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March 14, 2024

Senate File 3557 (Jordan)

Dear Chair Becker-Finn and House Judiciary and Civil Law Committee Members,

The National Federation of Independent Business (NFIB) represents over 10,000 small businesses across Minnesota. Our mission is to promote and protect the right of our members to own, operate, and grow their businesses.

NFIB Minnesota appreciates the willingness of Rep. Jordan and the Packaging Waste Reduction and Cost Reduction Act coalition to work with small businesses on the proposal's definition of "de minimis producer."

We believe the amended focus on separate tonnage- and revenue-based criteria will provide a more appropriate scope and a more accessible exemption for small businesses.

This also gives affected small producers a simpler target to focus on as they grow, allowing them to more easily plan for future compliance should they hit the tonnage threshold.

Again, we are grateful to Rep. Jordan and the coalition for addressing this concern and are neutral on the remainder of the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'John L. Reynolds', is positioned above the typed name.

John L. Reynolds
Minnesota State Director
National Federation of Independent Business
john.reynolds@nfib.org

March 19, 2024

Representative Jamie Becker-Finn
Chair of the Committee on Judiciary Finance and Civil Law

Re: HF 3577 — Jordan: Packaging Waste and Cost Reduction Act established, and rulemaking authorized.

House Judiciary Finance and Civil Law Committee members,

The City of Minneapolis is well-known for our high participation and low contamination in our residential recycling and organics recycling programs. With this success, our 2022 Capture Rate Study found it is not feasible for Minneapolis to meet the City, County or the State's recycling and composting goals without systematic changes and infrastructure improvements.

Our customers, Minneapolis residents (and all residents and businesses in the State), have always had to cover the cost for recycling, composting and disposal of packaging and have had no say in how products are manufactured. It's time that manufacturers and producers be held accountable for the packaging they make and the infrastructure needed to manage packaging at its end of life. We encourage you to support the Packaging Waste and Cost Reduction Act (HF 3577/SF 3561) which will do just that.

Passage of this bill will:

- Reduce taxpayer money used to cover collection and processing of recyclable and compostable materials
- Set requirements for manufacturers to reduce and redesign their packaging so eventually it is all reusable, recyclable, or compostable
- Cover education and outreach costs
- Support the development of a robust reuse system for packaging
- Expand access to reuse, recycling and composting programs around the State

In past hearings, the paper industry has requested an exemption due to the high paper recovery rates in Minnesota. In 2022, our office completed a waste characterization and capture rate study of *single-family homes* to evaluate how well our customers do at putting the right material in the right cart. The results showed that there are significant opportunities for improvement for both containers and paper products.

Recovery rates for the most common recyclable items were found as follows (a table of all material types is on the back of this letter). The recovery rate is the percentage out of 100% available that was put into a recycling cart.

- Steel cans (soup / veggie cans) – 29%
- Mixed paper (office paper, magazines, junk mail) – 36%
- #1 PET plastic (water / soda bottles, clamshells for to-go food, berry container) – 38%
- #2 HDPE (milk jugs, shampoo and laundry detergent bottles) – 43.6%
- Aluminum cans – 51%
- Cardboard / kraft paper – 54%

As noted earlier, data from this study is for *single-family homes* where there are the fewest barriers for collection and education to recycling and composting. Our 2022 study, also supports the many other organizations who agree that the paper recycling rate stated by the industry is too high. (Article: [Let's make paper recycling even stronger with EPR](#))

Opposition to this bill has also referred to the significant investment from the private industry, SCORE funding and State grants to support the recycling and composting industries in Minnesota. It is important to note that all of these funding sources come directly from taxpayer money in the form of solid waste management taxes and fees, and hauler and processor fees for service allowing them to cover facility upgrades and enhancements. Passage of this bill will eliminate taxpayer costs associated with collection and education of recyclables and compostable packaging and put the onus on the manufacturers of these products. Additionally, studies of EPR programs in other countries has not found significant increase in the cost of goods sold – meaning that manufacturers are not passing these expenses onto customers. (Memo: [Impact of EPR Fees for PPP on Price of Consumer Packaged Goods](#))

Lastly, passage of the bill will result in systematic changes and financial support including but not limited to: packaging redesign; increased access to reuse; recycling and organics recycling programs; and increased education, all of which are necessary to reduce greenhouse gas emissions to help meet City, County and State waste and climate goals.

Please continue to support waste reduction, reuse, recycling, and organics recycling programs, and all residents in Minnesota by passing the Packaging Waste and Cost Reduction Act.

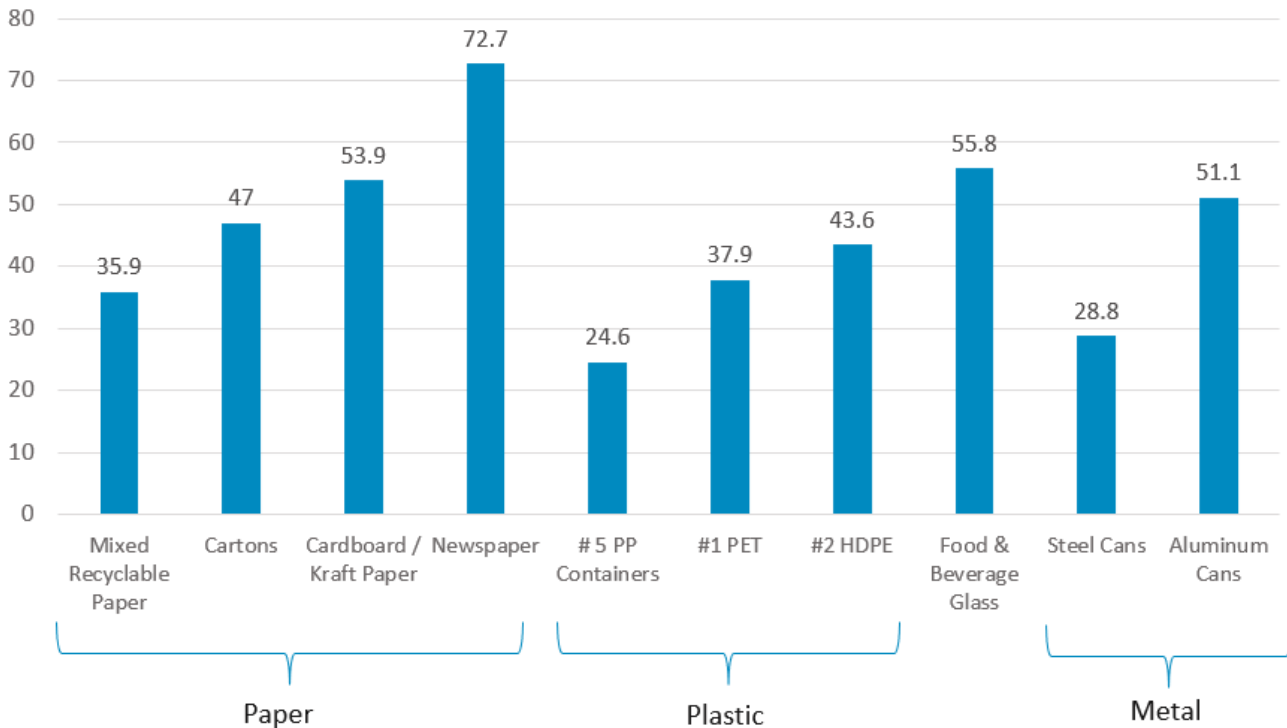
Sincerely,



David A. Herberholz, Director
Minneapolis Solid Waste & Recycling

Minneapolis 2022 Waste Characterization & Capture Rate

Average capture rate by percent of material



The full 2022 Waste Characterization & Capture Rate Study can be found under the Studies & Reports drop-down on our Division web page: minneapolismn.gov/solid-waste-recycling

March 18, 2024

Dear Chair Becker-Finn and members of the Judiciary, Finance, and Civil Law Committee:

On behalf of the Association of Plastics Recyclers, I am **submitting written testimony in support of HF3577, Packaging Waste and Cost Reduction Act (Jordan)**. This bill is one of our top priority policies across the U.S. because it is a proven, effective solution to increase plastics recycling and support domestic manufacturing.

[The Association of Plastic Recyclers \(APR\)](#) is a US-based non-profit and the only North American organization focused exclusively on improving the recycling of plastics. APR members are the entirety of the plastics recycling industry from design to collection to recovery to remanufacturing. Plastics recycling is what APR does every day. APR understands the challenges facing the industry and the solutions needed to scale recycling effectively as a key solution to reduce plastic pollution and waste and move toward a more sustainable, circular economy.

Under our policy and advocacy initiatives, the APR works with U.S. states and stakeholders to adopt and implement producer-funding recycling policies as a critical solution to improve plastics recycling. **This bill will increase recycling rates and reduce plastic waste; reduce greenhouse gas emissions; spur more sustainable packaging design; and achieve all these milestones through an industry-driven solution without government spending.**

WE NEED TO COLLECT MORE PLASTICS FOR RECYCLING

The US could [recycle nearly 50% more plastic bottles today](#) using our existing recycling capacity if there was stronger participation and improved access to recycling programs. Many plastics recyclers are not running at full capacity because **we are not collecting enough bottles, milk jugs, and other common plastics for recycling from households and businesses**. A 2024 national recycling report found [Minnesota only recycles 20% of its PET bottles and only 26% of its HDPE bottles](#), despite 100% of these bottles being recyclable. This is why APR is supporting and actively engaging in Extended Producer Responsibility (EPR) policies in US states like this bill.

EPR for packaging and printed paper is the [only proven policy to provide sufficient, ongoing, and dedicated funding to increase recycling](#). By providing sustained, consistent, and adequate funding for recycling, Minnesota can improve the convenience of recycling, provide stronger

and more regular education and outreach to improve participation in recycling, and drive investments in new collection programs, sorting infrastructure, and more regional markets to support a circular economy and reduce plastic waste.

MINNESOTA'S RECYCLING SYSTEM NEEDS IMPROVEMENT

All states will see improvements in recycling rates under EPR programs, even states like Minnesota that have relatively strong existing programs. Three of the four states that have already adopted EPR for packaging—Maine, Oregon, and California—are also some of the top recycling programs in the country. [Data from across the US shows there is substantial room to improve recycling, both in the number of households participating in recycling and the amount of recyclables collected from households.](#) A 2024 national recycling report found Minnesota [buries or burns over 685 million tons of recyclable materials](#) each year from households. Improvements are needed and now is the time to transform the system through this bill.

This bill will drive needed investments in infrastructure and education to improve recycling in Minnesota without passing those costs along to local governments or consumers. Even maintaining Minnesota's current recycling system will require continual investment, and EPR for packaging is the most effective solution to shift the funding toward brand companies and off taxpayers and local governments' budgets.

ECONOMIC BENEFITS AND BUSINESS OPPORTUNITIES IN MINNESOTA

Recycling has many proven environmental benefits, but it is first and foremost a business. This bill will grow plastics recycling businesses in Minnesota and the upper Midwest instead of expanding landfills. It is a vote for green jobs and clean, circular economy.

This bill is also a huge business opportunity for the existing service providers in MN, not a threat. There is a large need for more services, new and renovated infrastructure, innovative collection and processing systems, and more to reach these goals. The existing recycling providers are in the best position to deliver these new and expanded services because they have the existing infrastructure, partnerships, and experience to best serve the state. There are several provisions in the language to build and improve upon the existing infrastructure and investments, while driving competition and higher performance standards.

PLASTICS RECYCLING PROTECTS OUR ENVIRONMENT

Plastics recycling has numerous environmental benefits and is a critical solution to reducing plastic pollution and waste. The use of recycled PET and HDPE plastics instead of virgin plastics [reduces energy use by 75 to 88% and reduces GHG emissions by 70%](#). Recycling plastics also

reduces air and water pollution compared to virgin production. Greater plastics recycling will move Minnesota closer to its climate goals. In addition, more recycling will result in millions of tons of materials kept out of landfills and incinerators, which will reduce the harm these facilities pose to the environment and local communities.

THIS POLICY IS BUILT UPON PROVEN SUCCESS WORLDWIDE

Today and every day of the year, in five provinces in Canada and over 20 European countries, more than 3,000 companies participate in EPR programs. Most of those companies are the same companies that sell the same products on our shelves in the US., companies such as Coca-Cola and Pepsi, Keurig and Kelloggs, Clorox and Colgate, and many, many others. **We know EPR policies work, and we know they are one of the most effective solutions to increase the amount of plastics collected for recycling and ensure more recycled materials are used in new plastic packaging.**

EPR DOES NOT DRIVE UP CONSUMER COSTS

EPR for packaging has been in place in parts of Europe and Canada for over two decades, and **there is no data to show that Producer Responsibility programs lead to a noticeable increase in consumer prices based on actual program experience.** [There is no discernable difference in the price of consumer goods](#) in locations that have EPR for packaging programs compared to those that do not.

Under EPR for packaging regulations in Canada, brand companies pay fractions of a penny per product. These costs are spread throughout the supply chain and the company portfolio, and do not result in perceptible changes in consumer prices. Data from three Canadian provinces show the [EPR program is less than 1% of the total price of the average cost of goods in those regions](#). There are numerous factors that influence product prices far greater than compliance costs such as EPR, including labor, transportation, retailer agreements, raw material supplies, and inflation.

[A 2023 Columbia University study](#) reinforced the findings that EPR for packaging is not a major driver of consumer costs. The study concluded that packaging is never more than 2% of the total cost of a product and that there is never a case where brand companies pass 100% of an added compliance cost to consumers. This demonstrates that opposition to this bill related to cost recovery is vastly overstating the potential cost increases by using inaccurate assumptions.

In addition, cost modeling in Washington state for a similar EPR for packaging program [showed EPR for packaging would provide substantial economic benefits](#). WA households could save \$60-300 per year by no longer having to pay for recycling services. Recycling programs would become more efficient to operate as more materials are collected, lowering the net costs per ton of managing recyclable materials. Overall, the system could contribute over \$200 million to Washington's economy through direct, indirect, and induced jobs.


RECYCLED CONTENT STANDARDS ARE NEEDED FOR STRONGER RECYCLING

The APR was the first plastics-related organization to publicly support mandatory recycled content legislation in 2006, and we continue to champion these policies. Using post-consumer resin (PCR) content in plastic packaging is [one of the most effective ways to reduce the environmental impact of the packaging](#). This bill will also help build and stabilize end markets for recycled plastics. This stronger market demand helps recyclers to invest in the needed infrastructure to grow plastics recycling. This, in turn, can support the expansion and stability of community recycling programs. The APR supports both EPR for packaging and strong recycled content requirements as necessary solutions. Both supply and demand policies are needed to improve plastics recycling; it's a both-and, not either-or.

MOVING FORWARD

The bill is the right policy for Minnesota right now and is based on proven programs working in dozens of countries around the world each and every day. We will not succeed if we do not start moving forward, and the bill outlines a reasonable, phased approach to implementation with appropriate feedback and input along the way to develop the best program for Minnesota. Thank you for your vision, leadership, and commitment. APR staff are available at your convenience to discuss these comments. Please contact Kate Bailey, Chief Policy Officer, at katebailey@plasticsrecycling.org.

Sincerely,



Kate Bailey
Chief Policy Officer, Association of Plastic Recyclers (APR)



March 19, 2024

Chair Jamie Becker-Finn
Judiciary, Finance, and Civil Law Committee
Minnesota House of Representatives
75 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

RE: Testimony in Support of HF 3577 – Packaging Waste and Cost Reduction Act.

Dear Chair Becker-Finn, Vice Chair Fraizer, and Members of the Judiciary, Finance, and Civil Law Committee:

Thank you for the opportunity to submit testimony on HF 3577 – Packaging Waste and Cost Reduction Act. Just Zero is generally supportive of this bill. However, we urge you to make targeted amendments that will significantly improve the bill’s ability to reduce waste and increase recycling.

Just Zero is a national environmental non-profit advocacy organization that works alongside communities, policy makers, scientists, educators, organizers, and others to implement just and equitable solutions to climate-damaging and toxic production, consumption, and waste disposal practices. We believe that all people deserve Zero Waste solutions with zero climate-damaging emissions and zero toxic exposures.

HF 3577 would establish an Extended Producer Responsibility for Packaging Program (“EPR for Packaging Program.”) When properly designed and implemented, EPR for Packaging Programs can reduce packaging waste, increase recycling rates, and incentivize companies to redesign their products and packaging to be less toxic, and more sustainable. Even better, as a form of producer responsibility, these programs accomplish all of this while shifting the cost of packaging waste management from cities and towns to the companies responsible for creating the waste in the first place.

We strongly urge you to support this important bill. However, the details matter when establishing an effective EPR for Packaging Law. As currently drafted, HF 3577 has several significant flaws that will impact the bills ability to effectively address Minnesota’s plastic pollution and packaging waste crisis. Therefore, we urge you to make the following changes to the bill:

- (1) Require the Minnesota Pollution Control Agency to set the performance targets; and
- (2) Add language that forces the producer responsibility organization to develop and implement a deposit return system for beverage containers if certain beverage container collection and recycling rates are not met.



1. The Minnesota Pollution Control Agency Must Set the Performance Targets for the Program.

Currently, HF 3577 requires the producer responsibility organization to establish performance targets as part of the stewardship plan.¹ Through these plans, the producers would set waste reduction, reuse, recycling, composting, and post-consumer recycled content requirements which they are responsible for achieving.² Moreover, as currently drafted, HF 3577 would also allow the producers to develop the measurement criteria for achieving the performance targets.³

Producer responsibility does not mean producer control. Instead, it means that the producers are required to meet clear, well-designed performance targets that are either set by the underlying legislation or by rule. The producers have a clear incentive to ensure that the performance targets are as low as possible because doing so would allow them to consistently meet the targets without significantly changing the landscape of packaging waste and waste management in Minnesota. Allowing the producers to set their own targets would create a program that amounts to little more than voluntary commitments. Minnesota would not put fossil fuel companies in charge or a transition to renewable energy. Why would the state put large consumer brands in charge of reducing their own waste?

HF 3577 should be amended to require the Minnesota Pollution Control Agency to set performance targets through rulemaking based on the results of the needs assessment. This will give the state more control over the development of critical performance targets. This is the approach Maine took when it passed its first-in-the-nation EPR for Packaging Program in 2021. The Maine Department of Environmental Protection is currently finalizing the rules that will set the performance targets. Moreover, California took a similar approach, but instead opted to set performance targets for key program goals – such as plastic reduction – in the statute.

Requiring the Minnesota Pollution Control Agency to set the performance targets would ensure that the targets are achievable and ambitious, while still leaving the producer responsibility organization the freedom and flexibility to meet these targets. Moreover, it would allow Minnesota to learn from Maine and California’s programs and help create a synergy between programs across the country.

2. The Bill Should Include Language That Requires the Producer Responsibility Organization to Implement a Deposit Return System for Beverage Containers If Statutorily Set Beverage Container Recycling and Collection Rates Are Not Met.

Currently, HF 3577 would establish an EPR for Packaging Program that covers beverage containers.⁴ While beverage containers are a form of packaging, this specific type of packaging material is better managed under a deposit return system.

¹ HF 3577, Sec. 12(3)(1).

² HF 3577, Sec. 12(5)(a).

³ HF 3577, Sec. 12(6).

⁴ The definition of “packaging” in HF 3577 incorporates an existing definition of packaging found in Minnesota law. That definition defines packaging as “a container and any appurtenant material that provide a means of



Therefore, we urge the legislature to include language in HF 3577 that sets recycling and collection rates for beverage containers. Should the producer responsibility program fail to meet those recycling and collection rates during the duration of the applicable stewardship plan, then the producer responsibility organization will be required to implement a deposit return system for beverage containers as part of the EPR for Packaging Program.

Including language that will create a deposit return system for beverage containers is necessary to (a) increase the recycling of beverage containers (b) address and reduce beverage container litter, (c) improve overall recycling rates, and (d) create a pathway for reusable and refillable beverage containers.

A. Deposit Return Systems Are More Effective at Managing Beverage Containers.

Beverage containers are highly recyclable. The problem is that when beverage containers are recycled through single-stream recycling systems – even systems bolstered by EPR for Packaging Programs – they become contaminated. This contamination limits their marketability as a commodity for recycling purposes and results in lower recycling rates.

The convenience of single stream recycling comes with a cost, contamination. Single-stream recycling depends first and foremost on educated consumers making the right choice about what can and cannot go into the blue bin. From there, the burden is on Material Recovery Facilities (“MRFs”) to remove any unrecyclable materials that made their way into the recycling stream while also processing and sorting the commingled recyclables into separate streams. These sorting processes are imperfect. According to the National Waste and Recycling Association, roughly 25% of what is placed into the single-stream recycling system is too contaminated to go anywhere other than a landfill.⁵

Additionally, the materials that are properly sorted are unlikely to be recycled as effectively as possible. The overall quality of the recycled material is the leading factor that determines what that material is ultimately used for. This difference in quality is often the difference between recycling and downcycling. Downcycling refers to using recycled material for projects and purposes that fail to capture the full environmental and economic benefits associated with recycling a product. In the case of beverage containers, the highest and best uses is bottle-to-bottle recycling, where containers are recycled directly into new beverage containers.

Common examples of downcycling with beverage containers includes turning plastic beverage containers into carpet and textiles, as well as using crushed glass for road improvement projects. While this is preferential to directly landfilling the material, it still means the materials can only be used once as opposed to being recycled repeatedly.

transporting, marketing, protecting, or handling a product. "Packaging" includes pallets and packing such as blocking, bracing, cushioning, weatherproofing, strapping, coatings, closures, inks, dyes, pigments, and labels. This would include beverage containers.

⁵ Maggie Koerth, The Era of Easy Recycling May be Coming to an End, FiveThirtyEight (Jan. 10, 2019).



When beverage containers are managed under a deposit return system – they are separated out of the single-stream curbside recycling system and instead are collected, sorted, and processed through an independent system. The result is a steady stream of high-quality recycled material that is consistently used to manufacture new consumer products. This is why states with deposit return systems have double the recycling rates than those that rely on single-stream recycling.⁶

The benefits of a deposit return system for beverage containers are especially important when focusing on plastic. There is significant evidence that the contamination levels associated with curbside and single-stream recycling systems make it unlikely, if not impossible, to recycle plastic beverage containers into new food grade products. This is because MRFs only sort plastic based on resin type. As a result, PET beverage containers are baled and sold with non-beverage container PET plastic containers. This can include household cleaners, pesticides, and other materials. These products are not certified as food grade by the U.S. Food and Drug Administration. This means that they cannot be used to manufacture new food grade consumer packaging products. Additionally, plastics are not inert – they very easily absorb the substances that they come into contact with. Therefore, the chemicals from non-PET beverage containers can and are absorbed by PET beverage containers during the collection and sorting process. These chemicals are not removed during the recycling process and therefore the beverage containers cannot be recycled.⁷

Therefore, to have high recycling rates for beverage containers, the EPR for packaging program should include a mechanism to create a deposit return system.

B. Without a Deposit Return System Minnesota Will Not See Significant Litter Reduction.

When beverage containers are included in EPR for Packaging Programs you don't see significant litter reduction. A central part of deposit return systems is that every beverage container sold has a refundable deposit placed on it. The consumer pays the deposit when they purchase the beverage container and gets the money back when they bring back the empty container for recycling. This creates an incentive for consumers to participate in the program and reduces the likelihood that these containers will become litter. This is extremely important because beverage containers – unlike other types of packaging – are traditionally consumed on-the-go and outside of the home. Therefore, they're very susceptible to becoming litter.

Deposit return systems have a proven track record of reducing beverage container litter. After Hawaii enacted a deposit return system in 2005, the number of beverage containers collected during Hawaii's Coastal Cleanup fell from 23,471 in 2004, to 10,905 in 2007 – a 53% drop in just three years.⁸ Litter reduction has occurred in all ten states with deposit return systems. A 2020 study by Keep America Beautiful found that states without deposit return systems have double the amount of beverage

⁶ 2018 Beverage Market Data Analysis, Container Recycling Institute (2020).

⁷ Dr. Charlotte Lloyd, [Toxins Hidden in the Plastics Are The Industry's Dirty Secret – Recycling Is Not the Answer](#), Guardian. (May 25, 2023).

⁸ Haw. Dep't of Health, Report to the Twenty-Fifth Legislature 9 (2009).



container litter than their deposit return system counterparts.⁹ The report also found that states with deposit return systems have less overall litter than the states that don't have deposit return systems.¹⁰ Less litter doesn't just mean cleaner, more vibrant communities, it also means less spending on clean-up efforts. Estimates show that the United States spends more than \$11 billion on litter clean up every year.¹¹

C. Including Language That Will Create a Deposit Return System Will Result in Higher Overall Recycling Rates.

As explained above, beverage containers are better managed under a deposit return system. These systems ensure the containers are collected and effectively recycled. Removing beverage containers from the curbside recycling system also will result in higher overall recycling rates for other types of packaging materials. If enacted, HF 3577 will create an EPR for Packaging Program that results in significant investment into collection and recycling systems for packaging material in Minnesota. Removing beverage containers will allow these investments to focus on capturing and recycling hard-to-manage materials while also improve recycling of other traditional commodities such as paper, cardboard, and non-beverage container plastics, glass, and metal.

D. Establishing a Pathway to a Deposit Return System Will Help Minnesota Establish Reusable and Refillable Beverage Container Programs.

A core goal of HF 3577 is a transition away from single-use packaging to reusable and refillable packaging. Deposit return systems create both the infrastructure and consumer culture necessary to develop reusable and refillable beverage container system.

In fact, before the introduction of one-way disposable containers, beverage companies relied on consumers to return bottles to be refilled. Glass bottles were expensive to manufacture and refilling them saved costs. To incentivize refilling, beverage companies utilized a deposit-return program to ensure glass containers were brought back and refilled.

Bottle Bill programs can, and must, return to this approach. Oregon is currently exploring this. In 2018, Oregon begun utilizing its existing deposit return infrastructure to launch a statewide refillable bottle system.¹² This system utilized approximately 245,000 refillable beer bottles.¹³ The bottles can be refilled up to 40 times and were made primarily from recycled glass.¹⁴ The bottles are designed to be easily separated from the rest of glass collected through the deposit return system.¹⁵ Once separated, the bottles are not processed for recycling but sent to a cleaning facility and then

⁹ Keep America Beautiful, [2020 National Litter Study](#). Page. 3. May 2021.

¹⁰ *Id.*

¹¹ Andrew Lisa, [It Costs Over \\$11 Billion Per Year to Clean Up Litter – How the Pandemic's Effect on Trash Output May Make It Worse](#), Yahoo. (April 22, 2021).

¹² Jared Pablen, [Oregon Group to Launch Refillable Bottle Program](#), Resource Recycling. (Feb. 7, 2017).

¹³ *Id.*

¹⁴ Cassandra Profita, [Oregon Launches First Statewide Refillable Bottle System in U.S.](#), NPR, (Sept. 17, 2018).

¹⁵ *Id.*



eventually sent back to participating breweries where they are refilled. For consumers, nothing has changed. Since launching in 2018, 410,155 bottles have been diverted from recycling for reuse.¹⁶

3. Conclusion

The time to act is now. HF 3577 will establish a EPR for Packaging Program that – if implemented correctly – can reduce packaging waste, address stagnant recycling rates, and relive towns and residents of the responsibly for paying to collect, sort, and manage an ever-increasing stream of packaging waste. This bill – with the amendments we’re proposed – has the potential to fix Minnesota’s broken and disjointed approach to managing packaging waste by creating a fairer more sustainable model that is funded by the companies that make the decisions that result in this waste in the first place.

Thank you for your time and consideration of these comments.

Respectfully submitted,

Peter Blair, Esq.
Policy and Advocacy Director
Just Zero.

¹⁶ Oregon Redemption Center, [Bottle Drop](#).



20 F Street
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Washington, D.C. 20001
recyclingpartnership.org

Minnesota House Judiciary Finance and Civil Law
March 19, 2024

House File 3577 – *“Packaging Waste and Cost Reduction Act”*

Thank you Chair Becker-Finn and members of the Committee, for the record, my name is Dylan de Thomas, and I represent The Recycling Partnership. I am testifying in support of House File 3577.

I lead state policy work for The Recycling Partnership, a national nonprofit that collaborates with communities, policymakers and more than 80 companies to invest in and strengthen public recycling programs across the country.

We work with those companies – big brands and manufacturers of packaging materials of all types, glass, aluminum, plastic, and paper products – to “insist and assist” them to uphold their sustainability goals to serve people and the planet.

These goals include minimum recycled content levels, package recyclability goals and climate goals. The circular economy cannot be achieved by recycling alone, but it can’t be done *without* recycling.

We also know that systemic change cannot happen without smart, well-designed policy. We have identified that well-designed Extended Producer Responsibility policy that strengthens quality recycling is a critical ingredient to achieving a circular economy in Minnesota and beyond.

Our robust research clearly shows that EPR policies such as those included in this bill can deliver huge gains in recycling rates by bringing nearly universal access to recycling and supported by robust recycling education. Our modeling for Minnesota shows that we could see recycling rates of over 65% – returning hundreds of thousands of tons of recyclable materials to market, reinjecting over \$20 million in lost material value into the economy annually, creating hundreds of jobs across the state, and rescuing those materials from being buried in a landfill or burned in an incinerator.

Some have mistakenly argued that EPR will increase costs for consumers. Various analyses have hypothesized about these impacts. We have looked in every major market around the world where producer responsibility has been implemented and we have not found any credible evidence that compliance fees have affected consumer prices. Let me repeat that: With thoughtful, well-designed, strong EPR programs globally – outcomes show [no credible evidence of a link between fees and how much consumers pay for products.](#)

EPR also represents a huge opportunity not just for the residents in Minnesota – reducing their costs – and also a business opportunity for the waste and recycling industry, leveraging their existing infrastructure, expertise, and building business opportunities for the entire sector and even new business opportunities.

This is a solid bill, which was the result of a multi-year, broad and robust stakeholder engagement process, and it should be moved forward, where we hope to see it continue to address outstanding concerns and improve.

The Recycling Partnership stands ready to support an effective policy and implementation of a successful EPR program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dylan de Thomas', with a long horizontal flourish extending to the right.

Dylan de Thomas
VP of Public Policy & Government Affairs
The Recycling Partnership



CONSERVATION
MINNESOTA

March 19, 2024

Chair Becker-Finn and Members of the House Judiciary Finance and Civil Law Committee:

Conservation Minnesota urges your support for HF3577 (Jordan), the Packaging Waste and Cost Reduction Act. We believe this bill is a crucial step to solving Minnesota's waste problem by asking producers to pay their fair share to improve recycling and waste reduction efforts across the state. Continuing to burn and bury our trash is not a sustainable or viable option, and we must find a new solution to manage our growing waste stream.

Minnesota has reached a breaking point with our waste problem. We are producing far more trash than we can manage, and nearly 40% of this waste is plastic and paper packaging. With the continued rise of e-commerce and the delivery economy, this number is only going to increase. These materials pose many environmental and health risks to communities across the state, and our current system places the cost of getting rid of these harmful and wasteful products on residents and local governments, rather than on the producers who make the trash.

This has left counties overburdened with the cost of managing recycling and waste programs. The creation of a producer-funded, non-profit "Producer Responsibility Organization" (PRO) will help pay the costs of managing packaging waste, and counties will have more resources to run these programs and expand their services without increasing the tax burden on their residents. With this act, it will no longer be solely the consumer's job to steward these products, rather, the companies responsible for them will have to cover the costs of their end-market needs.

HF3577 puts us on a path to building a more sustainable and fair waste management system. As it stands, taxpayers and local governments are left with all the costs of disposing of this waste, including external damages to the environment and public health. This new system will make producers more accountable stakeholders in solving our waste problem and make them responsible for their fair share to keep Minnesota a clean and healthy place for everyone.

We respectfully ask that this committee support HF3577 to help reduce our reliance on single-use packaging and start tackling Minnesota's growing trash problem.

Sincerely,
Nels Paulsen, Policy Director
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James Lehner, Policy Associate
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james@conservationminnesota.org



American Forest & Paper Association

March 19, 2024

Representative Jamie Becker-Finn
Minnesota House of Representatives
State Office Building, Room 5
St. Paul, MN 55155

RE: Opposition to House Filling 3577– The Packaging Waste and Cost Reduction

Dear Committee Chair Becker-Finn, Vice Chair Frazier, and Members of the Judiciary Finance and Civil Law Committee,

The American Forest & Paper Association (AF&PA) must respectfully oppose House Filling 3577- the Packaging Waste and Cost Reduction Act on behalf of our members and their employees who are an integral part of the circular economy.

Introduction to AF&PA

AF&PA serves to advance U.S. paper and wood products manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recycle resources, generate renewable bioenergy and are committed to continuous improvement through the industry’s sustainability initiative — [Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future](#). The forest products industry accounts for approximately five percent of the total U.S. manufacturing GDP, manufactures about \$350 billion in products annually and employs about 925,000 people. The industry meets a payroll of approximately \$65 billion annually and is among the top 10 manufacturing sector employers in 43 states.

In Minnesota, the industry employs more than 23,000 individuals, with an annual payroll of over \$1.7 billion. The estimated state and local taxes paid by the forest products industry totals \$103 million annually.¹

Concerns with Packaging Waste and Cost Reduction Act

AF&PA must respectfully oppose HF 3577, which would require producers to create or participate in a product stewardship organization to sell or distribute products for use in Minnesota. We respectfully ask policymakers to focus on improving recycling for materials with low recovery rates, instead of creating mandates and fees for paper producers that could direct capital away from investing in recycling infrastructure.

¹ Data sources: U.S. government, AF&PA, and Fastmarkets RISI. Figures are the most recent available as of December 2022.

The paper industry has a demonstrated, measurable record of success in making paper and paper-based packaging more circular and sustainable through market-based approaches. Extended producer responsibility policies are typically applied as a solution for hazardous, hard-to-handle materials with low recycling rates, such as batteries, paint, mattresses, or electronics. For a highly recycled material like paper, with widely accessible collection programs and robust and resilient end markets, EPR could disrupt efficient and successful paper recycling streams to improve the least effective streams.

The Paper Industry Is a Responsible Producer

Paper recycling rates in the U.S. have consistently increased in recent decades, with 68 percent of paper recovered for recycling in 2022.² The paper industry recycles about 50 million tons of recovered paper every year — totaling more than 1 billion tons over the past 20 years. According to the EPA, more paper by weight is recovered for recycling from municipal waste streams than plastic, glass, steel, and aluminum combined.³ The paper industry has planned or announced around \$7 billion in manufacturing infrastructure investments by the end of 2025 to continue the best use of recycled fiber in our products, resulting in an over 9-million-ton increase in available capacity.⁴

This success has been driven by the paper industry's commitment to providing renewable, sustainable, and highly recycled products for consumers. Recycling is integrated into our business to an extent that makes us unique among material manufacturing industries – our members own 100 materials recovery facilities (including two in Minnesota) and 80 percent of paper mills use some amount of recycled fiber. Any EPR system must fully and fairly credit the early, voluntary action our industry has taken to advance the recycling rate of our products, and strictly prohibit the use of fees generated by one material to subsidize development of recycling infrastructure for competing materials with lower recycling rates.

In fact, our industry's recycling rates are so successful that some products are approaching the maximum achievable recycling rate. The three-year average recycling rate for the material that would be most impacted by EPR; old corrugated containers (OCC), is already 91.3 percent.⁵ In addition, 81.4% percent of Minnesotans have access to residential curbside recycling.⁶ The state already has a well-developed and widely accessible paper and paperboard recycling system, thus negating the need for an EPR program. Identifying successful parts of existing programs will allow the state to replicate proven solutions with lowered risk for all stakeholders.

Continuing innovation and meeting customer needs is an important part of the way our members do business. Through research among our members and best practices in the industry, AF&PA developed a tool to help packaging manufacturers, designers and brands create and manufacture

² <https://www.afandpa.org/priorities/recycling>

³ https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf

⁴ <https://www.afandpa.org/priorities/recycling/paper-recycling-process>

⁵ <https://www.afandpa.org/news/2023/us-paper-industry-tallies-high-recycling-rate-2022>

⁶ <https://www.afandpa.org/priorities/recycling/what-were-doing>

packaging that meets their recyclability goals. *The Design Guidance for Recyclability* is intended to serve as a data-driven resource to support ongoing innovation.⁷

Paper Products Do Not Belong with Packaging EPR Concepts

Not only does HF 3577 create an inappropriate one-size-fits-all solution for packaging types that have vastly different needs and sustainability goals, but it adds paper products to the list of covered materials, which simply does not make sense. The argument that “everyone in the bin needs to pay” is a distraction from whether paper products are contributing to the concerns that are to be addressed by EPR or if it can become more sustainable as a result of EPR being in place- and the answer is no to both.

- Printing paper consumption is naturally declining due to electronic substitution- 64 percent nationally since 2000- and are not contributing to growing volumes in recycling bins associated with other materials.
- Printing papers have already achieved the EPR “design for the environment” goal, as the vast majority of printing papers are 100 percent recyclable and do not contain hard-to-recycle components like other materials that would benefit from major infrastructure improvements.
- Printing paper processing is straightforward and does not require the kind of special equipment needed to sort lightweight, multi-material or complex products. PRO Investments in infrastructure would likely subsidize needs for non-paper materials, not paper.
- This is an aspirational and counter-productive goal for printing papers due to expanding single-stream collection and an increasing proportion of packaging papers in the mix. These trends make increased recycled content unsuitable for making high quality printing paper and diverts otherwise usable fiber away from more efficient uses like packaging products.
- Including printing paper in the legislation would involve the registration, fee collection and enforcement for potentially thousands of printing paper “producers” due to the complex supply chain relationships among manufacturers, brand owners or distributors, and retailers of printed paper products. This raises the question of how high administrative costs of managing such a program with so many producers representing such a small volume of material could be justified.
- Paper maintains importance as a medium for sensitive financial and medical documentation, conservation and archival grade paper, paper designed for use in building construction, and important First Amendment conduits. The overly broad definition of “paper product” in HF 3577 creates issues for access to essential products in addition to First Amendment equity issues.
- The definition of “paper product” in HF 3577 captures materials that are unlikely to be found in the waste stream. Unprinted paper is an intermediary product and until it converted into its final use, does not enter the waste stream. By charging producers of these products for entering Minnesota, they are unfairly charged for a material that is unlikely to be found in municipal waste streams.

⁷ <https://www.afandpa.org/news/2021/afpa-releases-new-guide-further-advance-paper-recycling-0>

Unintended Consequences of EPR Policies

EPR policies must be carefully designed to avoid creating fees or mandates that could disrupt efficient and successful paper recycling streams or that direct private sector funds away from investment in recycling infrastructure. HF 3577 requires funding which would be used to pay the costs of municipalities and entities providing solid waste management services. But this is merely a cost-shifting mechanism common in other EPR programs that does not create added value or develop end markets for recyclable materials. The paper industry already contributes to economically sustainable recycling programs by purchasing and utilizing material sourced from residential collection programs in manufacturing new products.

HF 3577 requires statewide goals that for postconsumer recycled content for 2033 and 2038. Recovered fiber markets are complex, efficient, and dynamic and are not served by regulations or prescriptive approaches to specify the use of recycled fibers or dictate what type of recovered fiber is used in products. The preference for recycled content in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling, fee structures to incentivize recycled content in paper products could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; raise the cost of production for new paper products; and narrow available choices for consumers.⁸ It can also result in unintended consequences such as an increase in transportation costs and emissions due to shipping recovered fiber even while virgin fiber can be sourced more locally.

Recycled paper fiber can be reused 5-7 times to make new products. Virgin pulp supply is needed to sustain and grow the recovered fiber cycle. The paper and wood products industry promotes and uses sustainable forestry best practices because it depends on sustainable forest growth. These best practices include forest certification programs that provide standards, or guidelines and structure, for sustainable forest management and fiber sourcing. In North America there is a mosaic of healthy forests, wherein growing, harvesting, replanting, and regrowing forests occurs as a standard practice. Forest lands in North America have been stable for more than 100 years. Our industry responsibly uses every part of the tree to make essential products for everyday life. Using paper and wood products incentivizes regeneration and replanting trees after harvest and keeping land in forests, decreasing the likelihood of conversion to other uses like parking lots, subdivisions, or pastures.

Current efforts have achieved strong gains in paper recycling and are expected to continue to do so in the future. Putting pressure on producers to arbitrarily change content in certain paper products interrupts the market-based utilization of recovered fiber, prevents recovered fiber from flowing to its highest value end-use, is counterproductive both economically and environmentally, and is inconsistent with the precepts of sustainability.

HF 3577 also requires, “10 percent of the number of units of packaging sold in the state must be returned to an established reuse system by 2033,” increasing to 20 percent in 2038. These goals

⁸ https://www.afandpa.org/sites/default/files/2022-09/AF%26PA-RecycledContentMandates_8152022_0.pdf

preference reusable packaging which is often, by nature, neither recyclable nor compostable. Similar to the current situation with e-commerce and curbside pickup groceries in New Jersey leading to a glut of reusable bags for customers, a sudden shift to reusable packaging mandated by policy before its end-of-life disposition is worked out could result in that packaging being treated as single-use when it may be ultimately less sustainable from a life-cycle perspective than packaging options available today. This issue is exacerbated by the bill preferencing reuse through lower producer fees, an incentive that will likely increase this concerning outcome.

Focus On Solutions for Products with Low Recycling Rates

Paper recycling has enjoyed decades of success because of the industry's investments, consumer education, the wide availability of well-developed recycling programs, and the efforts of millions of Americans who recycle at home, work, and school every day. The paper products industry is proud to be part of the recycling solution by providing renewable, sustainable, and highly recycled products for consumers. We respectfully ask policymakers to focus on improving recycling for materials with low recovery rates that contaminate the recycling stream.

Conclusion

We encourage the Committee to avoid measures that might penalize the forest products industry from continuing to engage in the state economy and we look forward to continuing our work with the State of Minnesota. Please contact Frazier Willman, Manager, Government Affairs at [Frazier Willman@afandpa.org](mailto:Frazier_Willman@afandpa.org) with any questions.



March 18, 2024

Scott Cassel
Chief Executive Officer/Founder

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Representative Jamie Becker-Finn, Chair
Representative Cedrick Frazier, Vice Chair
House Judiciary Finance and Civil Law Committee
State Office Building Room 5
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

RE: Support for HF 3577, Packaging Waste and Cost Reduction Act

Dear Chair Becker-Finn, Vice Chair Frazier, and Committee members:

Thank you for the opportunity to submit a letter in support of **HF 3577** to create an Extended Producer Responsibility (EPR) program for packaging materials and paper products in Minnesota.

The Product Stewardship Institute (PSI) is a national policy expert and consulting nonprofit that pioneered EPR in the United States along with a coalition of hundreds of state and local government officials, including those in Minnesota. Since 2000, PSI's policy models have helped to develop producer responsibility policies for many of the 136 EPR laws enacted for 18 industry sectors in 33 states.

My comments focus on one aspect only – the need for anti-trust language in the bill. For over two decades, companies have sought, and have been given, anti-trust protection under EPR bills, just like the language in HF 3577. To develop the collection, reuse, and recycling systems required in any packaging EPR law, producers need to work together to determine the cost of such improvements, as well as how those costs will be allocated among producers based on the material and amount used, the cost to the system, and environmental factors. Anti-trust protection might also be needed to protect other companies (e.g., waste management) when they enter into discussions with producers and other stakeholders to determine how service providers will be reimbursed for their efforts to collect and recycle materials. Anti-trust protection is a standard element in all EPR laws.

I urge you to **support HF 3577** for the financial and environmental health of Minnesota's economy. If you have any questions, please feel free to contact me at (617) 513-3954, or Scott@ProductStewardship.US.

Sincerely,

Scott Cassel
Chief Executive Officer/Founder



Midwest Region

MEMORANDUM

To: House Committee on Judiciary Finance and Civil Law

From: National Waste & Recycling Association – MN Chapter

Re: Packaging Waste and Cost Reduction Act, HF 3577

Date: March 18, 2024

The National Waste & Recycling Association (“NWRA”) is pleased to offer comments on the Packaging Waste and Cost Reduction Act, HF 3577 (“PWCRA”), scheduled for hearing before the Committee on March 19, 2024. NWRA is concerned that in its current form, the PWCRA violates several state and federal constitutional provisions, is unduly complex and burdensome, is problematically vague in key respects, and will run counter to its stated goals. NWRA therefore urges the Committee to oppose PWCRA and vote against moving the bill forward.

Legal Deficiencies in the PWCRA

The PWCRA is a sprawling, complex bill, proposing major new regulation of packaging wastes in a series of stages through the late 2030s. Yet despite its size and complexity, it is also quite vague given the scope of the regulations and the punitive enforcement provisions proposed. For purposes of the March 19 hearing and the Judiciary Committee’s jurisdiction, NWRA will focus on the legal issues with the bill.

The PWCRA violates the nondelegation doctrine

The nondelegation doctrine is rooted in Article 1 of the Minnesota Constitution. As discussed by the Minnesota Court of Appeals last year, the doctrine is focused on ensuring that the law is made by the peoples’ elected representatives. *Minn. Auto. Dealers Ass’n v. Minn. Pollution Control Agency*, 986 N.W.2d 225, 231-32 (Minn. Ct. App. 2023) (“*MADA v. MPCA*”). The most common nondelegation question is whether the Legislature has given reasonably clear guidance and criteria for administrative agencies to apply in rulemaking. *Id.* For example, the question in *MADA v. MPCA* was whether the MPCA had violated the doctrine by adopting California air pollution control regulations “as amended”. The Court concluded that MPCA’s adoption of the California rules did not violate the doctrine, both by virtue of the specific structure of the Clean Air Act and by accepting the MPCA’s representation that any substantive changes would undergo formal rulemaking.

The PWRCA poses a different problem, in that it essentially makes one or more private entities – the Producer Responsibility Organizations (“PROs”) – a rulemaking body. The PROs, none of which presently exist, are charged with developing stewardship plans that have the force of law. While it is true that proposed stewardship plans are subject to limited public comment and approval by the MPCA, the procedures for development and adoption of stewardship plans fall far short of the due process protections afforded by the Minnesota Administrative Procedure Act. The need for adequate due process through rulemaking is especially acute here, where the PWRCA imposes \$25,000/day penalties for first time violators of stewardship plans. PWRCA § 22(c). NWRA therefore urges the Committee to reject the PWRCA in its current form for violation of the nondelegation doctrine.

The PWRCA violates the Dormant Commerce Clause

Article 1, § 8, cl. 3 of the United States Constitution gives Congress the power to regulate interstate commerce, and this has long been held to involve a “dormant” dimension, limiting States’ ability to regulate interstate commerce themselves. The Supreme Court most recently addressed the issue in *Nat’l Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023). Although the Court was highly divided on the proper standard, a majority of the Court agreed that a state law is unconstitutional if it “substantially burdens” interstate commerce.

There can be little doubt that the PWRCA poses a substantial burden on interstate commerce. The bill would prohibit the sale of covered materials “into the state”, unless the producer complies with an approved stewardship plan and meets the law’s reusability, recyclability, compostability, and collection system requirements. PWRCA § 9, Subd. 1(b), (c). These would have the effect of projecting the PWRCA’s requirements into the national markets of covered materials. Unlike the facts of *Nat’l Pork Producers Council*, where the law’s standards were reasonably clear and capable of conformance (and yet still may have been unconstitutional), the PWRCA would set up a byzantine system of shifting standards for covered materials. Consequently, it substantially burdens interstate commerce and is likely unconstitutional.

The PWRCA interferes with constitutionally protected freedoms of association

NWRA is troubled by the PWRCA’s compulsory participation requirements, which mandate that producers participate and fund the PROs, pay for the Commissioner’s costs, and effectively mandate service providers to do the same. PWRCA § 9, Subd. 2, § 10. Freedom of association is guaranteed by the Minnesota and U.S. Constitutions, and includes the converse right not to be compelled to support political and ideological causes with which one disagrees, and the freedom not to speak or to have one’s money used to advocate ideas one opposes. *Hurley v. Irish–American Gay, Lesbian, & Bisexual Group*, 515 U.S. 557 (1995); *Keller v. State Bar of Calif.*, 496 U.S. 1 (1990).

Implementation and enforcement of the PWRCA is entirely funded by fees levied on producers through compulsory subsidies of the PROs and Commissioner. Compulsory subsidies are subject to exacting First Amendment scrutiny and cannot be sustained unless two criteria are met: (1) there must be a comprehensive regulatory scheme involving a mandated association among those who are required to pay the subsidy; and (2) compulsory fees can be levied only insofar as they are a necessary incident of the larger regulatory purpose which justified the required association. *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 310 (2012). Surviving the first criteria is exceedingly rare because mandatory associations are permissible under the First Amendment only

when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms. *Id.* There can be no serious argument that the PWRCA is the only means to reduce packaging wastes. The Minnesota Waste Management Act has employed many different tools over the past 30 years to improve management of various wastes, without ever requiring anything resembling the PWRCA. The PWRCA is therefore likely to violate state and federal constitutional protections for freedom of association.

The antitrust protections are insufficient

To the extent the PWRCA proceeds, the antitrust provision in the bill is too narrow. Section 18 immunizes PROs from antitrust liability, but provides no protections to producers and service providers who are required by law to implement the stewardship plans developed by the PROs. Overall, the PWRCA imposes a highly centralized, inherently anticompetitive structure on the sale, use, collection, and disposal of covered materials. PROs, immunized from antitrust liability, are likely to develop stewardship plans that have anticompetitive elements. At a minimum, producers and service providers must also be immunized from antitrust liability to the extent they are complying with the requirements of the PWRCA or stewardship plans approved by the MPCA.

The Producer Responsibility Advisory Board poses severe conflict of interest issues

The proposed Producer Responsibility Advisory Board (“PRAB”) creates significant conflict of interest problems, in that the PRAB members will be developing policy recommendations for how their constituent organizations should be regulated. The PWRCA will certainly result in a *dramatic* increase in the cost of selling, using, and managing packaging and packaging wastes, and each segment of the packaging supply chain will have strong incentives to shift those costs to other elements of the chain. While consultation with regulated industry is generally appropriate and necessary in any statutory scheme, the PRAB has a much more formal and influential role, and is rife with conflict of interests risks. In many ways this is a consequence of the nondelegation doctrine problem NWRA has previously highlighted; turning private associations into *de facto* regulators creates a host of problems, including conflict of interest issues.

The drafters of the PWRCA appear to have recognized this, but the proposed remedy – development of vague “conflict of interest policies – merely highlights the problem. *See* PWRCA § 5, Subd. 11. For example, the conflict of interest provision purports to address “perceived” conflicts of interest – whatever those are – arising from a member’s “employment.” This would appear to create circumstances in which members can be forced to recuse themselves from opining on the very subjects with which they have expertise and for which they were appointed to the PRAB. Overall, Subdivision 11 is a band-aid that cannot solve the inherent contradictions arising from the PWRCA’s scheme.

These comments have only scratched the surface of the many issues with the PWRCA. There is good reason to believe that the net effect of the PWRCA will simply be to increase costs for all Minnesota consumers of packaging, including those least able to afford it. NWRA will reserve its policy concerns with the PWRCA for other forums.



MINNESOTA GROCERS ASSOCIATION

1360 Energy Park Drive, Suite #110 • St. Paul, MN 55108 • 651-228-0973 • 1-800-966-8352 • www.mngrocers.com

March 19, 2024

Chair Becker-Finn, Ranking Minority Member Scott, and Members of the House Judiciary Finance and Civil Law Committee:

The Minnesota Grocers Association thanks you for the opportunity to express our concerns regarding HF3577, the Packaging Waste and Cost Reduction Act.

The Minnesota Grocers Association is the only state trade association representing the food industry of Minnesota. Minnesota has a unique culture of hundreds of hometown grocers and convenience stores, many of whom are independent, multi-generational, and locally owned. We have over 300 members with over 1,300 locations statewide, which includes food producers, manufacturers, brokers, and wholesaler members. Our industry provides over 150,000 jobs in the state – both union and non-union. The retail food industry is the backbone of Minnesota's prosperity, providing 1 out of every 20 jobs in our state.

From farm to fork, the challenges continue for the food industry of Minnesota. Increases in labor cost, severe workforce shortages, inflation in commodities, rising energy and transportation costs, as well as persistent supply chain problems test day-to-day operations. All of these factors and regulatory restriction put dramatic pressure on consumer baskets.

As an industry, we are deeply committed to the communities we serve. We take our role as an environment steward seriously. Our members are innovators when it comes to packaging, recycling, and repurposing. We appreciate the interest in a circular economy that can benefit all.

The MGA supports investment in proven programs and technologies that efficiently bring more clean material into the system. We support investments in recycling infrastructure and public education. Any changes to Minnesota's existing and successful recycling programs should be approached collaboratively with an acknowledgement of current packaging requirements, systems, and product availability. It is important that all facets of the program be thoughtfully vetted through each aspect of the supply chain to ensure the structure supports stated goals and is achievable without unintended consequences. Minnesota cannot act as an island, and advancement of extended producer responsibility must support a global supply chain.

On behalf of our membership, we thank you for the opportunity to voice our concerns. We thank Representative Jordan for meeting with us and for her willingness to discuss these concerns. We look forward to working collaboratively as this bill moves through the committee process.

Sincerely,

Jamie L. Pfuhl
President
Minnesota Grocers Association



March 19, 2024

Chair Becker-Finn & Members of the House Judiciary Finance and Civil Law Committee:

Thank you for the opportunity to provide comments on HF 3577, the Packaging Waste and Cost Reduction Act.

The Minnesota Retailers Association is comprised of 1,200 retail stores across the state, including main street retailers, regional/mid-sized retailers, and retailers with a national presence. Today's retail market is competitive, and consumers are mobile with many options for purchasing products, including across a state border, the country and in some cases even the world.

This past summer we had a small work group discussing extended producer responsibility (EPR) as we recognize the importance of such conversations. As a result of that work, we developed a dozen draft principles we deem important when considering any EPR program. To the credit of Rep. Jordan, HF 3577 meets some of those principles, however it has significant challenges in several areas, and as a result we are opposed.

Our main objections to the bill center on:

- The proposed framework stands to create a Minnesota-only approach, without harmony with other state initiatives. Without such uniformity with other states, Minnesota's consumers may face higher product costs, and retailers may be placed at a competitive disadvantage in today's competitive marketplace.
- Unlike the introduced version, the current language does not prohibit consumer point of sale fees, and as such a consumer could end up seeing increased prices for products before and at the point of sale.
- The proposal leaves open the door for requiring consumer take-back at retail outlets. Consumer participation should be convenient and easy, and utilize existing outlets for recycling, however retailer participation should be voluntary.
- Related to cost-benefit, the rates and dates in the proposal are arbitrary and lack data to support whether they are reasonable or even achievable.

Retailers share your goal of being good stewards of the environment, and we hope you share our goal of fostering a marketplace where Minnesota's retailers can competitively serve their customers.

Sincerely,

Bruce Nustad
president

TESTIMONY

Jacob Cassady
Director, Government Relations

On Behalf of
The Association of Home Appliance Manufacturers

Before the Minnesota House
Judiciary Finance and Civil Law Committee

HEARING

H.F. 3577
An Act Relating to Packaging Waste and Cost

March 19, 2024

Chair Jamie Becker-Finn, Vice Chair Frazier, Ranking Member Scott and members of the Judiciary Finance and Civil Law Committee, the Association of Home Appliance Manufacturers (AHAM) supports reasonable and effective extended producer responsibility (EPR) measures. AHAM is willing and committed to working with the committee on a bill similar to Oregon's EPR law, the Plastic Pollution and Recycling Modernization Act (SB582, 2021).

AHAM represents more than 160 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

In Minnesota, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to Minnesota is \$3.6 billion, more than 25,000 direct and indirect jobs, \$468.5 million in state tax revenue, and more than \$1.2 billion in wages. The home appliance industry, through its products and innovation, is essential to consumer lifestyle, health, safety and convenience. Home appliances also are a success story in terms of energy efficiency and environmental protection.

AHAM supports all material packaging EPR legislation that provides the following:

Packaging That Does Not Enter the Household/Curbside Recycling Stream is Excluded

Appliance packaging materials, including expanded polystyrene (EPS) and thin plastic film (PE), may ultimately not enter the residential recycling stream because large appliances are usually delivered to a consumer's home and, as part of the installation, the packaging material is removed by the installer and not left in the home. The installers load the packaging into the delivery truck and return those materials to be recycled through commercial (non-residential) recycling systems.

Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream. A shipment of portable and floor care appliances would include hundreds of products placed in multiple master cartons that are secured to a pallet. The pallet of product goes to a distribution center and is either separated by units or delivered to the final seller. Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream.

Oregon's EPR law, the Plastic Pollution and Recycling Modernization Act (SB582, 2021) recognizes and encourages this successful recycling process by including a provision that

exempts covered packaging materials if the producer can demonstrate that their packaging is recovered as a function of the distribution chain and is recycled at a responsible end market. The Oregon law states the following:

A producer may demonstrate to the department that a material is exempt from the requirements for a covered product if the material:

- (A) Is collected through a recycling collection service not provided under the opportunity to recycle;*
- (B) Does not undergo separation from other materials at a commingled recycling processing facility; and*
- (C) Is recycled at a responsible end market.*

Ontario, Canada takes a similar approach with a regulation that allows for two deductions and home delivered appliances are one of them. The following is a common deduction in Canada:

Allowable deductions are those Blue Box materials that are:

*Collected from an eligible source at the time a related product was installed or delivered. For example, packaging that is supplied with a new appliance and is removed from the household by a technician installing the new appliance.*¹²

AHAM requests the legislation to be amended to include the provisions above.

Program Should Focus on Packaging Recovery and Not Material Design Requirements

Appliance packaging is used to protect the appliance and factory personnel during storage, transport, and delivery. The safest and most cost-effective materials for this use are lightweight, can withstand multiple impacts, and maintain their integrity in humid conditions. Unlike smaller, fast-moving consumer goods, packaging for heavy durable goods have different requirements and must be able to ensure the protection of workers during transportation and at distribution centers. Large appliances such as refrigerators, freezers, dishwashers, cooking ranges, washers and dryers are stacked as high as 30 feet and packaging cannot fail while products are warehoused, regardless of environmental or climate conditions.

¹ <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB582>

² <https://www.circularmaterials.ca/faq/>



Worker safety in warehouses, distribution centers or during transportation/delivery must be considered, especially when dealing with large appliances such as refrigerators, freezers, dishwashers, cooking ranges, clothes washers and dryers. Once assembled, major appliances are often packaged, stored and moved in very large warehouses or distribution centers. These facilities often have limited climate control and can experience extreme temperature and humidity changes. Low temperatures can cause packaging materials to become brittle while humidity and heat can affect the packaging's structural integrity and limit the effectiveness of adhesives or the strength of products that

are made from fiber.

For safety purposes, it is vital to maintain the structural strength of packaging materials, particularly with respect to major appliances that are regularly stacked vertically with multiple units above ground. Furthermore, these appliances are often moved around by clamp truck and the packaging must withstand the force of the clamps to be moved efficiently. Other paper alternatives such as cardboard, molded pulp or honeycomb can only handle a more limited impacts and more apt to lose structural integrity in hot and humid environments.



A fiber-based alternative would be larger and heavier, which leads to more truck loads and more warehouse space. It is estimated that there would be an increase of 5-10% in all directions of the packaging, which equates to an increase of about 20-30% more trucks needed to deliver large appliances.

Additionally, thin plastic film (PE) is used to protect the finish of appliances as well as the display screen. Fiber alternatives, such as paper, are like sandpaper and would scratch the product and would lead to consumers either accepting a damaged product or refusing delivery and the distributor returning the product to the warehouse. There is no alternative to the use of plastic film to protect the finish of appliances or the display screen.

Durable Product Manufacturers Should Have Designated Seat on Advisory Board/PRO

Manufacturers of durable products should have an equal role in the management of the program as other stakeholders. Durable goods have unique packaging needs that other, non-durable manufactured goods do not necessarily require. A designated seat or position would ensure that all stakeholders have a voice in the program.

Recovery programs that place responsibility for recycling and/or disposal of post-consumer packaging with producers must ensure producers' involvement is not limited to merely

subsidizing the status quo of inefficient recovery and recycling programs. If producers are responsible for the costs to dispose/recycle in a given jurisdiction, then producers must have the authority to exercise proper oversight without being required to give preferential treatment to existing partners, collectors, or municipal programs during the program's design and implementation. Requiring responsibility without authority is a dysfunctional management structure.

Material Fees Appropriately Assigned Based on Material's Environmental Impact

Packaging material fees or "eco fees" must consider the life-cycle impact of the material. The use of packaging material that is easily and readily recycled should be incentivized as compared to lightweight, non-biodegradable materials. Alternatives to existing packaging materials or material source reduction involve tradeoffs. For example, plastic-based products will generally be lighter and less volume than fiber-based packaging. In addition, there are already inherent financial incentives for manufacturers to reduce costs and amounts of packaging, especially for home appliances that have non-consumer facing packaging, because the packaging is not used for marketing purposes. It is purely an additional cost to the product to ensure the product arrives at the home without being damaged. The methodology used to set fees should be consistent with established practices to determine fair allocation of costs based on the complexity required to collect certain material. Minnesota should require the PRO(s) to apply the minimal annual administration fee feasible to prevent less environmentally impactful materials from subsidizing more environmentally impactful materials.

Credit Manufacturers for Previous Packaging Reductions

Manufacturers who proactively reduced and/or included recycled material in their packaging should have those actions counted toward any source reduction or recycled material requirement. A future packaging law or regulation should not penalize companies that have already taken these steps.

States should seek a Harmonized Approach

To the greatest extent possible, states should harmonize stewardship programs including definitions and the process for reporting and remitting with existing state programs. Harmonization of recycling policies will encourage economies of scale, efficiencies and convenience for consumers, while streamlining compliance. In Canada, "EPR" packaging programs exist in most Provinces, with manufacturers having to comply with each program that varies in scope. This is very costly to both manufacturers and to residents.

Conclusion

AHAM appreciates the opportunity to provide comments to the Committee. Manufacturers of consumer products need flexibility in choosing appropriate materials for packaging their products to avoid situations that cause product breakage and damage during transport (which ultimately increases the lifecycle impact of the product) as well as to deter theft of smaller, high value electronics from retail establishments. The current system for appliances and appliance packaging works, and it should be allowed to continue on its successful path. For future reference, my contact information is (202) 202.872.5955 x327 or jcassady@aham.org.

March 18, 2024

Honorable Jamie Becker-Finn, Chair
Minnesota Judiciary Finance and Civil Law Committee
State Office Building Room 5
St. Paul, MN 55155

Dear Chair Becker-Finn:

The Animal Health Institute has previously shared our concerns about including animal health products in the product stewardship requirements under HF 3577, the Packaging Waste and Cost Reduction Act. As a result of the amendment that would remove animal health products from the scope of this bill, we are no longer opposed.

We would like to thank the various committees for their work on this issue, and Representative Jordan for her leadership and consideration of our concerns.

Sincerely,



Mandy Hagan
Director, State Government Affairs



03/18/24

RE: House File 3577

Representative Jordan,

Medical Alley represents a global network of more than 800 leading health technology and care companies including representation from all corners of the state of Minnesota. Our mission is to activate and amplify healthcare transformation.

Recognized worldwide as a leader in healthcare innovation, Minnesota sets a standard for excellence – impacting local communities and influencing global health outcomes and advancements. With access, affordability, and quality as top priorities, Medical Alley and our partners are committed to developing solutions which drive meaningful change and save lives.

Since our founding in 1984, Medical Alley has been committed to advancing innovation while protecting the environment. Alongside our partners, we embrace the responsibility of minimizing environmental impacts to ensure a healthy and sustainable future for all Minnesotans.

As you are aware, Medical Alley testified on House File 3577 expressing our concerns about access to FDA-regulated products in the following committees:

- House Environment and Natural Resource Finance and Policy on February 20
- House Commerce Finance and Policy on February 28
- House State and Local Government Finance and Policy on March 12

Medical Alley appreciates your inclusion of an amendment exempting infant formula, medical food, and fortified oral nutritional supplements on February 28 in the House Commerce Finance and Policy Committee.

We are still reviewing the impact of the language of the [A4 Amendment](#) you intend to incorporate into your bill on March 19 in the House Judiciary Finance and Civil Law Committee, given that the amendment was made public around 9:45 AM on March 18. With that said, we believe this amendment is a significant step in the right direction toward addressing many of our concerns. We are grateful to you for incorporating this language into your legislation.

As we move forward, Medical Alley will be seeking clarity and alignment between the House and Senate versions of this legislation. We appreciate your honest and direct dialogue with Medical Alley to address our concerns.

Sincerely,

A handwritten signature in black ink that reads 'Peter Glessing'. The signature is written in a cursive, flowing style.

Peter Glessing
Senior Director of Policy and Advocacy
Medical Alley



Michael J. Smaha
Vice President, Government Relations
The Homer Building
Industrious, 12th Floor
601 13th Street, NW
Washington, DC 20005
Cell: (202) 876-4347

March 18, 2024

Representative Jamie Becker-Finn
Chair, Judiciary Finance and Civil Law Committee
559 State Office Building
100 Rev Dr Martin Luther King Jr Blvd
St. Paul, MN 55155

RE: Comments on HF 3577, Packaging Waste and Cost Reduction Act

Dear Chair Becker-Finn and Members of the House Judiciary Finance and Civil Law Committee:

The Can Manufacturers Institute (CMI) appreciates the opportunity to comment on HF 3577, introduced by Rep. Sydney Jordan. CMI has a few concerns with HF 3577 that we have shared with the bill sponsor earlier this year and want to see changed in order to ensure there are no unintended consequences for metal cans.

CMI is the U.S. trade association representing metal can makers and their suppliers. The industry employs more than 28,000 people and our members have facilities in 33 states, including Minnesota. One member, Silgan Containers, manufactures food cans in Savage, employing 130 people. Another member, Crown Holdings, makes aerosol cans in Faribault, beverage cans in Mankato and food cans in Owatonna. Between those three facilities, Crown employs almost 400 people. Our members are proud to make the most sustainable package.

CMI offers the following suggestions to improve the bill's language. These suggestions will ensure higher recycling rates for metal cans, especially aluminum beverage cans, promote equity, minimize market distortions between reusable and single-use packaging, and ensure post-consumer recycled content rates are realistic for all metal can types.

As currently written, all metal cans are included in the EPR program, and we suggest adding language to ensure that if the contemplated program doesn't deliver the desired rates for beverage containers, there should be a recycling refund program created or at least a plan devised to get increase beverage container recycling rates. CMI requests the addition to help our industry meet ambitious national recycling rate [targets](#) for aluminum beverage cans starting with a 70 percent rate by 2030.

Unfortunately, Minnesota is losing too many beverage containers to its roadways, waterways, and landfills. The Container Recycling Institute [estimates](#) that each year 3.8 billion beverage containers sold in Minnesota that are collectively worth \$47.2 million go to landfill. That's 666 beverage containers littered or landfilled for each Minnesotan. This problem exists because Minnesota's current recycling system does not work well enough. The Recycling Partnership's *2024 State of Recycling Report* says Minnesota has a [20%](#) recycling rate. It also finds that [30%](#)

of Minnesotans have *zero* access to recycling. Even if the curbside recycling system is improved, it still doesn't address the [one-third](#) of beverage containers consumed on-the-go.

Additional collection opportunities and infrastructure investments made by the producer responsibility organization (PRO) in HF 3577 is a fair start to increasing beverage container recycling rates. Unfortunately, it will not go far enough to increase rates required to meet industry needs. Ideally, CMI wants an automatic trigger that creates a recycling refund for beverage container program. At the very least, there should be a requirements that the PRO makes a plan specific to beverage containers to elevate recycling rates to the promised rate in the legislation, and that plan could include a recycling refund program. CMI requests the addition to help our industry meet ambitious national recycling rate [targets](#) for aluminum beverage cans starting with a 70 percent rate by 2030.

CMI suggests recycling rate targets for covered containers of 65 percent by December 31, 2033, or 75 percent by December 31, 2038. If the beverage brands selling beverage containers in Minnesota are unable to meet that, they must then establish a new PRO that manages beverage containers.

Fee Reduction for Use of Higher Valued Materials

CMI strongly supports the addition of an eco-modulation factor that encourages the consumer product goods (CPG) companies to increase their use of packaging with high economic value. CPG companies should be incentivized to use higher valued materials since it means the recycling system can better financially sustain itself. All metal cans, whether aluminum or steel, are one of the more highly valued commodities in the recycling bin. One [study](#) from The Recycling Partnership showed aluminum beverage cans were about 6% by weight of material in the single-family household but a little more than half its monetary value. Steel can easily be recycled by mega magnets at recycling facilities, making it easy for steel to get recycled.

Favoritism Towards Reuse Creates Unfair Competition

CMI understands the bill's intent is to encourage reusable packaging to reduce materials going to landfill. However, the performance rates in the bill are very aggressive for reusable packaging, and the one-time application of the lowest fee to these products creates unjustified subsidies and drivers for this type of packaging. Also, it is unfair that the PRO pays for the reuse infrastructure when the PRO is made up of many more companies than those that use reusable packaging. This is not equitable and will cause other types of packaging to subsidize the true cost of reusable packaging. CMI does not support the public sector choosing winners and losers when it comes to reusable versus single-use containers. Consumer demand should determine the growth of reusable container systems.

Post-Consumer Recycled Content Goals and Metal Cans

HF 3577 establishes high post-consumer recycled content (PCR) targets for covered materials (30% by 2038). Requiring metal packaging to have a minimum of 30% post-consumer recycling content is an ineffective tactic for achieving decarbonization and circular economy goals.

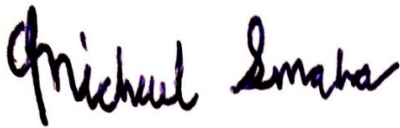
First, requiring a minimum recycled content of 30% will make it difficult for the specialized steel used to produce cans to meet strict product safety and formability requirements. If the recycled content level threshold is set too high, steel can makers will not be able to meet quality and safety standards.

Second, recycled content requirements for steel are difficult to mandate, due to how steel is made. Steel used in can making is produced in basic oxygen process (BOP), which typically incorporates 20-30% scrap. Only BOP steelmaking has the capability to produce the grades of steel utilized in packaging. Requiring a minimum recycled content of 30% may result in adding so much recycled content during production that the process becomes energy inefficient. This inefficiency reduces the desired environmental benefits of reusing used steel to make new products.

Third, there is no need for any minimum recycled content requirement for steel cans given the material's robust end markets in Minnesota and other states. Demand for used steel scrap already exceeds supply and all collected steel has a market. Adding a minimum recycled content requirement to increase steel can recycling would not result in more steel cans being recycled. What is needed are improvements in recycling access so more people can recycle their steel cans. It would only shift steel from one end market to a mandated market, adding cost and greater environmental impact to the production of cans without increasing the amount of steel cans recycled.

In closing, CMI supports the intent of HF 3577 and the goal of increasing the collection and circularity of all metal cans. CMI appreciates the opportunity to share our thoughts and suggestions for improving HF 3577. Our suggestions will ensure a higher recycling rate for aluminum beverage cans, equity between reuse and single-use packaging, and realistic content requirements for all metal cans. Please do not hesitate to contact me if CMI can answer questions and provide additional input.

Sincerely,

A handwritten signature in black ink that reads "Michael Smaha". The signature is written in a cursive, slightly slanted style.

Michael Smaha
Vice President, Government Relations
Can Manufacturers Institute



March 18, 2024

559 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Dear Chair Becker-Finn and Vice Chair Frazier:

Thank you for your consideration of packaging and recycling legislation in the state of Minnesota. We are writing to you as the Sustainable Food Policy Alliance (SFPA), including member companies Danone North America, Mars Incorporated, Nestlé USA, and Unilever United States. All four companies have each made extensive investments and commitments to make consumer product packaging more sustainable and transition to a circular economy. In turn, we also are focused on finding policy solutions that transform our nation's current waste management and recycling systems. Our advocacy is outlined in our [Packaging and Recycling Policy Priorities](#) and supplemented by our [Extended Producer Responsibility \(EPR\) Policy Priorities](#) and our [Post-Consumer Recycled \(PCR\) Content Policy Priorities](#).

These priorities aim to shift away from the status quo and move toward a waste and recycling future where companies like ours can set and meet ambitious goals to integrate PCR content into our packaging, consumers are educated to better navigate their local recycling systems, and we can all be better stewards of the environment. Within our own companies, we are investing in improving recycling systems around the world, innovating our packaging design, and collaborating with suppliers, local communities, and retail customers to advance forward-looking solutions that help our consumers make a difference and impact the planet. We know it is essential for stakeholders to come together to make end-to-end system changes that will truly transform our waste management system into a circular economy.

SFPA is supportive of Extended Producer Responsibility (EPR) programs. All four companies participate in EPR programs globally and we have worked to set up and support EPR programs and policies in the United States, such as Colorado's Producer Responsibility Program for Statewide Recycling Act. In Minnesota, we appreciated the opportunity to participate in the stakeholder process for the draft bill and are now sharing our feedback on MN HF 3577 which is being considered by the Committee on Judiciary Finance and Civil Law. We support a number of the principles underpinning the bill, but wanted to share some concerns and recommendations for consideration in the legislative process:

- As written, the Commissioner has a very broad role in the implementation of the EPR program, and we would recommend shifting several of their responsibilities to the PRO. This should include setting performance targets and the potential consideration of third-party certification on those performance targets.
- We agree that a needs assessment is essential to determining which infrastructure improvements are needed to improve Minnesota's recycling system. Since the PRO will invest in the activities deemed necessary by the needs assessment to achieve legislative goals, we recommend that the PRO have a strong role, along with the state and the advisory council, in how it is conducted.



- We request some additional clarity on fees and recommend removing the provision related to the PRO establishing a financial reserve, which we believe will drive up the cost of the program.
- The legislation does not recognize the important role of a suite of recycling technologies called advanced, chemical, and/or molecular recycling. These methods allow industries to capture and recycle certain plastics, such as mixed plastics, that were previously considered difficult or impossible to recycle, and results in less plastic in landfills. We are supportive of these technologies because they allow for the reprocessing of materials that cannot be recycled through mechanical recycling and providing recycled content that is safe for food packaging. We urge you not to restrict the technologies that can reprocess material to deliver feedstock – not energy or fuel. Additionally, strong air quality, siting, and other permitting processes should be in place to ensure that infrastructure investments do not adversely impact the environment or disadvantaged populations.
- When considering PCR rates, special consideration must be given to packaging that has food contact as it is required to comply with food safety regulations issued by the Food and Drug Administration (FDA) that could conflict with PCR requirements.
 - We would like to see the bill amended to include certain important exemptions from the PCR requirements. For example, we recommend the following language from New Jersey’s Recycled Content Law¹: “(1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the postconsumer recycled content requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the manufacturer cannot comply for another reason as determined by the department pursuant to rule, regulation, or guidance.
- As written, the bill requires a litter study, which we believe is better addressed separately.
- We also believe that there should not be intentionally added toxics in packaging, but also need to recognize the trade-off between recycled content mandates utilizing mechanical recycling and achieving reduced toxicity of covered materials. We recommend removing the provisions addressing toxics and address in separate legislation, given the complexity.
- While composting is essential to a circular economy, we believe it should only be included in an EPR program to note that better recycling can lead to less contamination in the composting stream.

We hope our feedback can help to develop an EPR program in Minnesota that includes best-in-class policy that is the right fit for the unique needs of the state. We look forward to working with you to continue to progress toward a more circular economy.

Sincerely,
The Sustainable Food Policy Alliance

¹ <https://www.nj.gov/dep/dshw/recycled-content/#:~:text=This%20Act%20establishes%20postconsumer%20recycled,of%20polystyrene%20loose%20fill%20packaging.&text=On%20January%2018th%2C%202022%2C%20Governor,391>



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March 18, 2024

Representative Jamie Becker-Finn
Chair, House Judiciary Finance and Civil Law
State Office Building Room 5
St. Paul, MN 55255

Dear Chair Becker-Finn,

Thank you for the opportunity to comment on HF 3577, a bill sponsored by Representative Jordan seeking to improve Minnesota's packaging waste. The Consumer Healthcare Products Association¹(CHPA) support efforts to reduce waste in a responsible way that do not interfere with existing federal government packaging obligations in place to ensure product safety, stability, and efficacy.

We have engaged constructively in the legislative process on this issue since the bill's introduction, so we are pleased to see the progress that has been made in crafting a balanced policy. Specifically, CHPA appreciates the revisions made to exempt most Food and Drug Administration (FDA) regulated healthcare products from the bill's scope. However, we remain concerned that FDA regulated dietary supplements remain under the purview of the extended producer responsibility (EPR) and post-consumer recycled content (PCRC) sections of the legislation.

FDA Regulated Consumer Healthcare Product Packaging

The FDA regulates consumer healthcare product packaging under Good Manufacturing Practices regulations (GMPs) (21 C.F.R. Part 211, Subpart G), including material examination and usage criteria, packaging and labeling operations, tamper-evident packaging and expiration dating. Similarly, FDA regulates dietary supplement product packaging under separate GMP regulations (21 C.F.R. Part 111, Subpart L) so that the condition of the packaging will ensure the quality of the dietary supplements (§ 111.410); and that it will protect against contamination, particularly airborne contamination (§ 111.415). Other consumer healthcare products are also regulated by the Consumer Product Safety Commission under the Poison Prevention Packaging Act (PPPA), which requires child resistant packaging. Manufacturers are required to test and certify compliance and products can be considered misbranded under the Federal Food, Drug, and Cosmetic Act when packaging does not comply with PPPA packaging and labeling regulations.

HF 3577, like most extended producer responsibility (EPR) bills considered in states around the country, justifiably exempts FDA regulated over-the-counter drugs and medical devices. This is important given the existing federal restrictions on packaging material use for these healthcare items. The bill falls short, however, in providing this same exception to dietary supplements.

¹ The Consumer Healthcare Products Association is the Washington, D.C. based national trade association representing the makers and marketers of over-the-counter medicine, dietary supplements, and consumer medical devices



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FDA Guidance Restricts Recycled Plastic From Being Used in Packaging of Dietary Supplements

In 1994, the Dietary Supplement Health and Education Act (DSHEA) was enacted as an amendment to the Federal Food Drug and Cosmetic Act (FFDCA). DSHEA explicitly defines dietary supplements as a category of food. Therefore, all the safety concerns regarding the use of plastic materials made from post-consumer resins in food-contact articles as described in the FDA guidance entitled, *Recycled Plastics in Food Packaging* apply to dietary supplements.

As states consider using post-consumer recycled materials – including plastic – FDA's safety concerns regarding how contaminants from the PCR material may appear in the final food-contact product made from the recycled material apply. In fact, FDA clearly states in its guidance that "post-consumer recycled content should not be used in the manufacture of a primary packaging component."²

To maintain uniformity with other states around the country and to avoid program confusion and conflict, we respectfully request FDA regulated dietary supplements be treated like all FDA regulated consumer healthcare products and be granted an exemption from the legislation. Like drugs and medical devices, dietary supplements undergo rigorous packaging checks from the FDA and other federal agencies. The specialized packaging needs of these products make across-the-board state mandated packaging proposals unfeasible in many cases. Adding dietary supplements as another exempted healthcare category alongside the existing exclusions for medications and medical devices would preserve the overall intent of cutting excess packaging from landfills, while not unduly affecting the availability and affordability of these important healthcare products.

Conclusion

Packaging for pharmaceuticals, dietary supplements, and medical devices is a multi-faceted and highly regulated space that forces manufacturers to consider several factors beyond basic aesthetics of the package itself. A federal framework guiding the industry's packaging is already in place, and for decades has served the public interest well. For this reason, we respectfully request an exemption for FDA regulated dietary supplements be added to the legislation before final approval.

Thank you for taking the time to consider our concerns and feel free to contact me directly with any follow-up questions you may have.

Sincerely,

² Guidance for Industry, Container Closure Systems for Packaging Human Drugs and Biologics, CHEMISTRY, MANUFACTURING, AND CONTROLS DOCUMENTATION. U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (CDER), Center for Biologics Evaluation and Research (CBER) - May 1999



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A handwritten signature in blue ink that reads "Carlos I. Gutiérrez". The signature is written in a cursive style.

Carlos I. Gutiérrez
Vice President, State & Local Government Affairs
Consumer Healthcare Products Association
Washington, D.C.
202.429.3521
cgutierrez@chpa.org

Cc: Members of the House Judiciary, Finance, and Civil Law Committee