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AMERIPEN
American Institute for Packaging and the Environment

Testimony in Opposition
Senate File 3561
Packaging Waste and Cost Reduction Act

Minnesota Senate Environment, Climate, and Legacy Committee
February 22, 2024

Chair Hawj, Vice Chair McEwen and members of the Minnesota Senate Environment, Climate, and Legacy Committee. AMERIPEN appreciates the opportunity to present testimony on S.F. 3561, the Packaging Waste and Cost Reduction Act (Morrison). AMERIPEN greatly appreciates the extensive work that has gone into S.F. 3561, and the balanced approach it takes to address a very complex issue. However, due to prescriptive performance rates and other important factors, we must oppose S.F. 3561 as currently drafted.

AMERIPEN supports packaging extended producer responsibility (EPR) legislation that represents shared responsibility for packaging recovery and recycling where the entire recycling system is improved. We believe that additional changes are necessary to S.F. 3561 to create a balanced approach to packaging EPR for Minnesota. We welcome the opportunity to continue to work with the Committee, Representative Jordan, and stakeholders in Minnesota to address packaging producer responsibility in a way that will improve recovery and recycling in the State and move its systems forward.

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging association in the United States representing the entire packaging supply chain. This includes materials suppliers, packaging producers, consumer packaged goods companies, retailers, and end-of-life materials managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. We focus on science and data to define and support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. We have several major, brand name, member companies headquartered in Minnesota, many who have a presence in the state, and more many who import packaging materials and products into the state. The packaging industry in Minnesota supports more than 40,000 jobs and accounts for more than \$12.2 billion in total economic output.

Packaging plays a vital role in Minnesota, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed, protecting the health and safety of Minnesotans who consume, use and handle those products. Packaging has value and none of it belongs in landfills, roadsides, or waterways. We need to recover it to be recycled and reused, and 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, designing packaging for better environmental performance to boost recycling and evolve the recycling infrastructure.

Positive Elements: AMERIPEN has been engaged in dialogues regarding packaging producer responsibility in Minnesota for more than two years and we recognize that progress has been made in S.F. 3561 to balance various interests and protect the State's already robust recycling system. AMERIPEN appreciates that S.F. 3561 grants producers the ability to choose a producer responsibility organization (PRO), for compliance, that represents their interests and that will implement producer responsibilities under the law. We also appreciate that the current draft balances requirements on the PRO and recycling service providers in a way that does not place the entire burden of the law on the PRO. AMERIPEN also appreciates that there is some flexibility built into the current draft that allows for adjustments if feasibility issues arise around implementation and maintenance of the packaging EPR program.

Key Concerns: Despite these positive aspects of S.F. 3561, several overarching concerns remain with the current draft of the bill that will prevent it from being an effective solution to truly improve the State's recovery and recycling systems. These concerns include:

1. **Performance Rates:** AMERIPEN has strong concerns that the Statewide Goals in Section 12, Subdivision 7, are not based on real-world analysis of the recovery and recycling systems in Minnesota and could prove to be unachievable. While we appreciate that the lead-time on these goals have been increased, we remain concerned that they are overly optimistic for all materials. We are also concerned that only the Minnesota Pollution Control Agency (MPCA) Commissioner can initiate the process for adjusting these goals, and only after review by the Producer Responsibility Advisory Board created in S.F. 3561. AMERIPEN believes that statewide goals should only be developed after the needs assessment, also required under the bill, is completed and that the PRO should propose reasonable goals in their first producer stewardship plan. Additionally, we believe that the PRO should be able to request that goals be adjusted due to unforeseen challenges or changes in the marketplace, instead of the MPCA Commissioner having to initiate such a process.
2. **“Producer” Definition:** We appreciate that the current draft attempts to clearly define who is a responsible “producer.” However, as implementation in other states continues, we have discovered that the current definition in S.F. 3561 lacks full clarity, particularly in co-packaged and private label scenarios. We believe that additional language is needed to ensure that the brand owner is and should be the ultimate primary entity that has responsibility for compliance with producer responsibilities, as they have the power to make packaging decisions and the data available to comply with the law. We are happy to provide additional related language.
3. **Reusable Packaging:** AMERIPEN understands the desire of this policy to encourage reusable packaging to reduce packaging materials going to landfill. However, the performance rates (as noted above) are incredibly aggressive for reusable packaging, and the application of the lowest fee to these products only once creates unjustified subsidies and drivers for this type of packaging. Additionally, Section 15 in S.F. 3561 stipulates that the PRO will be paying for continual cleaning and infrastructure costs under this program, yet producers of this type of packaging only will pay a fee once into the system for that packaging. This is not equitable and will cause other types of packaging to subsidize the true cost reusable packaging. Finally, the definition of reuse does not fully encompass at-home refill systems that are likely to prove to be the most feasible options for reuse in the short-term.
4. **Recyclable Determination:** AMERIPEN appreciates that S.F. 3561 creates a process for determining what covered materials are considered “recyclable” and creates a uniform requirement for these materials across the State. However, we believe that a 3-year review cycle for this process is not frequent enough to evaluate changes in the marketplace and create improvements needed to meet performance goals. Additionally, AMERIPEN believes that the PRO should have the ability to petition the Commissioner to evaluate materials that are able to achieve “recyclable” status, perhaps with Advisory Board review.
5. **Timeframes:** AMERIPEN is concerned that PRO registration and compliance must begin a mere 10.5-months from now, on January 1, 2025, if S.F. 3561 is enacted. While a PRO has been formed and approved for compliance with packaging EPR laws in other states, this timeframe for developing a registration application and ensuring producer participation is unreasonably fast and will create an immense burden on current PRO efforts. AMERIPEN asserts that registration of the packaging PRO in

Minnesota should not occur until January 1, 2026, to allow for greater alignment and regulatory scoping to occur.

6. **Toxic Chemicals Benchmarking:** AMERIPEN appreciates that the current draft does not stipulate expansive and undefined toxics reduction language, which would be difficult for a PRO to calculate and measure. Within Section 8, we appreciate that the PRO is tasked with an information sharing duty in this regard. However, we recommend that the Commissioner also have a role in informing the PRO of chemical issues of concern and any new laws prohibiting toxic substances. Additionally, we would like to seek clarity for the use of language regarding “all laws prohibiting toxic substances in covered products” – we are concerned that this language is open-ended and could lead to extensive time researching the world for chemical restrictions, which is not typically a PRO’s purview.
7. **Bottle Deposit Return System:** AMERIPEN appreciates that Section 21 creates the ability for a future bottle deposit return system in Minnesota to interact with a packaging EPR program. AMERIPEN requests that if at such time a bottle deposit return system is created, there be an appropriate transition period away from the packaging EPR program to avoid major shocks to the State’s recycling systems from the sudden subtraction of some covered materials from curbside recycling programs.
8. **Infrastructure Investments:** AMERIPEN believes that infrastructure investments should be made through the procurement of services, through the competitive bidding process described in the bill. However, prescriptive infrastructure plans, as envisioned by the current draft of S.F. 3561, should be more adaptable and based on estimates of capital investments provided in the PRO plan. Infrastructure investments must be flexible and able to react to market conditions, as opposed to a dollar figure locked in stone at the time of a plan submission.
9. **Compostable Products:** We appreciate the specific consideration of compostable packaging within the draft legislation but encourage the sponsor to explore that further, including in collaboration with the AMERIPEN members and the Biodegradable Products Institute (BPI). It is very important within any EPR program to recognize the unique attributes of and recovery methods for compostable packaging that are often distinctly different than recyclable materials.

In conclusion, AMERIPEN again appreciates the significant work that has gone into S.F. 3561 and the forward progress that has been made. While we cannot support the bill at this time, we look forward to working with Senator Morrison, the Committee, and other critical stakeholders to address the aforementioned issues and continue to improve this legislation. AMERIPEN looks forward to working towards policy solutions, including packaging producer responsibility, that are results based, effective and efficient, and equitable and fair – and that will improve packaging recovery and recycling in Minnesota.

Please feel free to Dan Felton, Executive Director of AMERIPEN at: danf@ameripen.org, or Andy Hackman at: ahackman@serlinhaley.com for any questions or for stakeholder discussions on this important issue