposal should focus on creating efficient, financially sustainable collection systems of recyclable materials used for consumer goods. Imposing wide bans on chemicals in packaging, without clear environmental or public health justification is not germane to creating an effective and efficient packaging EPR program. Provisions for toxics in packaging is a policy category of its own with separate systems in place to address covered chemical compounds toxics. Bans on certain materials and chemicals should not be considered without carefully assessing the relevant science, applicable federal standards and guidance from federal agencies, the feasibility of removing or avoiding specific substances, and the time needed to transition supply chains. Importantly, the legislation identifies a zero-tolerance standard which is often not feasible

AMERIPEN strongly believes that chemicals in packaging can and should be addressed outside of packaging producer responsibility laws and under other existing statutory and regulatory frameworks. If the toxics provisions remain, we recommend revising the Toxics prohibitions to follow model legislation from the Toxics in Packaging Clearinghouse of which New York is a member state
- 6. Feasible and Consistent Approach** – Seven states – Maryland, Maine, Oregon, Colorado, California, Minnesota and Washington State – are diligently working to implement packaging EPR laws enacted since 2021. While these programs are not the same, there are lessons to be learned as they are being implemented. These lessons suggest that greater involvement of producers in a shared producer responsibility system will result in a more efficient and more quickly funded program that would begin improving packaging recovery and recycling in New York sooner.

Conclusion

AMERIPEN recognizes the need to improve recycling systems in New York and we remain committed to being a partner to find the right path forward. We believe that improving the recycling system is a shared responsibility. We urge the Legislature to **reject the one-sided approach in S.1464** and support a true negotiation to create a feasible structure for an EPR program that will improve recycling systems in New York.