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HOUSE BILL 2678

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State of Washington

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By Representatives Rust, Valle and Brekke

Read first time 01/23/92. Referred to Committee on Environmental Affairs.

1 AN ACT Relating to waste reduction and environmental labeling;  
2 amending RCW 70.95H.030; adding a new chapter to Title 70 RCW; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
6 otherwise, the definitions in this section apply throughout this  
7 chapter.

8 (1) "Composite packaging" means packaging that contains two or more  
9 of the following materials: Glass, metal, plastic, or paper.  
10 Packaging that contains two or more types of metals, plastics, or  
11 papers is composite packaging.

12 (2) "Department" means the department of ecology.

13 (3) "Director" means the director of the department of ecology.

1 (4) "Package" or "packaging" means a container providing a means of  
2 marketing, protecting, or handling a product and includes a unit  
3 package, an intermediate package, and a shipping container as defined  
4 in "Standard Terminology of Packaging and Distribution Environments"  
5 (American Society for Testing and Materials, designation: D996-90).  
6 "Package" also means such unsealed receptacles as carrying cases,  
7 crates, cups, pails, rigid foils and other trays, wrappers and wrapping  
8 films, bags, and tubs.

9 (5) "Packager" means:

10 (a) In the case of a product placed in a package before entry into  
11 Washington state, the distributor or wholesaler who causes the product  
12 to be brought into Washington state;

13 (b) In the case of a product placed in a package in Washington  
14 state before retail sale of the product, the person who places the  
15 product in the package; and

16 (c) In the case of a product placed in a package at the point of  
17 retail sale, the retail seller.

18 An entity with gross sales of less than five million dollars is not  
19 a packager.

20 (6) "Paper" means corrugating medium, bleached packaging paper,  
21 solid unbleached kraft, boxboard, or linerboard.

22 (7) "Person" means an individual, firm, association, copartnership,  
23 political subdivision, government agency, municipality, industry,  
24 public or private corporation, or any other entity.

25 (8) "Plastic" means one or more of the resins identified under RCW  
26 70.95F.020.

27 (9) "Postconsumer waste" means a material or product that has  
28 served its intended use to an end-use consumer and has been discarded  
29 for recovery by that consumer. Postconsumer waste does not include

1 factory-generated waste that is routinely returned to the manufacturing  
2 system.

3 (10) "Recovery rate" means the rate at which a material is  
4 recovered or diverted annually from municipal solid waste for reuse or  
5 recycling purposes, including export for such purposes, expressed as a  
6 percentage of the total amount of the material that would be destined  
7 for municipal solid waste in a year if diversion or recycling did not  
8 occur. Recovery or diversion for combustion is not reuse or recycling  
9 for purposes of determining recovery rate.

10 (11) "Recycled content" means the percentage, by weight, of  
11 postconsumer recycled material contained within a package.

12 NEW SECTION. **Sec. 2.** Effective December 31, 1994, a packager  
13 using paper, glass, metals, or plastic resins in a package shall meet  
14 one of the following requirements:

15 (1) The package shall be designed to be refilled or reused for its  
16 original purpose at least five times, and fifty percent or more of all  
17 such packages produced shall actually be returned for refilling or  
18 reuse; or

19 (2) The packaging material shall be reduced in volume or weight by  
20 at least twenty percent when compared to a package used for the same  
21 purpose or product by the packager as of January 1, 1989.

22 Effective December 31, 1999, the packaging material shall be  
23 reduced in volume or weight by an additional twenty percent when  
24 compared to a package made five years earlier. A packager may not  
25 satisfy the reduction requirements under this subsection by using a  
26 different packaging material, unless that packaging material has a  
27 recovery rate higher than the one being substituted; or

28 (3)(a) The package shall be made with recycled content materials  
29 meeting the following standards:

1 (i) Effective December 31, 1994, until December 31, 1997:

2 Plastics Twenty-five percent

3 Paper Forty percent

4 Steel or tin-coated steel Twenty-five percent

5 Glass Forty percent

6 Aluminum Forty-five percent

7 (ii) Effective January 1, 2000, and thereafter:

8 Plastics Fifty percent

9 Paper Fifty percent

10 Steel or tin-coated steel Thirty-five percent

11 Glass Fifty percent

12 Aluminum Sixty percent

13 (b) A packager using paper that elects to meet the requirements  
14 under this subsection shall report the state-wide percentage of  
15 recycled paper content used in paper packaging in the state. The  
16 recycled content percent shall be calculated as a state-wide average of  
17 all recycled paper used in paper packaging in the state.

18 (c) A packager using plastic that elects to meet the requirements  
19 under this subsection (3) shall report, for each resin used by that  
20 packager, the nation-wide percentage of recycled resin content used in  
21 plastic packaging in the nation. The recycled content percentage shall  
22 be calculated and reported for each resin type and shall not be  
23 calculated as the average percentage content of all resin types.

24 NEW SECTION. **Sec. 3.** Composite packaging shall meet all the  
25 applicable requirements of section 2 of this act for all materials  
26 contributing more than ten percent, by weight, of the package.

27 NEW SECTION. **Sec. 4.** (1) The following types or parts of  
28 packages are exempt from the requirements of this chapter:

1 (a) Any part of a package consisting of a flexible film that is in  
2 direct contact with food and that is necessary to prevent spoilage; and

3 (b) Packages determined by the director, by rule, to be de minimis.

4 (2) Rules implementing section 2(2) of this act shall allow full  
5 credit for any packaging innovation that decreases total packaging used  
6 by the amounts required under that section. Rules shall also allow for  
7 exemptions if the packager demonstrates, to the department's  
8 satisfaction, that the package has been reduced to the maximum extent  
9 practicable.

10 NEW SECTION. **Sec. 5.** Effective December 31, 1994, each  
11 packager subject to this chapter shall certify to the department, with  
12 respect to each type of package used by the packager, that the package  
13 is in compliance with the requirements of this chapter, or, in the case  
14 of a package that is exempt from the requirements of this chapter under  
15 section 4 of this act, the specific basis upon which the exemption is  
16 granted. The certification shall be contained in a certificate of  
17 compliance signed by an authorized official of the packager. The  
18 certificate shall be submitted to the department once every three  
19 years, as well as each time a package is reformulated or replaced. A  
20 copy of the certificate shall be kept on file by the packager.  
21 Acceptance of the certificate by the department shall not constitute  
22 acceptance of the facts contained in the certificate.

23 NEW SECTION. **Sec. 6.** Each packager subject to this chapter  
24 shall maintain records sufficient to document compliance with this  
25 chapter. The packager shall make such records available for inspection  
26 by the department.

1        NEW SECTION.    **Sec. 7.**        Each packager or manufacturer subject to  
2 this chapter who violates section 2, 3, or 5 of this act is subject to  
3 the following penalties:

4        (1) For a first violation, the packager or manufacturer is liable  
5 for an administrative penalty in an amount not to exceed ten thousand  
6 dollars. In lieu of a penalty, the department may send the packager or  
7 manufacturer a letter notifying the manufacturer that it is in  
8 violation of this chapter and warning the manufacturer of additional  
9 penalties if the violation continues.

10       (2) For a second violation, the packager or manufacturer is liable  
11 for an administrative penalty in an amount not to exceed twenty-five  
12 thousand dollars.

13       (3) For a third violation, the packager or manufacturer is liable  
14 for an administrative penalty in an amount not to exceed fifty thousand  
15 dollars.

16       (4) For any violation after a third violation, the department may  
17 ban the sale in commerce of the product or package concerned.

18       (5) After initiating an enforcement action for a violation of  
19 section 2, 3, or 5 of this act, the department shall allow thirty days  
20 to be in compliance before initiating a subsequent enforcement action.

21       NEW SECTION.    **Sec. 8.**        Any penalties collected under section 7  
22 of this act shall be deposited in the clean Washington account created  
23 in RCW 70.95H.800.

24       NEW SECTION.    **Sec. 9.**        The department shall adopt rules to  
25 implement this chapter. The rules establishing standards and criteria  
26 for environmental marketing claims shall be adopted by June 30, 1994.

1        NEW SECTION.    **Sec. 10.**        After June 30, 1994, no person may make  
2 an environmental marketing claim governed by rules adopted under this  
3 chapter that cannot be substantiated in accordance with the standards  
4 and criteria contained in this chapter or the rules adopted under it.

5        NEW SECTION.    **Sec. 11.**        (1) Rules adopted under section 9 of  
6 this act shall be designed to reduce negative environmental impacts of  
7 packaging.

8        (2) The rules adopted under section 9 of this act shall include  
9 standards for claims and criteria for substantiating claims that a  
10 product or package:

- 11        (a) Is source reduced;
- 12        (b) Is refillable;
- 13        (c) Is reusable;
- 14        (d) Is recyclable;
- 15        (e) Has a recycled content;
- 16        (f) Is compostable;
- 17        (g) Is ozone neutral;
- 18        (h) Is nontoxic;
- 19        (i) Is photodegradable;
- 20        (j) Is biodegradable;
- 21        (k) Is degradable; or
- 22        (l) Is decomposable.

23 The department shall include standards and criteria for substantiating  
24 such other claims related to a specific environmental impact or  
25 attribute of a product or package as the department considers  
26 appropriate.

27        (3) The department shall ensure that the criteria and standards  
28 contained in the rules are sufficient to allow the office of the  
29 attorney general to determine whether an environmental marketing claim

1 is false, misleading, or deceptive with respect to a specific  
2 environmental impact or attribute.

3 (4) The department shall attempt to ensure that the criteria and  
4 standards contained in the rules are based on the best available  
5 scientific information.

6 (5) The department may distinguish among product or package  
7 categories in setting standards and criteria in the rules.

8 (6) In adopting the rules, the department shall ensure that  
9 environmental marketing claims make a clear distinction between the  
10 product and any accompanying packaging unless the claim applies to  
11 both.

12 (7) The department shall include the following requirements in the  
13 rules:

14 (a) An environmental marketing claim stating that a product or  
15 package is "recycled" or has "recycled content" shall be used only in  
16 connection with a product or package containing postconsumer materials  
17 if the percentage of recovered material is specified in the claim and,  
18 the percentage of postconsumer materials is not less than twenty-five  
19 percent by weight until December 31, 1999, and is not less than fifty  
20 percent by weight on or After January 1, 2000.

21 (b) An environmental marketing claim relating to the recyclable  
22 nature of a product or package shall be used only in connection with a  
23 product or package for which a manufacturer, retailer, distributor, or  
24 other person responsible for the use of such environmental marketing  
25 claim is able to demonstrate, using standards and criteria contained in  
26 the rules, the following:

27 (i) Until December 31, 1999, twenty-five percent or more of all of  
28 such type of products or packages produced in the United States are  
29 recycled annually;

1 (ii) Beginning January 1, 2000, fifty percent or more of all of  
2 such type of products or packages produced in the United States are  
3 recycled annually.

4 (c) An environmental marketing claim relating to the reusable or  
5 refillable nature of a product or package shall be used only in  
6 connection with a product or package that is reused for the original  
7 purpose of the product or package an average of five times or more.

8 (d) No environmental marketing claim relating to the compostable,  
9 photodegradable, biodegradable, degradable, or decomposable nature of  
10 a product, package, or material, or any similar description, may be  
11 used in connection with a product, package, or material unless the  
12 manufacturer, retailer, distributor, or other person responsible for  
13 the use of such environmental marketing claim is able to demonstrate,  
14 using standards and criteria contained in the rules that:

15 (i) Until December 31, 1999, twenty-five percent or more of all of  
16 such type of products, packages, or materials produced in the United  
17 States are managed annually in a waste management system that is  
18 protective of human health and the environment, and for which the  
19 director has determined the claim is a relevant and environmentally  
20 desirable and significant characteristic; and beginning January 1,  
21 2000, fifty percent or more of all of such type of products, packages,  
22 or materials produced in the United States are managed annually in such  
23 a waste management system;

24 (ii) The product, package, or material will decompose safely in  
25 such a waste management system through natural chemical and biological  
26 processes into basic constituents, containing no toxic residues, within  
27 an amount of time compatible with such system; and

28 (iii) The product, package, or material will not release or produce  
29 at any time toxic substances or other substances that may otherwise be  
30 harmful to human health or the environment, including during the

1 management process and any subsequent application or use of by-products  
2 of the process, such as use of the product or by-product of composting  
3 as a soil amendment or mulch.

4 An environmental marketing claim under this subsection (7)(d) shall  
5 clearly specify the applicable management system and specify that the  
6 claim applies only to products, packages, or materials that are managed  
7 in such a system.

8 (8) Notwithstanding the requirements of subsection (7) of this  
9 section, an environmental marketing claim of a type covered by that  
10 subsection may be made with respect to a package, product, or material  
11 that does not itself qualify under that subsection for the claim, if:

12 (a) The claim is made at a retail outlet by use of a point-of-  
13 purchase display sign for the package, product, or material, and does  
14 not appear on the package, product, or material itself;

15 (b) The community in which the retail outlet is located has a  
16 program for the recycling, reuse, composting, or other activity with  
17 respect to which the claim is made; and

18 (c) The program is identified in the display sign.

19 NEW SECTION. **Sec. 12.** Not later than June 30, 1997, and every  
20 three years thereafter, the department, in consultation with the  
21 attorney general, shall review the rules adopted under section 9 of  
22 this act. In reviewing these rules, the department shall take into  
23 account new technologies that have developed since the most recent  
24 adoption of rules, and if determined appropriate by the department,  
25 shall revise the standards and criteria contained in the rules to  
26 reflect these new technologies.

27 NEW SECTION. **Sec. 13.** Waste reduction and environmental  
28 labeling is a matter affecting the public interest for the purpose of

1 applying chapter 19.86 RCW. A violation of sections 9 through 12 this  
2 act is not reasonable in relation to the development and preservation  
3 of business. A violation of this chapter constitutes an unfair or  
4 deceptive act or practice in trade or commerce and an unfair method of  
5 competition for the purpose of applying chapter 19.86 RCW.

6 **Sec. 14.** RCW 70.95H.030 and 1991 c 319 s 205 are each amended to  
7 read as follows:

8 The center shall:

9 (1) Provide targeted business assistance to recycling businesses,  
10 including:

11 (a) Development of business plans;

12 (b) Market research and planning information;

13 (c) Access to financing programs;

14 (d) Referral and information on market conditions; and

15 (e) Information on new technology and product development;

16 (2) Negotiate voluntary agreements with manufacturers to increase  
17 the use of recycled materials in product development. If voluntary  
18 agreements for newsprint, printing and writing papers, and tissue  
19 products are not established by December 31, 1995, the department of  
20 ecology shall adopt rules by July 1, 1996, requiring manufacturers  
21 producing those products to contain, in the aggregate, at least forty  
22 percent recycled content;

23 (3) Support and provide research and development to stimulate and  
24 commercialize new and existing technologies and products using recycled  
25 materials;

26 (4) Undertake an integrated, comprehensive education effort  
27 directed to recycling businesses to promote processing, manufacturing,  
28 and purchase of recycled products, including:

- 1 (a) Provide information to recycling businesses on the availability  
2 and benefits of using recycled materials;
- 3 (b) Provide information and referral services on recycled material  
4 markets;
- 5 (c) Provide information on new research and technologies that may  
6 be used by local businesses and governments; and
- 7 (d) Participate in projects to demonstrate new market uses or  
8 applications for recycled products;
- 9 (5) Assist the departments of ecology and general administration in  
10 the development of consistent definitions and standards on recycled  
11 content, product performance, and availability;
- 12 (6) Undertake studies on the unmet capital needs of reprocessing  
13 and manufacturing firms using recycled materials;
- 14 (7) Undertake and participating in marketing promotions for the  
15 purposes of achieving expanded market penetration for recycled content  
16 products;
- 17 (8) Coordinate with the department of ecology to ensure that the  
18 education programs of both are mutually reinforcing, with the center  
19 acting as the lead entity with respect to recycling businesses, and the  
20 department as the lead entity with respect to the general public and  
21 retailers;
- 22 (9) Develop an annual work plan. The plan shall describe actions  
23 and recommendations for developing markets for commodities comprising  
24 a significant percentage of the waste stream and having potential for  
25 use as an industrial or commercial feedstock. The initial plan shall  
26 address, but not be limited to, mixed waste paper, waste tires, yard  
27 and food waste, and plastics; and
- 28 (10) Represent the state in regional and national market  
29 development issues.

1        NEW SECTION.    **Sec. 15.**        Sections 1 through 13 of this act shall  
2    constitute a new chapter in Title 70 RCW.

3        NEW SECTION.    **Sec. 16.**        If any provision of this act or its  
4    application to any person or circumstance is held invalid, the  
5    remainder of the act or the application of the provision to other  
6    persons or circumstances is not affected.