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FOOD INDUSTRY ALLIANCE OF NEW YORK, INC.

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Senate and Assembly Standing Committee on Environmental Conservation Joint Committee Hearing Related to Examining Effective Solutions to Reduce Packaging

October 24, 2023

Chairman Harckham, Chairwoman Glick and respective members of the Senate and Assembly Environmental Conservation Committees, the Food Industry Alliance of New York State which represents the full spectrum of the retail food industry in our state, is appreciative of the opportunity to submit testimony related to the creation of an Extended Producer Responsibility (EPR) program in New York.

First, we wish to express our strong opposition to S.1064, which aims to amend the environmental conservation law and the state finance law to establish an Extended Producer Responsibility (EPR) program for packaging and printed materials as drafted.

Let me begin by emphasizing that the retail industry is fully committed to promoting sustainability and cost-effective solutions to enhance New York's recycling infrastructure. Over the years, we have actively engaged in consumer education initiatives on recycling and have implemented protocols to minimize and reuse packaging materials whenever feasible. We firmly believe that a well-structured EPR program can be beneficial for New York. However, the current proposal lacks the necessary clarity, consistency, and cost-containment measures required for its successful implementation.

First and foremost, it is imperative to recognize that the retail food supply chain operates on a national scale, as was evident during the COVID-19 pandemic. The challenges related to product shortages and delays in availability underscore the interdependence of our industry on policies and procedures adopted by neighboring states. Unfortunately, this legislation fails to acknowledge the complexity of the supply chain and the potential disruptions it could introduce.

The enactment of an EPR mandate without considering the intricacies of the industry's operations may lead to significant delays in the availability of essential consumer goods. Therefore, we recommend that any legislation pertaining to EPR be examined at a national or regional level rather than on a state-by-state basis.

Further, it is essential to clarify the role of the retail industry within the EPR proposal. While the legislation essentially exempts retailers that are not producers, it lacks a clear definition of what constitutes a producer from a retail perspective. As the public facing entity which will be fully impacted by enacting an EPR program in New York, it is crucial to effectively and clearly define the roles and responsibilities of retailers.

Additionally, it must be recognized that in April 2023, the New York State Center for Sustainable Materials Management (CSMM) announced that they would be conducting a statewide needs assessment and gap analysis for New York's recycling program. The complexity and lack of clarity within the legislation being considered highlights the need to allow this process to be completed. FIA recommends

allowing the current third-party needs assessment to not only complete their work, but for it to be discussed and analyzed before enacting any new EPR mandate.

The retail food industry is also concerned that the proposal lacks provisions for cost containment. This is further emphasis of the importance of the ongoing needs assessment process. We are concerned that there is no mechanism in place to delay or modify the implementation of EPR if the program's costs prove to be significant. A recent study conducted by York University in Canada estimated that EPR could result in over \$800 million in annual direct costs to the packaging industry. These increased costs would disproportionately affect low-income households due to their higher consumption of prepackaged goods. This potential impact on vulnerable populations should be a significant consideration in addition to the fiscal effect on the retail food industry overall.

Lastly, the proposed timelines for a complete overhaul of New York's recycling infrastructure within less than five years are unrealistic. It is imperative not to rush the implementation of EPR without first, completing the needs assessment to identify fiscal barriers, and then to establish relevant definitions, account for market changes, and consider both current and potential future economic factors.

The global health crisis underscored the critical role of the retail food industry both locally and globally. In an inflationary environment with rising costs, any hurried implementation of EPR would have far-reaching cost implications for the entire industry, ultimately impacting consumers.

It is also crucial to acknowledge that the grocery industry operates within a financially volatile landscape, with annual increases in operational costs. Operating on a slim profit margin of 1-2%, affordability concerns are very real absent meaningful cost containment provisions. Rushing to enact and implement an EPR program will likely further jeopardize our industry's ability to invest, expand, and continue serving our communities effectively.

The Food Industry Alliance of New York State Inc. would welcome the opportunity to engage in a constructive dialogue to find a solution that accommodates the interests of all stakeholders involved.

Thank you for your time and consideration of our concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. Durant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael P. Durant
President/CEO
Food Industry Alliance of NYS, Inc.