

Testimony in OPPOSITION
to
TN SB 573
in the
Senate Standing Committee on Energy, Agriculture, and Natural Resources

March 6, 2024

The Flexible Packaging Association (FPA) is submitting testimony **in opposition to TN SB 573**, which directs the Department of Environment and Conservation to establish an Extended Producer Responsibility program in the State of Tennessee.

I. Background on FPA & Flexible Packaging

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day—including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. While FPA greatly applauds the progress the authors of this bill have made, we do not believe SB 573 has undergone all the necessary changes to provide Tennesseans with a durable, effective EPR program.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging waste. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single-material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled through store drop-off programs; however, end markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending.

Developing end-of-life solutions for flexible packaging is a work in progress, and FPA is partnering with manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® ReNew® Program; and the Consortium for Waste Circularity. All of these programs seek to increase the collection and recycling of flexible packaging. Increasing the recycled content of new products will not only create markets for the products, but will also serve as a policy driver for the creation of a new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

It is FPA's position that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials and promotion and support of market development for recycled products is an important lever to build that infrastructure. FPA also supports well-crafted EPR that can be used to promote this needed shift in recycling in the U.S. In fact, FPA worked with the Product Stewardship Institute (PSI) and jointly drafted a set of principles to guide EPR for flexible packaging ([FlexPack.org/end-of-packaging-life](https://flexpack.org/end-of-packaging-life)). The dialogue looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity.

It is with this background that FPA provides this testimony to improve the Tennessee extended producer responsibility bill.

II. Producer Definition Requires Technical Correction

As currently drafted, the definition of producer correctly identifies persons who use covered materials for the sale or distribution of a product in Tennessee under the person's own name or brand. Subsequently, licensees of a trademark selling covered materials are identified as producers when the correct language would include licensees selling products that use covered materials. FPA requests that the definition of producer be amended to correctly identify licensees using covered materials in their end products as producers.

III. Producer Responsibility Organizations Require Antitrust Protections

SB 573 requires producers to come together to reduce packaging through product design and program innovations while collectively designing and implementing innovative reuse processes. Anytime competitors are in the same room, they are prohibited by antitrust law from discussing or agreeing on anything to do with price – and strategies impacting market share are central to pricing. FPA and its members request that an antitrust exemption limited to the specific purposes of the producer responsibility organization be included in the legislation in order to avoid a costly legal quagmire when funds would be better spent reclaiming our materials.

IV. Litter Remediation & Prevention Programs Should Be Excluded From EPR

FPA and its members recognize that in Tennessee, up to 88.5 million pieces of litter exist on roadsides at any given time. While this statistic is clearly unsustainable, the Tennessee Department of Transportation has illustrated in its most recent report that despite a staggering \$23 million investment per year, litter has only decreased by an average of 2% per year of the study.¹ FPA and its members strongly believe that a systems-based approach will be more effective at addressing the litter problem and that EPR funds should be directed at infrastructure that prevents our products from being incorrectly disposed of in the first place. For this reason, we request that litter be addressed under separate legislation which would allow the current bill to maintain its focus on developing a robust EPR program. At a minimum, funds should be used for recycling education programs, which can be effective at reducing litter at a significantly lower cost.

¹ Burns & McDonnell, "2022 Tennessee Statewide Litter Study" (Nashville, 2023).

V. Reasonable Costs to Producers

As stated above, FPA and its members support well-crafted EPR that can be used to promote this needed shift in recycling in the United States. SB 573 requires reimbursement of 100% of the “reasonable costs” associated with collection, transportation, processing, and recycling of covered materials. While FPA’s members are wholly committed to addressing plastic pollution, asking producers to potentially pay for Tennessee’s recycling system in full with no maximum payment threshold and no final determination of what a “reasonable cost” may undermine the long-term success of the EPR program. It is likely also to lead to unintended policy consequences along the waste supply chain.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current SB 573 but stands ready to support a future version that creates a strong foundation for a meaningful EPR program for packaging, which would provide the necessary investment in new infrastructure and markets for all packaging, including flexible packaging. In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at (443) 534-3771 or jrichard@flexpack.org.

Respectfully,

A handwritten signature in cursive script that reads "John J. Richard".

John J. Richard
Director, Government Affairs
Flexible Packaging Association