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AMERIPEN
American Institute for Packaging and the Environment

Testimony
in Opposition to
House Bill 228
Recycling Information on Products

Virginia House of Delegates Labor and Commerce Committee
January 30, 2024

Chair Ward, Vice Chair Herring and members of the Virginia House of Delegates Labor and Commerce Committee.

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to provide testimony on House Bill 228 (Cole) that would ban recyclability claims and labels on product containers and packaging by creating a Virginia-specific recyclable mandate. AMERIPEN supports policies that improve recycling, consumer education and moves materials into circularity. HB 228 will unfortunately result in more – not less – packaging materials going to disposal in Virginia. Additionally, HB 228 sets a negative precedent for all recyclable materials, as it will deprive consumers of useful information about how to recycle packaging. We are therefore opposed to HB 228 as drafted and we urge you to oppose its passage.

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging industry trade association in the United States representing the entire packaging supply chain. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. This includes materials suppliers, packaging manufacturers, consumer packaged goods companies, and end-of-life materials managers. We focus on science and data to support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. We have several member companies with a presence in Virginia, and many more who import packaging materials and products into the state.

Packaging plays a vital role in Virginia, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed, protecting the health and safety of Virginians who consume, use and handle those products. Packaging has value and none of it belongs in landfills, roadsides, or waterways. We need to recover it to be recycled and reused, and no one knows better how to do that than the AMERIPEN members who design, supply, produce, distribute, collect, and process it. They are driving innovation, designing packaging for better environmental performance to boost recycling and evolve the recycling infrastructure.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

HB 228 unfortunately does not meet these principles and we are therefore opposed to it as drafted. Below are critical flaws with the current version of the bill that we believe must be considered regarding recyclability claims and labels on product containers and packaging.

Recyclability Criteria

HB 228, as currently drafted, would restrict the use of recyclability claims and labeling on containers or packaging made of a material that is recyclable under a majority of regional and local waste management plans adopted in the Commonwealth pursuant to § 10.1-1411. The Virginia Waste Management Board would be

required to maintain a list of all materials that are considered recyclable and make that list available on the Virginia Department of Environmental Quality (DEQ) website.

We believe uniform labeling standards are essential to the free flow of interstate and international commerce and support the adoption of the Federal Trade Commission (FTC) Green Guides by states in conjunction with existing state truth-in advertising statutes. We are concerned that it will be very difficult, if not impossible, for manufacturers to comply with the new definition of recyclability proposed in HB 228 to make their products available to consumers in Virginia. Furthermore, the restrictions in HB 228 will not allow manufacturers to communicate with their consumers on how to properly recycle those materials, creating conflict and confusion for consumers and causing less materials to be recycled and manufactured into new packaging and products. More – not less – materials will go to landfill, having a resounding negative impact on the ability of the state to reach its waste diversion goals.

ASTM Resin Identification Code (RIC)

The labeling provisions in the current version of HB 228 are extremely problematic for any producers that follow the ASTM resin identification code (RIC) standard and voluntarily use the How2Recycle labels with the chasing arrows symbol on their products. We believe that HB 228 as currently drafted may prohibit these, and potentially other future, commonly used labels identifying a package or product as recyclable, or other valuable environmental traits, under the FTC Green Guides. The ASTM RIC was developed in 1988 to meet the needs of recyclers and manufacturers for a consistent, uniform resin identification coding system that can be applied worldwide and is currently required in at least 35 state laws – including Virginia. The RIC is not a symbol or statement indicating the packaging or product is recyclable or a direction to consumers to recycle the product or packaging. Originally intended to assist waste recovery facilities in the quality sorting of plastics products prior to recycling, the RIC system has today become a vital foundational tool used by municipalities, scrap brokers, recyclers, manufacturers, consumers, and others for managing the end-of-life of plastics materials.

How2Recycle Labels

HB 228 would likely ban the use of many How2Recycle labels that have become an important and standardized tool in recyclable labeling across the country. How2Recycle is an example of a nationally recognized product labeling system that began in 2008 as a project of the Sustainable Packaging Coalition (SPC). The goal of the How2Recycle label is to reduce consumer confusion with a clear and consistent recycling label and corresponding informational website. The label informs consumers about the proper way to recycle regularly purchased items. Attached to this testimony is information regarding those labels and the positive impacts that they have had on informing consumers and improving packaging design.

Recyclable Materials List

The list to be maintained by the Virginia Waste Management Board of all materials considered recyclable by the majority of local solid waste regional and local waste management plans is not clearly defined and those plans do not require regional and local solid waste entities to clearly indicate what is actually accepted for recycling. Therefore, this provision is likely unimplementable. Furthermore, it is unclear how a container or packaging would be able to be added to the recyclable materials list if there is an increase in its recycling rate if a manufacturer is precluded from making statements regarding the recyclability of the container or packaging.

Conclusion

If Virginia restricts the use of certain recyclability claims and symbols, while other states mandate their use, it will increase consumer confusion, leading to reduced recycling rates and potentially *increased* contamination. We encourage this Committee and other interested stakeholders to engage in further discussions with packaging brand owners and manufacturers on this issue to determine what, if any, labeling language and requirements might be workable within the confines of HB 228.

AMERIPEN recognizes the need to improve recycling and consumer education for many types of packaging and we remain committed to being a partner to find the right path forward to recycle and reuse more packaging materials. However, HB 228 goes beyond a reasonable approach to labeling, and we urge you to **oppose the passage of HB 228**. Please feel free to contact Dan Felton, Executive Director of AMERIPEN at danf@ameripen.org, or Andy Hackman at ahackman@serlinhaley.com for any questions or for stakeholder discussions on the important issue improving recycling of packaging materials. Thank you for your consideration of our comments.