

All Wrapped Up

Extended Producer Responsibility for Packaging

April 2025 Newsletter

In this month's edition of *All Wrapped Up*, we discuss the start of an 18-month clock for California producers to revisit their use of the chasing arrows symbol on products and packaging; the "at least" 8-month timeline for the revised SB 54 rulemaking; the Colorado Addendum to the Participant Producer Agreement; the kickoff meeting of the Massachusetts EPR Commission; and continued momentum for EPR in Maryland and Washington, which would make for a historic year in U.S. EPR packaging law. We also take a deeper dive – in our *Issue in Focus* section – into why everyone seems to like Minnesota's EPR law.



April 2025 State-By-State Updates

California

Colorado

Illinois (needs assessment only)

Maine

Maryland

Massachusetts (needs assessment only)

Minnesota

Oregon

Washington

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Issue In Focus: The Minnesota Model

Minnesota's EPR packaging law has been recognized by many stakeholders as a model for other states developing their own EPR legislation. Maryland Senator Malcolm Augustine, sponsor of Maryland SB 901, remarked: "We learned from other states, particularly leaning on Minnesota as a framework, but then we tailored it to our unique status here in Maryland and informed by the needs assessment." Sarah Price of the Maryland Retailers Alliance stated: "We do appreciate the direction that it has taken, because the retail industry generally does prefer the Minnesota model." Similarly, Andrew Hackman of AMERIPEN noted that Maryland's bill reflects "a lot of compromise that [also] happened in Minnesota last year."

The influence of Minnesota's law, however, extends beyond Maryland. Washington SB 5284 also received industry support due to its alignment with Minnesota's approach. Amy Ockerlander, President of the Association of Washington Cities, commented: "The recycling reform act mirrors Minnesota's EPR bill that passed in 2024 and is considered to be the gold standard for EPR nationally." Allison Kustick of the Association of Plastic Recyclers agreed, stating: "SB 5284 is based on Minnesota's EPR law and not California's, and it is the result of several years of stakeholder conversations and is based on lessons learned from other states to be a very strong bill."

Minnesota's EPR packaging law appears to be setting a benchmark for effective EPR packaging policy, serving as a foundation for legislative efforts in other states and earning broad support from both industry and government stakeholders. The question then remains, is Minnesota's EPR law really the "gold standard"? Set forth below are four aspects of the Minnesota law that have convinced others that the answer to this question is yes.

- ***Definition of "Producer."*** MINN. STAT. § 115A.1441(26) provides a six-part definition of a "producer" designed to clarify which entity in a product chain is the obligated producer. The definition includes both items sold at physical retail locations and via e-commerce and provides separate criteria for packaging and paper products. Other states left much of the

definition of “producer” to rulemaking, which may have contributed to confusion amongst producers about who was to be held accountable for EPR compliance obligations. Laying out the expectations within the initiating statute may have helped reduce confusion.

➤ **Packaging Exemptions**

- MINN. STAT. § 115A.1441(16) excludes covered materials that a "producer distributes to another producer"; "are subsequently used to contain a product, and the product is distributed to a commercial or business entity for the production of another product"; and "are not introduced to a person other than the commercial or business entity that first received the product used for the production of another product."
- MINN. STAT. § 115A.1451(3)(3) allows the PRO to seek exemptions "from performance targets and statewide requirements for covered materials that cannot be waste reduced or made reusable, recyclable, or compostable due to federal or state health and safety requirements, identifying the specific federal or state requirements and their impact on the covered materials."
- MINN. STAT. § 115A.1448(1)(d) allows the PRO to petition MPCA for a two-year extension of the 2032 recyclable/compostable/reusable deadline if "market or technical issues prevent a covered material from being considered recyclable, reusable, or compostable."
- MINN. STAT. § 115A.1441(16) includes a similarly broad range of exemptions in line with the packaging EPR laws in Colorado and California, which provides some modicum of consistency between and among state exemptions. These exemptions include FDA-regulated infant formula, medical food, drugs, medical devices, and medical equipment; drugs, biological products, parasiticides, medical devices, or in vitro diagnostics used to treat animals; FIFRA-regulated products; OSHA-regulated hazardous or flammable products; fortified oral nutritional supplements; refillable liquified petroleum gas containers; newspapers and magazines; bound books; or products that recycling or composting facilities will not accept because of the unsafe or unsanitary nature of the paper product; and paint subject to a stewardship program.

➤ **Public Shaming.** MINN. STAT. § 115A.1457(11) requires the PRO to post on its website the names of producers and brands that are not in compliance. The “public shaming” postings may aid in the identification of free riders, *i.e.*, producers who should be participating but are not. Of interest, Washington SB 5284, goes a step further, expressly requiring the Department of Ecology to initiate enforcement against noncompliant producers that are not members of a PRO. Many producers are supportive of these types of mechanisms to lessen the financial burden on compliant producers.

➤ **Shared Responsibility.** MINN. STAT. § 115A.1455 requires producers to reimburse service providers for the costs of providing “covered services.” By February 1, 2029, producers must cover at least 50% of these costs; by February 1, 2030, this increases to 75%; and by February 1, 2031, producers must reimburse 90% of costs. Producers generally support distributing the costs of EPR programs among as many stakeholders as possible. By contrast, other stakeholders argue that the 10% benefit does not outweigh the challenges and costs of negotiating contracts with municipalities, which can be a complex and difficult process.

King & Spalding + Extended Producer Responsibility

King & Spalding has a cutting-edge extended producer responsibility practice. We have been at the forefront of these laws long before Maine became the first state to pass a comprehensive EPR packaging law in 2021. Our EPR practice extends beyond paper and plastics to batteries, electronics recycling, and other product stewardship, and our clients include producers as well as service providers. The firm also has one of the deepest environmental teams among the AmLaw top tier firms, providing full-service capability and a global reach. Chambers USA, one of the most preeminent legal ranking organizations, named King & Spalding as the Environmental Law Firm of the Year in 2024.

Authors for this edition



Karl Heisler
Partner
Chicago
+1 312 764 6927
kheisler@kslaw.com



Cynthia Stroman
Partner
Washington D.C./Houston
+1 202 626 2381
cstroman@kslaw.com



Sydney Weiss
Associate
Chicago
+1 312 764 6907
sweiss@kslaw.com



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