

Committee: Environment and Transportation

Testimony on: SB 222 “Environment – Reducing Packaging Materials -- Producer Responsibility”

Position: Favorable with Amendments

Hearing Date: March 29, 2023

The Maryland Chapter of the Sierra Club has reviewed SB 222 as amended by the Senate and would like to share two ongoing concerns. As we have noted in previous years and in testimony on SB 222 and HB 284, we support the concept of Extended Producer Responsibility and believe it could be a useful tool to develop strategies for reduction of packaging. However, we have reservations about the lack of concrete measurable performance targets in the statute with penalties for failure to achieve them. We also encourage the committee to embrace proven strategies for reducing some types of packaging, allowing the program to focus on reducing and improving the recyclability of packaging that is difficult to recycle.

1. Lack of program performance targets in the statute

There is only one performance target in SB 222 as amended: each participating producer is required “to reduce all packaging material waste to the maximum extent practicable, and by not less than 25% for each packaging material type, within 5 years after the date on which the first version of the plan is approved.”¹ The Senate has added a definition of “packaging material waste”: “the percentage of the total weight of packaging materials sold or distributed in the State that are not recycled, reused, or composted.”² We do not believe that this is measurable in the aggregate or for individual producers.³ Nor is there a penalty in the statute (§9-2510) for failing to meet this target.

All other performance targets in the program are proposed by the producers in their Producer Responsibility Plans, approved by MDE after the bill has been adopted.⁴ If these performance goals are not met, MDE may require a Producer Responsibility Organization (PRO) to amend the Plan and it may impose an administrative penalty.⁵ SB 222 as amended has increased the maximum administrative penalty for a PRO that does not meet its own performance goals, from \$5,000 to \$250,000.⁶ Their enforcement in the bill is at the discretion of MDE, and only applicable to the Plan targets, not the overall target expressed in the statute.

2. Adopt proven strategies for specific types of packaging, when they exist

Packaging is a heterogeneous product, including many different types of packaging materials. SB 222 covers: primary, secondary, and tertiary packaging intended for the consumer market; service packaging, including carryout bags, bulk goods bags, and takeout and home delivery food service packaging; and

¹ SB222 reprint with Senate amendments, §9-2504(C)(4), p. 19, lines 20-24.

² Ibid, §9-2501(F), p. 11, lines 1-3.

³ While the bill’s title suggests an objective of reducing packaging used, which is measurable and under producer control, the bill’s target is to reduce packaging that is wasted, after it is used by consumers, over which producers have less control.

⁴ Ibid, §9-2504(C)(3), p. 19, lines 6-19.

⁵ Ibid, §9-2504(J)(5), p. 26, lines 11-18.

⁶ Ibid, §9-2510(C), p. 33, lines 14-18.

beverage containers. Although several U.S. states have passed producer responsibility for packaging bills, they are different from each other in the degree of public oversight and coverage, and none are yet operational. There has been no opportunity to distill the “lessons learned” for these complex packaging programs.

However, there is already a highly effective producer responsibility policy for one type of packaging -- beverage containers. Beverage container deposit systems, also called “deposit/return” or “recycling refunds,” add a refundable deposit to the price of beverage containers that is refunded when the container is returned for recycling or reuse. There are decades of experience in ten U.S. states demonstrating their effectiveness at increasing recycling, reducing beverage container waste, and reducing litter. Most are run by producers, with public oversight. These programs are considered an international best-practice in recovery of containers for recycling and for reducing litter.^{7,8} They complement producer responsibility programs for other types of packaging.

Most states that have adopted or are considering producer responsibility for packaging laws exclude beverage containers, either because they already have a well-functioning deposit-return system or because they are proposing one in a separate bill, which is the preferred approach.⁹ Support for a separate deposit-return system for beverage containers would reduce SB 222’s complexity and allow it to focus on reducing difficult-to-recycle packaging, and promoting incentives to reduce and redesign packaging to be more recyclable or reusable.

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⁷See the literature review in the Sierra Club’s Guidance on Beverage Containers (2021):

<https://www.sierraclub.org/sites/default/files/Sierra-Club-Beverage-Container-Guidance.pdf>.

⁸ “...there is little evidence that any other program, in and of itself, is nearly as effective as deposit programs at reducing litter rates.” University of Maryland, Environmental Finance Center (EFC). 2011. “2011 Impact Analysis of a Beverage Container Deposit Program in Maryland.” December 15. p.4. Also see Reloop/CRI, *Fact Sheet: Deposit Return Systems Reduce Litter*, January 2021.

⁹See, for example, Beyond Plastics and Just Zero, “[Ten Requirements for Effective Packaging Reduction Policies](#),” (January 2023), #4: “Include a modernized Beverage Deposit Law, a.k.a Bottle Bill: ...deposit return laws are the best example of EPR and the most effective way to handle beverage containers.”