

June 5, 2023

Re: **Oppose S. 4246-A/ A. 5322-A – Packaging Reduction and Recycling Act**

Dear New York State Legislator,

PRINTING United Alliance respectfully requests you oppose the newly amended bill, NY S. 4246-A/A. 5322-A, related to establishing an Extender Producer Responsibility program for packaging that would require producers of packaging materials to be responsible for managing post-consumer packaging waste; establish non-reusable packaging reduction requirements for packaging producers; and ban the use of certain substances and materials from packaging.

In addition to the substantive concerns outlined below, we have concerns about the approach to advancing this legislation. With just a few days left in the legislative session, these amendments were put forth without meaningful stakeholder input or robust detailed discussion of the complex provisions. There is limited opportunity for stakeholders to provide public comments and for legislators to consider comments and evaluate the bill on its merits.

S. 4246-A/ A. 5322-A is a multipart policy initiative that involves many stakeholders and has broad impacts on many industries including the manufacturers of packaging as well as residents/consumers in the state. While the Alliance recognizes improving the recycling system is critical, this legislation has many concerning provisions. This bill offers a framework for a comprehensive EPR program with far-reaching impacts. It therefore warrants full and fair consideration and adequate debate.

As background, the Alliance represents the interests of facilities engaged in producing a wide variety of products through screen printing, digital imaging, flexographic, and lithographic print processes. The print industry is comprised primarily of small businesses, with approximately 95 percent of the printing industry falling under the definition of a small business as described by the Small Business Administration.

The newly amended S.4246A (Hackham)/A.5322A (Glick) - Packaging Reduction and Recycling Infrastructure Act, continues to fall short of a balanced approach that provides packaging producers responsibility in the solid waste and recycling system. This proposal also fails to set up a workable structure for increased recycling rates, reduced toxicity, and greater circularity for packaging. Below are major issues that have not been addressed in this new draft or have been newly added and represent new problems with this legislation:

- **DEC Contracts for Producer Responsibility Organization:** As currently drafted, the Department of Environmental Conservation (DEC) would directly contract, via an RFP with a single Producer Responsibility Organization (PRO) to oversee the requirements of the law without any direct packaging producer input or control.
- **State-Run Program:** Further, if there is no response to the RFP, DEC would be forced to run the entire program, something that has not been done with EPR anywhere in the world and would

be an immense burden on the Department, likely running afoul of conflict-of-interest requirements.

- **Disposal Costs Reimbursed & Undermine Recycling Goals:** In several places in the legislation, it is indicated that producers would not only have to pay for recycling activities and infrastructure – but also disposal costs. No other jurisdiction in the world subsidizes disposal or landfilling of packaging materials through EPR. The impact of this funding would likely undermine the goal of the legislation to improve environmental outcomes – if local governments and private entities know that funding is available for landfilling, it is already the cheapest and easiest way to manage solid waste.
- **Lack of Producer Input:** An overarching theme of the text of the proposal is that producers will not have a role in helping design or implement EPR in the State of New York. Both in the design of the PRO system, stakeholder input priorities and through the advisory council, there appears to be an intentional attempt to minimize producers’ ability to aid in the program and simply have producers serve to fund the system and forced to attempt to achieve goals, for which they have no control over.
- **Unachievable Recycling & Source Reduction Goals:** Similar to the previous draft of S.4246/A.5322, the proposal establishes mandatory source reduction and recycling rate goals that are not consistent with other states and not based on any real-world data. Additionally, these goals do not properly consider significant previous progress that companies have made to source reduce their packages.
- **Toxic Chemical & Material Type Bans Eliminate Significant Packaging Types:** The provisions of the bill that would ban certain chemicals or material types due to certain physical traits threaten major portions of packaging technologies that protect products and food and would directly result in significant increases in food waste, breakage, and increased greenhouse gas emissions – while not actually addressing real-world problems in the recycling system.

This legislation bans packaging containing numerous identified chemistries designated as “toxic substances” and creates a Task Force to recommend additional substances to ban. The language in the bill runs counter to the recently finalized chemical regulation legislation signed into law in New York State that focused on children’s products. The legislation laid out a framework for working with expert scientists, identifying high priority chemicals, taking action, and making decisions on those chemistries when warranted by the best available risk assessment science on thousands of products.

- **Office of Inspector General Unnecessary & Duplicative:** The continued provision for an entirely new Office of Inspector General is costly, unnecessary, and specifically duplicates a role that traditionally is performed by the PRO and the Department.
- **Subsidization of Reusable Packaging:** The new text of this legislation clearly seeks to exempt reusable packaging from any fee or obligation, while at the same time trying to grow infrastructure in this area. This would result in all other packaging types subsidizing reusable packaging without any funding source. It is fundamentally inequitable to take this approach and

would likely cause the program to fail, when coupled with the source reduction goals in the bill, because there would be a diminishing funding source to subsidize reusable packaging infrastructure.

- **Immense Data Burdens:** The proposal sets up massive and unique data reporting requirements for producers to submit information that is highly proprietary and difficult to segregate to one state market like New York. These requirements go far beyond anything seen in any other state EPR law.
- **Precludes Advanced Recycling from the definitions of “Recycling” and “Post-Consumer Recycled Material (PCR)”:** As written, the bill excludes advanced recycling from the definition of “recycling” and does not include: (A) energy recovery or energy generation by any means, including but not limited to . . . pyrolysis, gasification, solvolysis, waste-to-fuel; (b) any chemical conversion process). It also therefore excludes advanced recycling outputs from the definition of “post- consumer recycled material.”

Advanced recycling is **NOT** incineration. Advanced recycling converts post-use plastics into their original building blocks, specialty polymers, feedstocks for new plastics, waxes and other valuable products. This process takes place in the absence of oxygen. Incineration is the combustion of unsorted municipal solid waste to turn into electricity. Combustion requires oxygen.

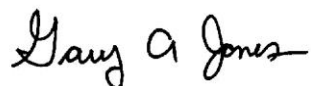
Advanced recycling can contribute significantly to a circular economy wherein plastics are repurposed rather than disposed, which helps keep plastics out of the ocean/environment. Ongoing and emerging advances in mechanical recycling are capturing more types of post-use plastics, while advanced recycling is poised to capture primarily used plastics that are not widely recycled today.

- **Overly-aggressive and unworkable mandates and timelines:** This legislation includes mandates for (1) reduction of non-reusable packaging; (2) recycling of non-reusable packaging; and (3) inclusion of post-consumer content. However, there has not been a dialogue with stakeholders, cost analysis or completed market impact studies to determine the feasibility or practicality of these mandates. We strongly encourage a full evaluation and consideration of these and other factors as part of the discussion around an EPR program.

In closing, the current proposal fails to set up a workable structure for increased recycling rates, reduced toxicity, and greater circularity for packaging. for the above reasons, the Alliance respectfully requests that you OPPOSE S. 4246-A/ A. 5322-A.

Thank you for your consideration.

Sincerely,



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