# S.1185-A (Kaminsky)

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| BILL |
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| S.1185-A (Kaminsky) |
| **SUBJECT** |
| Extended Producer Responsibility Act |
| **DATE** |
| February 04, 2021 |
| **OPPOSE** |

The Business Council opposes S.1185-A (Kaminsky), which would establish the Extended Producer Responsibility Act. Functionally, this proposal represents a full-scale paradigm shift in the New York recycling sector and would essentially transfer responsibility for end-of-life management of packaging (carton, glass, metal), paper and plastic products from municipalities to a broad class of "producers" (including manufacturers of, and companies who import and/or sell, products covered by this legislation). An Extended Producer Responsibility (EPR) program of this magnitude and scope is without precedent in the United States, comes at an unknown cost, and will have a significant impact on New York's business community at the same time it attempts to recover from the economic effects of the pandemic.

At the outset, beyond the alarming scope and cost of the proposal, member companies are concerned that there has been no recent discussions regarding the feasibility or practicality of such a broad EPR program. The restructuring of an entire sector of the economy should only be undertaken after extensive stakeholder engagement, multiple regional public hearings and comment periods, cost analysis, and market impact studies. Policy proposals should represent the work product of that due diligence, balancing the interests of stakeholders and the public within an overarching policy framework.

Unfortunately, this legislation does not appear to be a product of a thorough and careful process; rather, it seems to identify a problem and mandates others to fix it.

New York is in a unique position compared to most other states now considering broad producer responsibility mandates. It has a statewide solid waste planning process, first required in 1988, as well as a process for adoption of county-level or multi-county recycling plans. New York has had a statewide requirement for municipal curbside collection and management of material since 1992, and –

importantly – that statutory mandate focuses on materials for which economic markets exist. It has statutory programs to assist municipalities, and businesses, expand markets for recovered secondary material.

Unfortunately, the implementation of this existing legal structure has received inadequate attention for the past decade or more. The state's solid waste management plan has not been updated since 2010, and less than half of New York counties are part of an approved local waste management plan. Over the past decade, New York has dedicated more than $4 billion to support the film industry, but a fraction of that to promote the recovery, source separation, and reuse of secondary materials.

New York already has a legal and operational infrastructure in place for secondary material recovery, and the focus now should be how to make that system work more effectively and efficiently. That approach will take involvement, including financial involvement, of all stakeholders. Additional regulatory mandates on material producers will be part of the approach as well. That process should also evaluate the state's overall recycling strategy. The state currently has three recycling systems in place, at times working at cross purposes: the bottle bill, which removes valuable material streams from the municipal recycling system, mandatory municipal curbside recycling, and several product specific producer responsibility mandates for products (tires, car batteries, rechargeable batteries, paint, mercury-containing products, cell phones) that are not appropriate for municipal curbside recycling. While considered sacrosanct by some advocates – in part due to the revenue it produces for other environmental programs – the state's bottle bill should be part of this reevaluation.

In contrast to a comprehensive review and evaluation of what is working and what is not, under the state's existing framework, this legislation simply shifts the entire financial and operational responsibility for the collection, source separation and marketing of post-consumer secondary materials to the private sector.

To demonstrate the scope of this proposal, this bill requires producers to form or join not-for-profit organizations designed to facilitate the end-of-life management of three broad categories of products:

1. *Packaging*, meaning any part of a container or package (whether recyclable or compostable) that is sold or distributed anywhere in the state. This term includes flexible foam, rigid material, paper, plastic, metal and/or glass.
2. *Paper*, which includes virtually every kind and form (except books).

3. *Plastics*, which includes any product containing a form of plastic as determined by the state Department of Environmental Conservation (DEC). The bill – intentionally or not – includes plastics used in clothing, construction, medical and laboratory supplies, electronics, toys, automotive equipment, food packaging, eyewear, building fixtures, and impact-resistant material.

The Producer Responsibility Organizations (PRO) formed under this bill must offer collection services "as convenient" as current recycling schemes to all single and multi-family residential units, schools, state & local government agencies, institutions operated by municipalities, and private entities. In other words, not only are PROs responsible for routes, plans, infrastructure, and business models, but the resulting program must be implemented so rapidly and efficiently that the transition from existing structures to those envisioned by this bill be effectuated without disruption. Considering the short time allowed for implementation, it is likely that PROs will utilize existing infrastructure currently maintained and operated by municipalities and private haulers. Traditionally, EPR programs allow the costs of processing and disposal to be incorporated into the total cost of a product. Public recycling programs are funded through tax revenue, while private haulers are paid directly by their customers. However this bill, in what can only be characterized as language hostile to business, prohibits any point-of-sale or other fee to be used to recover the cost of end-of-life product management. In doing so, this bill attempts to camouflage the true cost of this program from New Yorkers, as there is no doubt that consumers will bear the ultimate cost of this program through increased prices of goods and services they purchase.

Further, this bill requires EPR implementation on an aggressive, and potentially unworkable, timetable. Within one (1) year of enactment, covered producers must join or form a PRO, develop and submit a producer responsibility plan to DEC for approval. The plan must include:

- a comprehensive list of covered materials for which the PRO is responsible. Without additional context, this language suggests that countless PROs could be required to capture the dozens of product categories referenced in this bill that would require end-of-life management. Ostensibly, a determination of whether a product is 'readily recyclable', meaning that a recycling market currently exists for a given product, would be made by DEC during the plan approval phase.
- a reimbursement structure for the utilization of municipal services that includes operational and capital activity-based costs associated with

administrative, sorting, collection, transportation, public education, and processing costs.

- a detailed description of outreach efforts to “stakeholders”, meaning municipalities, haulers, material recovery facilities and processors. Stakeholders can review and comment on the draft plan, and the PRO must include in its final submission a summary of comments and proposed changes and reasons why the proposed changes were ultimately not included in the final plan.
- a minimum post-consumer recycled material content rate and a minimum recycling rate for covered materials. While certainly an attempt to achieve design modifications, certain products require virgin material to achieve desired characteristics (e.g., transparency). Within one (1) year of plan approval, producers will have to meet minimum post-consumer recycled material content rate and recycling rates.
- a description of how the PRO will invest in reuse and recycling infrastructure in the state which, depending on municipal infrastructure utilization, could mean investments and upgrades in publicly owned facilities.

The cost for this program would be significant for the affected sectors, especially because of the COVID-19 pandemic. Manufacturing and supply chains are under greater economic pressures related to production, employment, and workplace protections. Companies are already being challenged to make their supply chains more resilient without weakening their competitiveness. This legislation adds on to the already significant costs associated with doing business, ranging from transportation to inventory, and threatens their existence.

For example, New York manufacturers are still evaluating how CLCPA implementation will affect their in-state operations, and considering what product, equipment, operation and employee changes will be necessary to manage reduced access to natural gas, further mandatory reductions in carbon emissions, and the electrification of most if not all in-state functions. No doubt, one result of CLCPA implementation will be to accelerate the obsolescence of existing equipment, processes and products. Under this legislation, these same manufacturers will have to consider similar impacts driven by mandates for recyclability of products, mandatory recycled content of productions, and new assessments on their business operations.

EPR programs usually induce consumers to take accountability for their part in waste reduction. Currently, the responsibility from recycling comes from an individual’s role as a taxpayer, not a consumer. The public has no real incentive in reducing its consumption of materials or considering the environment. If this bill is aimed at improving recycling and taking steps toward a circular economy, this is not it. EPR initiatives usually establish systems where consumers pay directly into waste management through the price of the products they purchase. This bill prohibits any “point-of-sale or any fee to consumers to recoup the costs of meeting producer obligations,” which in essence would take away any incentive for consumers to purchase eco-friendly goods.

The Business Council represents more than 2,300 businesses across the state, serves as an advocate for employers, and endeavors to achieve a robust business climate, economic growth, and jobs. Legislation that would seek to reorganize an entire sector, at a time when access to elected officials is limited and the state’s economy is reeling from the effects of COVID-19, and without meaningful input from either affected stakeholders or the public could produce several unintended and significant consequences.

We and our members stand ready, willing, and able to work with the state legislature to improve the state’s secondary material recycling programs. However, we strongly oppose this legislation as proposed. The Business Council recommends a more measured response, fully informed by an evaluation of the state’s existing recycling programs, undertaken gradually and in a responsive, result-oriented fashion.