

Katie Jacoy
Western Counsel
WINE INSTITUTE
31 West Road
Tacoma, Washington 98406
Cell phone: (360) 790-5729
kjacoy@wineinstitute.org



**Senate Committee on Energy and Environment
Testimony in Opposition to SB 582 -1
February 23, 2021**

Wine Institute is a public policy association representing 1,000 California wineries and associate members. The California wine industry is committed to sustainability with an impressive 80% of California's total wine production certified under a statewide sustainability program. The sustainability program encourages use of products with recycled content, reusability, takeback or recyclable packaging, and non-toxic materials. Wine Institute is committed to participating in discussions regarding the develop of efficient, cost effective means for handling wine packaging. While we support the objective of recovering more wine packaging, this bill is problematic in approach and costs.

We are opposed to SB 582 -1 Amendment, shifting the full costs of Oregon's recycling system for wine packaging to a mandatory producer responsibility organization (PRO). The bill shifts all the costs without granting the PRO autonomy to run a program efficiently. There is costly, uncontrolled government oversight and involvement in every step of the recycling process and the PRO must foot the bill. In the end, the hefty government price tag for modernizing the recycling system will be passed along to Oregon consumers in higher prices and potentially less selection. This proposal provides no shared responsibility to encourage consumers to be good stewards of the packaging, crucial to a healthy recycling system.

When looking globally, this attempt to implement an extended producer responsibility (EPR) program is flawed in that it lacks many of the elements typical in successful EPR programs. We will briefly discuss some of the ways this proposal deviates.

1) KEY ELEMENT: Industry-run program with minimal government involvement

It is most efficient for a PRO to have autonomy to decide all issues relating to the recovery and recycling of the materials they are to cover. A state's involvement should be limited to approving an initial plan, reviewing annual compliance audit reports, and 5-year review of the plan.

SB 582 -1 Amendment proposes a program with excessive government involvement throughout the process, including regulatory activity by the Environmental Quality Commission (EQC), Department of Environmental Quality (DEQ), local governments, New Coordinating Body to be established by EQC rule to coordinate between multiple PROs, New Oregon Recycling System Advisory Council (ORSAC) appointed by the Governor with only two producers out of fifteen members.

The bill also requires the PRO to do costly reporting and other activities outside the primary mission of running the recycling system. Here is a sampling of the regulatory-type obligations imposed on the PRO:

- Make available on its website and update once per month a searchable registry of compliant members and the identity of members currently not in compliance with the Act (Sec. 4(6));
- Ensure that each member pays its fee and produces necessary records (Sec. 4(8));
- Determine whether a producer is in violation of the product labeling rules and not register producers who are in violation (Sec. 4(9));
- If DEQ approves more than one PRO, the PRO must establish a coordinating body and submit a coordination plan for DEQ approval (Sec. 4(7));
- Draft and submit a detailed Program Plan and Plan amends until DEQ is satisfied (Sec. 6 & 7);
- Not less than once per month provide written notice to DEQ of any change to the Plan in the preceding month; (Sec. 10(2));
- Annual report to DEQ (Sec.12(1)); Revise report after comments for DEQ, ORSAC & the public (Sec. 12 (4));
- Each calendar quarter, provide a materials disposition report (Sec. 12(6));
- Develop education resources and promotional campaigns in consultation with ORSAC and provide local governments opportunity to review and comment (Sec. 14(1)). These education materials must be approved by DEQ (Sec. 14(8)); and
- Establish and implement a program to clean up and prevent litter and marine debris (Sec. 16).

2) KEY ELEMENT: No or minimal fees paid to the government

The fees that producer members pay to a PRO should be used for the core mission of recycling covered products; they should not be paid to government. Since this bill proposes excessive government involvement, it also imposes unlimited fees on the PRO to pay for all the oversight, additional programs, grants, educational materials, and promotional activity that are ancillary to the primary function of the PRO. The bill requires a PRO to fund all costs associated with the producer responsibility program, including but not limited to:

- Fees paid to the State to cover the costs of administering, implementing and enforcing the Act, including special studies and rulemaking. This includes multiple fees: a one-time fee for reviewing the Plan; a fixed one-time fee for reviewing a Plan amendment; as well as an annual fee for DEQ's administrative expenses. All to be paid in advance based on notification to the PRO on or about September 1st each year. (Sec. 31)
- Fee paid to the State to cover the waste prevention and reuse program developed by DEQ to reduce life cycle impact of covered products. This includes unrestricted grants and loans to public bodies, tribal governments nonprofit organizations and in some instances, private organizations. (Sec. 32)
- Fund at least once per calendar year the development and distribution of education resources and promotional campaigns in consultation with ORSAC, local governments, and approved by DEQ. This includes media channels such as print publications, radio, television, internet and online streaming services. Educational resources must be updated no later than four months after DEQ makes changes to the uniform statewide collection list. (Sec. 14 (7) & (9))

- Fund litter & marine debris cleanup and prevention which must include a minimum of \$10 million per year in grants, direct payments and research. This is in addition to PRO expenditures for administration of the grants, payments or research. EQC will annually adjust the minimum expenditure based on the change in the CPI. (Sec 16);
- Payment of a contamination management fee to commingled recycling processing facilities to compensate the facilities for costs of removing and disposing of contaminated products. The fee will be determined by a study contracted for by EQC and paid no more frequently than once per month. DEQ can review the fee once per year. (Sec 24);
- Payment of a processor commodity risk fee to be set and periodically revised by EQC to be paid to commingled recycling processing facilities to ensure that producers share in the costs of fully processing commingle recyclables from Oregon (Sec. 25);
- Payment of a compost facility contamination management fee to be set and periodically revised by EQC to compost facilities to compensate facilities for the costs of removing and disposing of covered products that are contaminants. The fee will be determined by a study contracted for by EQC and paid no more frequently than once per month. DEQ can review the fee once per year. (Sec. 26);
- Fund or reimburse the eligible expenses of a local government or their service provider, including costs associated with other recycling system improvements for covered products as determined by EQC by rule. (Sec. 13)

3) KEY ELEMENT: Predictable fees so producers can make business decisions

Businesses need to be able to calculate the cost of doing business in order to make choices on where and how to efficiently expend resources and sell products. Any fee paid by producers to be part of a PRO should be easily calculated by the producer.

There is nothing certain or easily calculated in this proposal. The PRO must establish a schedule of fees to be paid by members that is sufficient to meet the financial obligations of the PRO. The PRO faces significant uncertainty in estimating how much the costs will be to provide the required service and pay for all the regulatory activity described above.

The manner by which the PRO establishes fees to pass the costs on to member producers is also too complicated and subjective to allow a producer to comfortably estimate its costs:

- Unspecified base fee to be multiplied by the total amount of covered products sold or distributed in the state;
- Additional unspecified base fee for covered products that have higher costs associated with their recovery;
- Additional unspecified base fee for covered products that are not recoverable;
- Incentives such as fee adjustments up or down based on environmental impact; and
- Unspecified uniform fees for members that have a gross revenue of less than \$5 million or sold in Oregon less than 5 metric tons of covered product in the most recent calendar year.

A more predictable way to calculate a producer's fee would be a per item amount. In that way, the money raised that goes to the PRO for financing the systems that work towards collection and recycling reflects the volume sold into the state. That methodology allows producers to come up with reasonable estimates of the fee based on historical numbers and forecasting. It ensures a logical relationship between the money raised and spent to collect the containers and the actual containers sold into that market.

The layers of fees proposed in this bill are rolled up into the ultimate fee paid by a member producer to the PRO. Whatever this fee is will surely be passed onto the consumers of their products. Wineries have been battered by a perfect storm - COVID-19 related tasting room

restrictions and closures, unprecedented wildfires and tariffs. The losses to the US wine industry due to COVID in 2020 are estimated to be \$1.4 billion with an additional \$3.7 billion, including lost future sales, due to the devastating wildfires. Wineries are not in the position to absorb any additional cost, so any increase in the cost of doing business will be passed onto their Oregon consumers.

4) KEY ELEMENT: Shared responsibility between the producer and the consumer

A shared responsibility between producers and consumers is a common feature of successful EPR programs. Producers pay a membership fee to a PRO. Consumer responsibility can take various forms, such as:

- “Pay as you throw” waste policies, which charge the consumer for garbage collection and hauling by weight. This incentivizes the consumer to recycle as much as possible to reduce their garbage bill;
- “Tipping fees” so it is not cheaper to landfill than to recycle. If the tipping fees go up or there are penalties to waste companies for attempting to landfill recyclables, the waste companies will raise rates, also incentivizing consumers to recycle as much material as possible;
- Paying a non-refundable “eco fee” or “container recycling fee” at the time of purchase; or
- Consumers’ additional labor to separate out the materials into various bins to keep recyclable materials from contaminating each other.

This bill fails to incorporate any such consumer responsibility initiatives.

For these reasons, Wine Institute urges you not to move this bill. Broader stakeholder discussions regarding the best way to modernize the recycling system in Oregon are necessary before deciding to burden wineries and other producers with the total cost and responsibility for the system.