



AMERIPEN
American Institute for Packaging and the Environment

Opposition Testimony

Senate Bill 269
Extended Producer Responsibility

Tennessee Standing Committee on Energy, Agriculture and Natural Resources

March 11, 2026



Chair Reeves, Vice Chairs Lowe and Sealand Members of the Committee on Energy, Agriculture and Natural Resources,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to submit testimony on Senate Bill 287 that seeks to establish an extended producer responsibility (EPR) program for packaging. While seven states have adopted some form of EPR for packaging, increasing costs and legal uncertainty create legitimate concerns about adopting yet another packaging EPR law without allowing time to review and learn from existing programs. As such, AMERIPEN must oppose SB 269 until these considerations have been addressed and considered in Tennessee.

AMERIPEN supports positive recycling policies when they are crafted in a balanced way. We would welcome the opportunity to work with Senator Southerland, this Committee and other stakeholders on a more feasible set of policy tools to increase packaging recovery and recycling in Tennessee without creating a new administrative burden for producers during uncertain economic times. AMERIPEN represents the entire packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. As the leading voice for packaging policy in the United States, AMERIPEN collaborates with legislators, regulators, and stakeholders to develop science-based, data-driven solutions that enhance the role of packaging in protecting products and promoting circularity. We have several member companies with significant presence and facilities in Tennessee, as well as many more that import packaging materials and products into the state.

Packaging plays a vital role in Tennessee, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and safely consumed by Tennesseans. Packaging has value and should be recycled, composted, and/or reused. No one knows better how to do that than the AMERIPEN members who design, supply, produce, distribute, collect, and process it. They are driving innovation and designing packaging for better environmental performance to boost recycling and evolve the recycling infrastructure.

Over the last five years, there has been significant development of EPR laws in the states, however, only one is fully operational, and significant legal and cost questions remain. Therefore, AMERIPEN recommends that before Tennessee considers adopting EPR for packaging, the State should find out what is working and what is flawed from the other state programs, and if they will survive legal challenges. In contrast to hastily adopting an EPR program, AMERIPEN supports policy solutions that are:

- **Results-Based and Data-Driven:** Designed to achieve increased recycling, composting, and reuse of packaging based on data from needs assessments.
- **Effective and Efficient:** Focused on best practices and promoting market-based solutions to maximize social and economic benefits that spur positive behaviors at minimal costs, increase packaging recovery, recapture material values, and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and related infrastructure for the residential recycling and composting streams, and funded by scaled shared cost allocations that reflect a reasonable balance among stakeholders in the residential recycling system, accounting for voluntary actions supporting material collection, sortation, and development of a domestic recyclable material manufacturing infrastructure.
- **Harmonized and Streamlined:** Aimed at consistency across programs with intentional effort to ensure a framework that promotes package optimization and minimizes consumer confusion.



SB 269 unfortunately does not meet these core goals. Following below are critical issues and considerations with the bill that we believe must be addressed before any packaging EPR program is considered in Tennessee.

New Cost Concerns in Implementing EPR States

In the past several months, AMERIPEN and its members have started to witness the financial and administrative burdens that are associated with packaging EPR laws. This emerging information is critical in evaluating if additional packaging EPR programs are feasible. AMERIPEN highly encourages policymakers in Tennessee to consider information from these key states that are just beginning to implement their EPR laws:

Oregon – Oregon is the first state to kick off a packaging EPR law and the only one to have a published and full budget. Oregon offers a glimpse into the costs in a state where the law is only designed to cover approximately 30% of the total cost of the system. The Circular Action Alliance (CAA), Oregon’s approved Producer Responsibility Organization, is benchmarking spending \$188 million in pre-program and 2025 costs alone, with the ongoing annual budget in the \$250–290 million range per year by 2026–2027, and breaks out as follows¹:

| Year | Total PRO Budget |
|---------------------|-------------------------|
| 2025 | ~\$188 million |
| 2026 | ~\$254 million |
| 2027 | ~\$289.5 million |
| 3-Year Total | ~\$731.5 million |

These program-level costs are passed directly to producers through a per-material fee structure. For mid-sized and larger manufacturers shipping into Oregon, this is not a negligible expense; it is a material operating cost increase with no guarantee of proportionate environmental return. Costs in **other states should be expected to be at least 70% higher**, due to the shared responsibility nature of the law in Oregon.

California - The cost picture grows dramatically larger when one examines California’s program, and the state’s own regulatory assessments confirm the scale of the burden. The total cost of meeting the major program goals and infrastructure requirements under California’s SB 54 is estimated at approximately **\$18.2 billion over just the implementation period**, with costs highest in fiscal years 2029–30 and 2030–31 as the statutory 25% source reduction and recycling rate requirements phase in.²

Those source reduction costs are estimated to result in investments of between **\$8.2 billion and \$15.4 over five years that will be needed under SB 54**³.

¹Circular Action Alliance (CAA), Oregon EPR Program Plan, September, 2025, <https://www.oregon.gov/deq/recycling/Documents/CAAamendOPPa2.pdf>

²California Department of Finance, Standardized Regulatory Impact Assessment Summary (DF-131), SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act, June 2025. <https://dof.ca.gov/media/docs/forecasting/economics/major-regulations/major-regulations-table/SB-54-DF-131-062525-ZH-1.pdf>

³ CalRecycle, [The Needed State of Collection Processing and End Markets Report](#) and [Analysis of Actions & Investments Needed to Achieve Source Reduction Goal](#)



On top of these system-wide costs, SB 54 requires producers collectively to pay \$500 million per year for ten years, starting in 2027, to fund the EPR program and a plastic pollution mitigation fund — **totaling \$5 billion over the life of the program**. The California Department of Finance’s own regulatory impact analysis found that the implementation cost for large producers is estimated to be on average \$406,500 annually per producer. The aggregate cost across all regulated parties was so significant that the initial draft regulations were expected to cost approximately **\$36 billion to implement**⁴ — a finding that prompted Governor Newsom to reject the regulations in March of 2025 and restart the rulemaking process from scratch.

Other States - Colorado, Minnesota, Maryland, Maine, and Washington are all at varying stages of implementing similar frameworks, meaning businesses operating nationally face a compounding, patchwork cost structure with no harmonization. Fee invoices in Colorado just started rolling out in January 2026, and will begin in California in 2027, and Maryland in 2028. Washington’s program is expected to become operational until 2030. CAA’s current PRO plan estimates **Colorado’s initial annual costs/budget to range from \$215-397 million each year over the first 5-year plan cycle**⁵ but have yet to be finalized until the plan kicks off on June 9, 2026.

The administrative and compliance costs layered on top of direct fees add yet another dimension of financial burden. Producers must maintain detailed data on the type, weight, recyclability characteristics, recycled content, and volume of every covered material sold into each state, with state-specific reporting categories that differ across jurisdictions. In sum, these costs have increasingly become an uncertain and overwhelming burden on manufacturers of all sizes, across the country.

Funding Mechanism

AMERIPEN opposes funding mechanisms, like those in SB 269, that provide for “net cost” or 100% or “total cost” reimbursement from producers to municipalities or private entities for collection, recovery, recycling, composting, and processing of packaging materials. This approach to cost coverage places the entire burden of the recycling system on producers without at least a proportional share of cost to local governments and recycling entities. This type of funding mechanism eliminates incentives or best practices for improving recycling, composting, and reuse and eliminates the positive attributes of having a stake in the efficient performance of the recycling system.

Improving the recycling, composting, and reuse system is a shared responsibility, and funds should primarily support infrastructure development. Reimbursements should only be used to return a material to a neutral market value – not cover the entire recycling, composting, and reuse system as it exists today.

Under a more appropriate funding mechanism, the law would stipulate a cost coverage formula, and the producer responsibility organizations or producers are given flexibility to use the needs assessment to determine reasonable best practices and convenience standards for particular geographic regions, and then determine reasonable and shared costs. Senate Bill 269 does not provide for this approach and would equate to a full funding obligation for producers.

⁴Beverly & Diamond LLP / BD Law, "CalRecycle Reissues Draft SB 54 Regulations," May 27, 2025.

<https://www.bdlaw.com/publications/calrecycle-reissues-draft-sb-54-regulations-targeting-californias-plastic-packaging-epr-program/>; see also Dazmii, "California SB 54 – The Packaging EPR Revolution That Isn’t Quite Here Yet," October 2025. <https://dazmii.com/california-sb-54-the-packaging-epr-revolution-that-isnt-quite-here-yet/>

⁵ CAA Approved Colorado PRO Plan, Approved by the Colorado Department of Public Health and Environment, December, 2025, <https://oitco.hylandcloud.com/cdphermipop/docpop/docpop.aspx?docid=45645438>



Consistent Approach

As discussed above, seven states – Maryland, Washington, Minnesota, Maine, Oregon, Colorado, and California – are working to implement full program packaging EPR laws enacted since 2021. While these programs are not the same, there are lessons to be learned as they are implemented. These states are in various stages of implementation, and we encourage a full review of the consistent core elements before any packaging EPR program is passed in Tennessee.

These lessons, and greater consistency between the most recent laws in Maryland, Minnesota and Washington, suggest programs that are harmonized and allow producers flexibility to design the system could result in an operational program that could be implemented sooner, more efficiently, and perhaps at a lesser cost.

As a lesson in caution, Maine was the first state to pass a packaging EPR program and is likely to be the fourth or fifth state to implement a program due to the law’s reliance on a government-dictated EPR program. SB 269 does not fully harmonize in a consistent way with other state EPR laws based on lessons learned and would likely create a system that is duplicative and costly to consumers and the State of Tennessee.

Significant Legal Questions

On July 30, 2025, the National Association of Wholesaler-Distributors (NAW) filed suit in federal court challenging Oregon’s packaging EPR as unconstitutional. NAW alleged that the law violates the federal Dormant Commerce Clause by discriminating against out-of-state producers and burdening interstate supply chains, and violates federal Due Process by compelling producers to pay fees set through a confidential, non-public methodology — with no notice-and-comment process, no access to the fee formula, and no recourse other than binding private arbitration with CAA⁶.

On February 6, 2026, the U.S. District Court for the District of Oregon granted NAW a partial **preliminary injunction prohibiting the Oregon Department of Environmental Quality (DEQ) from enforcing the packaging EPR law against NAW** members while the case proceeds to trial, on the grounds of Dormant Commerce Clause and Due Process claims, the two that formed the basis for the injunction, to proceed⁷. Applying the Ninth Circuit’s preliminary injunction standard, the court found that **“serious questions go to the merits of Plaintiff’s claims, there is a likelihood of irreparable injury, and the balance of hardships tips sharply in favor of Plaintiff.”**⁸

Following the ruling, Oregon Business & Industry — on behalf of 15 industry trade associations representing grocers, food processors, wine growers, brewers, and other industries — sent a letter to DEQ on February 9, 2026, requesting that the agency voluntarily pause enforcement against all producers pending resolution of the litigation⁹. A five-day bench **trial on the merits is scheduled to begin July 13, 2026**.

⁶ NAW Complaint, Case 3:25-cv-01334-SB, Doc. 1 (D. Or. July 30, 2025); Or. S.B. 582 (2021); Or. Rev. Stat. §§ 459A.860–459A.975.

⁷ DLA Piper, “Oregon EPR: District Court Issues Preliminary Injunction” (Feb. 2026); Sidley Austin, “Oregon Federal Court Enjoins EPR Law Enforcement,” Sidley Environmental, Health, and Safety Brief (Feb. 10, 2026).

⁸ Order Granting Preliminary Injunction, National Association of Wholesaler-Distributors v. Feldon, No. 3:25-cv-01334-SI (D. Or. Feb. 6, 2026).

⁹ Oregon Business & Industry, Joint Letter to Oregon DEQ (Feb. 9, 2026), on behalf of 15 trade associations.



Legal analysts have characterized this ruling as a bellwether for EPR programs nationally. A final decision against the state could have far-reaching consequences in the six other states with EPR programs built on the same fundamental architecture as Oregon’s program. **The court’s willingness to credit the constitutional challenges signals structural vulnerabilities in EPR design that producers in other states can be expected to invoke.** States considering packaging EPR legislation, including Tennessee, would be well served by examining the Oregon case and pausing adoption of a new EPR law until the court has ruled on these issues.

Conclusion

AMERIPEN recognizes the need to reduce packaging waste and improve the recycling, composting, and reuse systems in Tennessee. However, due to recent cost factors, structural issues and legal questions surrounding SB 269; we must oppose the legislation at this time. We urge the Committee to consider the critical issues and concerns above and welcome the opportunity to work with all stakeholders to create a reasonable pathway to improving recycling, composting, and reuse, and creating greater packaging circularity in Tennessee, that avoids rushing to adopt a packaging EPR program now.