

Testimony in OPPOSITION  
to  
SB 2368  
in the  
Senate Committee on Agriculture and Environment  
and the  
Senate Committee on Health and Human Services  
February 9, 2024

The Flexible Packaging Association (FPA) is submitting testimony **in opposition to SB 2368**, which directs the Department of Health to conduct a statewide recycling needs assessment in the State of Hawaii.

**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. Unfortunately, we do not believe SB 2368 as written will provide a solid foundation for Hawaii's critical 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 other 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 and increasing the recycled content of new products that will not only create markets for the products but will 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 (<https://www.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 HI needs assessment bill in order to support a well-crafted EPR program. A well-crafted EPR program in the state would provide the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow for the collection and recycling of a broader array of today's packaging materials, including flexible packaging; and quality sorting and markets for currently difficult-to-recycle materials.

## **II. Producer Definition**

As currently drafted, there is no definition of "packaging and single-use product producers" within the bill, despite the Department of Health's instruction to coordinate with them. Following other packaging EPR programs throughout the country and internationally, the definition of the producer should be the owner of the item that uses packaging to protect, contain, transport, or serve the item and not the manufacturer (or converter) of the packaging in order for the EPR program to be implementable.

The primary responsibility for fee collection, remittance, and reporting must be on the consumer packaged goods companies (CPGs), which encompasses food manufacturers and retailers in their role as brand owners. They have the ability to track consumer sales in a given jurisdiction and control how products are packaged, not the packaging converters. Packaging manufacturers would have no way to determine where the packaging is sold and even in some cases to what brand or CPG. Packaging converters sell packaging, which may then be used for multiple brands within their portfolio and sold throughout the country. Even when packaging is sold directly to a brand in Hawaii, packaging converters have no way of knowing whether the final product (that uses the packaging) will be sold in or out of the state. Therefore, for an effective EPR program to work, producers must correctly be defined as the entities with the final product sales that use the packaging, in this case brand owners.

While this bill attempts to provide a starting point for an EPR program, the definition of terms cannot be left for agency officials to define on an ad-hoc basis that will likely inform the final EPR program's definition, and thus determine its success. FPA requests a formal definition of producer be included and that manufacturers of flexible packaging be leveraged by the Department of Health in their needs assessment to inform their research.

### **III. Existing Collection Infrastructure & Equity**

FPA strongly agrees with SB 2368's consideration of how extended producer responsibility could increase equity. As stated above, flexible packaging has led the way in reducing environmental impacts, such as energy and water use, greenhouse gas emissions and less packaging weight and waste; it is also significant in increasing food access while preventing food loss and waste.

SB 2368 also directs the Department of Health to examine the critical issue of access to refuse, recycling, and compost collection services. Because many materials recovery facilities have not invested in newer mechanical recycling or advanced recycling technologies, flexible packaging is not often accepted through curbside collection programs. Many stores recognize the benefits of recycling bags and films and host store drop-off programs to combine and add value to their existing "back of the house" programs for products like pallet wrap and shipping materials. In order to get a complete picture of recycling access for plastics, these programs must be considered in the Department's needs assessment.

SB 2368 also directs the Department to examine whether sortation technology is up to date. While sortation is critical to reduce contamination, materials recovery facilities should be comprehensively examined for investments in the latest mechanical and advanced recycling technologies to determine where circularity investments need to be made.

### **IV. Conclusion & Next Steps**

For these reasons, FPA opposes the current SB 2368 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](mailto:jrichard@flexpack.org).

Respectfully,



John J. Richard  
Director, Government Affairs  
Flexible Packaging Association