DAVID Y. IGE GOVERNOR OF HAWAII



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Testimony COMMENTING on HB1646 RELATING TO THE ENVIRONMENT

REPRESENTATIVE NICOLE E. LOWEN, CHAIR
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Hearing Date: 2/3/2022 Room Number: Via Videoconference

- 1 Fiscal Implications: Costs to implement this measure will impact the priorities identified in the
- 2 Governor's Executive Budget Request for the Department of Health's (Department)
- 3 appropriations and personnel priorities. The Department estimates that one enforcement position
- 4 should be established and funded annually to implement this proposal, and funding will be
- 5 necessary to develop a material characterization study.
- 6 **Department Testimony:** HB1646 prohibits the sale or distribution of consumer goods with
- 7 deceptive claims about the recyclability of the product; establishes recyclability standards in the
- 8 State; requires the Department to conduct a material characterization study on recyclable
- 9 materials; and prohibits the sale of products labeled as compostable or biodegradable unless the
- 10 product meets compostable or biodegradable standards.

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- The Department recognizes that without defined standards, products labelled as recyclable might not actually be recyclable and can negatively impact the recycling process by introducing contamination. Establishing standards and prohibiting the sale of products that claim to be recyclable but do not meet the standards may improve the process of collecting and recycling products in the State.
- However, the Department respectfully offers comments about the impact HB1646 may have on the State's consumers, specifically as it relates to similar legislation recently enacted in the State of California. If a product qualifies as a recyclable product in California, but ultimately does not meet the recyclability standards in Hawaii, a producer may elect to forego Hawaii's

- 1 market in lieu of printing specific labels or increase prices for Hawaii-specific labels.
- 2 Additionally, market factors play a prominent role in what is considered recyclable in the State.
- 3 For example, low-density polyethylene (LDPE) plastic can be recycled but the value for local
- 4 facilities has traditionally been just enough to cover transportation costs to out-of-state recyclers.
- 5 Last year, it cost local facilities \$0.05/lb. plus transportation costs to recycle LDPE plastic but a
- 6 statewide recyclability standard may determine that LDPE plastic is recyclable and potentially
- 7 impact the ability of local facilities to operate.

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The Department estimates that implementing HB1646 in its entirety will require the establishment and funding of one new position to enforce HB1646. This position would receive complaints and inspect products with nonconforming labels and conduct enforcement actions on producers violating the labeling standards. In addition to enforcement, the position would also conduct education and outreach efforts to inform the public and the affected business community about what can and cannot be recycled. The Department estimates that it will cost no more than \$500,000 and take approximately two years to complete a statewide material characterization study, from procurement, to contracting, to study development and completion.

The Department respectfully requests that a material characterization study be conducted first to ascertain what material types and forms are recovered and not considered contaminants by State facilities, and other relevant information about material types and forms that are collected, sorted, sold, or transferred by State solid waste facilities. The Department believes that the information ascertained from the material characterization study can better inform the Legislature when addressing recyclability and labeling standards.

Offered Amendments: None

Thank you for the opportunity to testify on this measure.

TO: Committee on Energy & Environmental Protection

FROM: Adrian Hong, President of Island Plastic Bags, Inc.

RE: HB 1646 Relating to Recycling

POSITION: COMMENTS

Thank you for the opportunity to submit comments on HB 1646. My name is Adrian Hong and I am the president of Island Plastic Bags Inc. (IPB), a second-generation, family business in Halawa Valley that manufactures plastic trash liners and recycles plastic scraps. The company supports the intent of this bill but would request a couple of changes to the language of the bill.

The company believes that products should be allowed to be marketed as biodegradable if they have scientific evidence that the products do in fact biodegrade when they are disposed of. The fact that there is no industry standard for biodegradation like there is for composability should not prevent companies from designing and selling more environmentally friendly products. The department should be given the discretion to review scientific evidence surrounding a biodegradable product and decide whether it can be marketed in Hawaii as such.

The City and County of Honolulu's Department of Environmental Services uses certification by the USDA BioPreferred® Program to determine if a product is in compliance with Bill 40 (Ordinance 19-30). The company requests that if a product has this certification that the product be allowed to use the label compostable on it.

Should you have any questions or comments about my testimony you can contact me by email at ahong@islandplasticbags.com or by phone at 808-484-4046.

Sincerely,

Adrian K. Hong, CPA*

President

Island Plastic Bags, Inc.

www.islandplasticbags.com

Email: ahong@islandplasticbags.com|Phone: 808-484-4046 |Fax: 808-488-8505

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February 2, 2022

Representative Nicole E. Lowen, Chair House Committee on Energy and Environmental Protection Conference Room 325 State Capitol 415 South Beretania Street

RE: HB 1646 – Regarding the recyclability of a product or packaging.

Dear Chair Lowen:

The Association of Home Appliance Manufacturers (AHAM) respectfully submit the following comments on HB 1646

AHAM represents more than 150 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

In Hawaii, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to Hawaii is \$2.95.2 million, more than 1,070 direct jobs and 1,120 indirect jobs, \$68.8 million in state tax revenue and more than \$100.4 million in wages.

AHAM agrees with and supports the premise of HB 1646 and that claims related to the recyclability of a plastic product be truthful and consumers deserve accurate and useful information related to how to properly handle the end of life of a plastic product. Despite our concurrence with the legislation's intent, we respectfully oppose HB 1646 for the reasons stated below.

Most importantly, HB 1646 conflicts with requirements of dozens of jurisdictions that require recyclability labels, such as the "chasing arrows" symbol. This is of particular concern to AHAM because as we read HB 1646, it would apply to products as well as packaging. The European Union's Directive on Waste from Electrical and Electronic Equipment (WEEE), for example, requires labeling that may not be consistent with HB 1646. There are dozens of jurisdictions that require the "chasing arrows" symbol on plastic material. The potential for confusion and disruption caused by HB 1646 is significant in instances where labeling is required in one jurisdiction on material that Hawaii does not deem recyclable.

The ASTM Resin Identification Code (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. Originally, it was intended to assist waste recovery facilities in the quality sorting of plastics products before 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. The RIC is not a symbol or statement indicating the product or product is recyclable or a direction to consumers to recycle the product or packaging, though it is often conflated as that.

AHAM recommends that HB 1646 include a provision expressly states that a resin identification code that complies with Business and Professions Code § 18015 is not a "symbol or statement indicating the product or product is recyclable" or a direction to consumers to recycle the product or packaging.

The Federal Trade Commission's Green Guides are designed to help companies and marketers avoid making environmental claims that mislead consumers. The Green Guides were first issued in 1992 and were revised in 1996, 1998, and 2012. The national standard in the area of environmental marketing, the Green Guides, provides guidance in the following areas: 1) general principles that apply to all environmental marketing claims, 2) how consumers are likely to interpret particular claims and how marketers can substantiate these claims, and 3) how marketers can qualify their claims to avoid deceiving consumers. National uniformity for labeling requirements is an important tool to help avoid additional consumer confusion and ensure the supply chain is not unnecessarily disrupted because of a patchwork of regulations.

The proposal would benefit from some clarity as to its applicability. Specifically, legislative findings state that it is the public policy of the state that claims related to the recyclability of plastic be truthful and accurate. However, other places in the bill appear to leave the door open to apply the provisions of HB 1646 to materials such as glass and paper.

Finally, the recordkeeping requirements are extremely broad and unnecessarily burdensome to companies, especially the smaller ones. As currently drafted, HB 1646 allows any member of the public the information and documentation required to substantiate a business's claims. Not only is the amount of documentation potentially voluminous, but there is also no limit on how many members of the public can ask for this information. A company could receive tens of thousands of requests for the same data essentially shutting down a business to meet the public demands. Limits should be placed on the type of data that has to be provided and the requests should only be permitted from Department as the entity responsible for enforcing the statute.

AHAM appreciates the opportunity to submit these comments on HB 1646 and would be glad to discuss these matters in more detail should you so request.

Respectfully submitted,

Jacob Cassady

Director, Government Relations



Written Testimony of David Thorp, American Beverage Association

Before the House Committee on Energy & Environmental Protection Comments on H.B. 1646: Relating to the Environment February 3, 2022

Good morning Chair Lowen, Vice Chair Marten and members of the committee. Thank you for the opportunity to provide comments on H.B. 1646 – relating to the environment.

I am David Thorp, Vice President, State Government Affairs West for the American Beverage Association (ABA). The American Beverage Association is the trade association representing the non-alcoholic beverage industry across the country and here in Hawaii.

ABA's member companies share a strong commitment to the environmental sustainability of their products and packaging. They sell virtually 100% recyclable packaging that has high market value, something that is critically important in the current recycling market.

While we support the objective of the legislation to improve recycling, we are concerned that products could be deemed to have a deceptive or misleading claim solely by a determination of the Department of Health as to whether the product or packaging is recyclable.

Instead of using a national uniform labeling standard, H.B. 1646 would create a state-specific standard for what is recycled and recyclable. This would lead to a state-specific labeling standard for a term like recyclable that would be unworkable for businesses that market and sell products at a national level.

At a time when supply chains are stretched and companies are having to transport products from across the country to meet the needs of consumers, this additional requirement would add complexity to businesses and further impact product availability without fully achieving our mutual goal of supporting increased recycling.

Sincerely,

David Thorp

David Thorp American Beverage Association Vice President, State Government Affairs West

Submitted on: 2/2/2022 8:28:22 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christopher Finarelli	The Household & Commercial Products Association	Oppose	Yes

Comments:

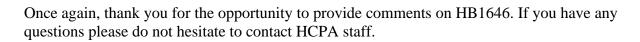
Dear Chair Lowen and Honorable Committee Members:

Thank you for the opportunity to provide testimony on HB1646 relative to recyclability claims. HCPA respectfully opposes HB1646.

The Household & Commercial Products Association (HCPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally including in the State of Washington. Products HCPA represents include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for home, lawn and garden, and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

Last year California adopted SB343, legislation similar to HB1646 establishing standards for recyclability claims on product packaging. Businesses under scope of the new California law are still learning how to comply its requirments, and recycling standards may not be clear until 2024. Meanwhile, states such as Washington and Oregon are currently considering similar proposals. A common thread between these proposals is that they are based on state recycling rates, and thereby setting the stage for a patchwork of standards across the country. Changes to labeling in of itself is a costly exercise, but importantly companies are not able to make state-specific labels on consumer products. Furthermore, different standards on a state-by- state basis could lead to consumer confusion and contamination in the recycling stream.

Finally, many producers are striving to include recycled content in their products and the need for more recovery of materials is important in that process. Recycling labels are an important tool to encourage recycling and under this bill its unclear if products – even if they are recyclable – will meet the standard of the bill. Any program restricting recycling claims should provide some opportunity to communicate local recycling opportunities for products such as a website or QR code. Under this proposal even these forms of communication would be prohibited.



Sincerely,

Christopher Finarelli

Director, State Government Relations & Public Policy - Western Region

Submitted on: 2/2/2022 8:34:52 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jennifer Navarra	Zero Waste Hawai'i Island	Support	No

Comments:

House Representatives,

Placing chasing arrows on plastic packaging is a deceptive strategy industry has been using for decades causing confusion among consumers, leading to high contamination rates of unrecyclable/or low grade material into the recycling stream, and giving consumers the false impression that their packaging was being recycled when it was not. Truth in labeling is a logical step in the right direction and as California has already passed this legislation, Hawaii can easily fly on the coattails of a state with a much bigger economy and more sway.

Essentially #1 and #2 plastic containers that are jugs, bottles and jars are recyclable; while all the other flimsy #1 plastic that much of our prepared foods (bakery items, sushi/bento box etc.) are not recyclable. Polypropylene (#5 plastic), which yogurt and plastic takeout clam shells typically comes in, is also not easily recyclable (although new technologies are being developed).

Lets pass this law and be clear to consumers about which plastics are, and are not recyclable and stop using items that are not recyclable.

Jennifer Navarra Coordinator Zero Waste Hawai'i Island

Submitted on: 2/2/2022 9:02:29 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Suzanne Frazer	B.E.A.C.H.	Support	Yes

Comments:

B.E.A.C.H. has long supported banning false and misleading environmental claims on plastic.

We offer the following amendments: - on page 7 number (4) change to a square rather than a triangle and in (g) do not allow mulching of plastic film. Plastic does not biodegradable, mulch or dissolve. It would also be good to include pods in this bill as they have deceptive claims of "dissolving" in washing machines and dishwashers - instead they clog them up and cause harm to the environment as the chemicals in the plastic kill fish.



February 2, 2022

To: The Honorable Nicole Lowen, Chair

Members, House Committee on Energy and Environmental Protection

From: Tim Shestek

Senior Director, State Affairs

Re: HB 1646 – Comments

The American Chemistry Council (ACC) would like to offer the following comments on HB 1646, legislation that creates new criteria for when products and packaging can make claims of "recyclability" and/or "compostability." Though ACC supports the intent of this legislation, we do have concerns with several provisions in the current draft, including the requirement that products and/or packaging must meet a 75% recycling rate to be considered "recyclable."

The 75% threshold is extremely ambitious, and most material types are likely to struggle to meet that threshold. Even under California's decades old bottle deposit program, only aluminum has a recycling rate above 75% (latest figures are at 76%). Producers that cannot label their products or packaging as recyclable due to unrealistic criteria are placed in an untenable position. If new labeling requirements are established, a fresh look at the entire recycling system is also warranted.

To that end, ACC and its member companies support a variety of policies that aim to reduce plastic waste in the environment, increase the collection and processing of plastic material and create new market demand for recovered plastics. We have established industry targets that 100% of plastic packaging be recyclable or recoverable by 2030 and that plastic packaging contain a minimum of 30% post-consumer recycled material by that same date.

In addition, efforts to modernize and expand the nation's recycling infrastructure have significantly increased. In the last three years, 64 projects in mechanical and advanced recycling² in the U.S have been announced, valued at \$6 billion. Together, these projects have the potential to divert approximately 8.9 billion pounds of waste from landfills each year.

ACC also believes an effective EPR system for consumer packaging can improve the collection and recycling of packaging materials. At its core, an EPR system should do the following:

Improve the recycling system overall by increasing access and modernizing the collection of all materials, including metals, paper, glass, and plastic.

- Increase the types and volumes of materials that are currently recycled through increased access, collection and sortation infrastructure investment.
- Improve education for consumers and residents to increase participation and reduce confusion and contamination.
- Encourage new business initiatives and entrepreneurs focused on developing local solutions that promote circularity.



¹ https://www2.calrecycle.ca.gov/Docs/Web/119868

² https://www.americanchemistry.com/better-policy-regulation/plastics/advanced-recycling

Provide funding to help improve recycling access, collection, sorting and outreach by investing all money collected through fees on consumer-packaged goods back into the system.

- Companies that manufacture consumer packaged goods could provide additional resources to support existing government and subscriber funding to improve recovery and recycling for all packaging materials.
- All packaging materials should be covered by the program to ensure specific packaging does not disproportionately shoulder the funding support required for the overall system.
- Funds collected through the program should be reinvested solely to help expand efficient collection and sorting and enable recycling systems, while capitalizing on existing infrastructure.
- Systems should provide disincentives to landfilling waste with the objective of encouraging recycling.

Consider and incentivize the use of packaging materials with better environmental performance.

- Recognize key sustainability attributes such as source reduction, weight, energy and water use, greenhouse gas emissions and food waste reduction.
- Consider the circularity traits of all materials such as recycled content, recyclability and composting.
- Support initiatives that use environmentally sustainable recycling technologies and packaging.

Support innovation in recycling technologies via the private and public sectors to ensure more used plastic is reused and not treated as waste.

- Support a competitive marketplace for increased investment in improved sortation and mechanical recycling.
- Recognize the role of advanced recycling in recovering more plastic waste and in producing recycled plastics and other recycled products.

Maintain and promote a competitive, free market approach to strengthen manufacturing supply chains and to develop recycling infrastructure and new circular markets for recycled plastics through appropriate collaboration across the plastics value chain.

- Maintain the important roles of local government and waste management companies, including operation and management of community and municipal waste management programs to avoid single-source providers and stranded assets.
- Allow companies to freely compete for materials.
- Allow use of new technologies and processes for materials to be remanufactured into new products.
- Reward efficiency and innovation and, where possible, help build on existing infrastructure.

Packaging and products that are part of an EPR system should be able to label their products/packaging as recyclable. Should HB 1646 move forward, ACC encourages the committee to engage in further dialogue with producers, material suppliers, packaging producers, waste industry representatives, environmental organizations, local governments, and other stakeholders to discuss crafting an EPR program that is efficient, effective and implementable. ACC looks forward to being part of such a discussion.

If you have any questions, please do not hesitate to contact me at 916-448-2581 or via email at tim_shestek@americanchemistry.com. You may also contact ACC's Hawaii based representative Ross Yamasaki at 808-531-4551 or via email at ryamasaki@808cch.com

Submitted on: 2/2/2022 11:07:24 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Requested
Lauren Blickley	Surfrider Foundation	Support	No

Comments:

Surfrider Foundation strongly supports HB1646. California recently passed a similar law to ensure that only products actually recyclable in the state can include the recycling arrows on their labels. We need to minimize the amount of contamination going into our recycling streams, and this bill is an important step towards that goal.

Submitted on: 2/1/2022 2:33:04 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

The Department of Health Needs to be Remove from this process.

The Government Needs to be Remove from the Reciycling process completlly!

Submitted on: 2/1/2022 8:33:04 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Barry	Individual	Support	No

Comments:

Aloha,

This Bill will protect our environment.

Mahalo,

Barbara Barry

Submitted on: 2/2/2022 2:52:31 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Cara Oba	Individual	Support	No

Comments:

Representatives of the Energy and Environmental Protection Committee,

This bill would address a very long-standing issue in which the plastics industry has controlled the discussion and has left consumers confused and consuming more virgin plastics due to the ambiguity of plastics' end-of-life processing. Plastics degrade when exposed in our tropical environment to release methane and form microplastics which are harmful to the climate and environment. These plastics migrate around the world and has been found in the most remote locations of the planet and can be found in animals and ourselves. Plastics are also landfilled or incinerated which produces toxic ash that also needs to be landfilled and gases that need to be captured. How much of it is actually recycled or composted is a giant unknown. We should be seeking to minimize the production and consumption of virgin plastics but we cannot do so if consumers are unaware of plastics' true lifecycle for our community.

I appreciate this bill's effort to clearly redefine what is or isn't recycleable or compostable and provide visibility into our waste management processes and standards that force a transparency and accountability about any recycling claims.

If Hawai'i can pass this bill, I think communities in other states and nations would be inspired by this act of agency. I have had the opportunity to hear from others from around the world about the impact of plastic waste and pollution in their communities and it is quite dire. Unmanaged waste has significant impacts on ecosystems, public health and quality of life. Proliferation of plastics has exacerbated issues of social inequity and climate justice. As the fossil fuel industry pivots to increase plastic production, now is the time to educate ourselves so we can articulate what our community can manage and how we want to manage it.

Thank you for allowing me to share my thoughts.

Submitted on: 2/2/2022 7:56:16 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sanne Berrig	Individual	Support	No

Comments:

Testifying as a private citizen who works in the landfill diversion sector on Hawai'i Island, I support this bill.

Counties are burdened with end of life management of materials that have been manufactured by industry who can and many times do print ANY claim on its packaging / body.

This not only confuses the consumer, it also contaminates collected materials, creating even more barriers for successful materials management.

Mahalo,

Sanne Berrig

Submitted on: 2/2/2022 8:20:13 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Georjean Adams	Individual	Comments	No

Comments:

FTC Green Guides are the most effective way to set nationally practical standards for environmental marketing claims regarding recyclability. It would be good to identify and publish for the public and manufacturers what the reyclability capabilities are in the state and counties and have funds to do such studies. More importantly, when state and county laws direct the use of "compostable" or "biodegradable" packaging and serveware such capabilities must be reasonably available so that distributors/vendors can actually meet FTC Green Guides (ie, collection and treatment facilities exist).

<u>HB-1646</u> Submitted on: 2/2/2022 8:56:53 AM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ted Bohlen	Individual	Support	No

Comments:

Support

Submitted on: 2/2/2022 1:37:25 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kaila	Individual	Support	No

Comments:

Aloha!!

I support the prohibition of consumer goods that lie about recyclability of the product and how the packaging is made. In order to combate waste we need companies to stop green washing their products.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

HB-1646

Submitted on: 2/2/2022 1:50:59 PM

Testimony for EEP on 2/3/2022 9:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
shantee brown	Individual	Support	No

Comments:

i support HB1646