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**SUBSTITUTE HOUSE BILL 1053**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Peterson, Dye, Kloba, and Ortiz-Self)

AN ACT Relating to delaying the implementation of restrictions on carryout bags; amending RCW 70A.530.020, 70A.530.040, 70A.530.060, and 70A.530.050; and declaring an emergency.

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

**Sec.**  RCW 70A.530.020 and 2020 c 138 s 3 are each amended to read as follows:

(1) Beginning ((~~January~~)) July 1, 2021, except as provided in this section and RCW 70A.530.030, a retail establishment may not provide to a customer or a person at an event:

(a) A single-use plastic carryout bag;

(b) A paper carryout bag or reusable carryout bag made of film plastic that does not meet recycled content requirements; or

(c) Beginning January 1, 2026, a reusable carryout bag made of film plastic with a thickness of less than four mils, in the event that the 2025 legislature does not amend this section to reflect the recommendations to the legislature made consistent with RCW 70A.530.060.

(2)(a) A retail establishment may provide a reusable carryout bag or a recycled content paper carryout bag of any size to a customer at the point of sale. A retail establishment may make reusable carryout bags available to customers through sale.

(b)(i) Until December 31, 2025, a retail establishment must collect a pass-through charge of eight cents for every recycled content paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (eight hundred eighty-two cubic inches) or greater or reusable carryout bag made of film plastic it provides, except as provided in subsection (5) of this section and RCW 70A.530.030.

(ii) Beginning January 1, 2026, a retail establishment must collect a pass-through charge of twelve cents for reusable carryout bags made of film plastic and eight cents for recycled content paper carryout bags, in the event that the 2025 legislature does not amend this section to reflect the recommendations to the legislature made consistent with RCW 70A.530.060. It is the intent of the legislature for the 2025 legislature to reassess the amount of the pass-through charge authorized under this subsection (2)(b), taking into consideration the content of the report to the legislature under RCW 70A.530.060.

(c) A retail establishment must keep all revenue from pass-through charges. The pass-through charge is a taxable retail sale. A retail establishment must show all pass-through charges on a receipt provided to the customer.

(3) Carryout bags provided by a retail establishment do not include:

(a) Bags used by consumers inside stores to:

(i) Package bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items such as nails, bolts, or screws;

(ii) Contain or wrap items where dampness or sanitation might be a problem including, but not limited to:

(A) Frozen foods;

(B) Meat;

(C) Fish;

(D) Flowers; and

(E) Potted plants;

(iii) Contain unwrapped prepared foods or bakery goods;

(iv) Contain prescription drugs; or

(v) Protect a purchased item from damaging or contaminating other purchased items when placed in a recycled content paper carryout bag or reusable carryout bag; or

(b) Newspaper bags, mailing pouches, sealed envelopes, door hanger bags, laundry/dry cleaning bags, or bags sold in packages containing multiple bags for uses such as food storage, garbage, or pet waste.

(4)(a) Any compostable film bag that a retail establishment provides to customers for products, including for products bagged in stores prior to checkout, must meet the requirements for compostable products and film bags in chapter ((~~70.360~~)) 70A.455 RCW.

(b) A retail establishment may not use or provide polyethylene or other noncompostable plastic bags for bagging of customer products in stores, as carryout bags, or for home delivery that do not meet the requirements for noncompostable products and film bags in chapter ((~~70.360~~)) 70A.455 RCW.

(5) ((~~Except as provided by local regulations enacted as of April 1, 2020, a retail establishment may provide a bag restricted under subsection (1) of this section from existing inventory until one year after June 11, 2020. The retail establishment, upon request by the department, must provide purchase invoices, distribution receipts, or other information documenting that the bag was acquired prior to June 11, 2020.~~)) Upon making a determination that COVID-19 related issues are continuing to cause significant supply chain problems regarding carryout bags required under this chapter, the governor may order a delay of the July 1, 2021, effective date for the restrictions specified in subsection (1) of this section. However, the governor may not order an extension of the implementation date beyond January 1, 2022. If the governor decides to order a delay under this section, the governor must provide notice of the updated effective date to affected parties at least 45 days in advance.

(6) For the purposes of this section:

(a) A recycled content paper carryout bag must:

(i) Contain a minimum of forty percent postconsumer recycled materials;

(ii) Be capable of composting, consistent with the timeline and specifications of the entire American society of testing materials D6868 and associated test methods that must be met, as it existed as of January 1, 2020; and

(iii) Display in print on the exterior of the paper bag the minimum percentage of postconsumer content.

(b) A reusable carryout bag must:

(i) Have a minimum lifetime of one hundred twenty-five uses, which for purposes of this subsection means the capacity to carry a minimum of twenty-two pounds one hundred twenty-five times over a distance of at least one hundred seventy-five feet;

(ii) Be machine washable or made from a durable material that may be cleaned or disinfected; and

(iii) If made of film plastic:

(A) Be made from a minimum of twenty percent postconsumer recycled content until July 1, 2022, and thereafter must be made from a minimum of forty percent postconsumer recycled content;

(B) Display in print on the exterior of the plastic bag the minimum percentage of postconsumer recycled content, the mil thickness, and that the bag is reusable; and

(C) Have a minimum thickness of no less than 2.25 mils until December 31, 2025, and beginning January 1, 2026, must have a minimum thickness of four mils.

(c) Except for the purposes of subsection (4) of this section, food banks and other food assistance programs are not retail establishments, but are encouraged to take actions to reduce the use of single-use plastic carryout bags.

**Sec.**  RCW 70A.530.040 and 2020 c 138 s 5 are each amended to read as follows:

(1) Until June 1, 2025, the department shall prioritize the expedited processing of applications for permits related to the expansion or reconfiguration of an existing pulp and paper mill for the purpose of manufacturing paper bags or raw materials used to manufacture paper bags.

(2) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(3) The enforcement of this chapter must be based primarily on complaints filed with the department and local governments. The department must establish a forum for the filing of complaints. Local governments and any person may file complaints with the department using the forum and local governments may review complaints filed with the department via the forum for purposes of the local government carrying out education and outreach to retail establishments. The forum established by the department may include a complaint form on the department's web site, a telephone hotline, or a public outreach strategy relying upon electronic social media to receive complaints that allege violations. The department, in collaboration with the local governments, must provide education and outreach activities to inform retail establishments, consumers, and other interested individuals about the requirements of this chapter.

(4) The department or local government shall work with retail establishments, retail associations, unions, and other organizations to create educational elements regarding the ban and the benefits of reusable carryout bags. Educational elements may include signage at store locations, informational literature, and employee training by October 1, 2020.

(5) Retail establishments are encouraged to educate their staff to promote reusable bags as the best option for carryout bags and to post signs encouraging customers to use reusable carryout bags.

(6) A violation of this chapter is subject to a civil penalty of up to two hundred fifty dollars. Each calendar day of operation or activity in violation of this chapter comprises a new violation. Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

((~~(7) If specific funding for the purposes of chapter 138, Laws of 2020, referencing chapter 138, Laws of 2020 by bill or chapter number, is not provided by July 1, 2020, from the waste reduction, recycling, and litter control account for purposes of implementing the education and outreach activities required under this section, then chapter 138, Laws of 2020 is null and void.~~))

**Sec.**  RCW 70A.530.060 and 2020 c 138 s 7 are each amended to read as follows:

(1) By December 1, 2024, the department of commerce, in consultation with the department, must submit a report to the appropriate committees of the legislature in order to allow an opportunity for the legislature to amend the mil thickness requirements for reusable carryout bags made of film plastic, the amount of the pass-through charges for bags, or to make other needed revisions to this chapter during the 2025 legislative session. The report required under this section must include:

(a) An assessment of the effectiveness of the pass-through charge for reducing the total volume of bags purchased and encouraging the use of reusable carryout bags;

(b) An assessment of the sufficiency of the amount of the pass-through charge allowed under this chapter ((~~70A.530 RCW [this chapter]~~)) relative to the cost of the authorized bags to retail establishments and an assessment of the pricing and availability of various types of carryout bags. For purposes of conducting this assessment, the department and the department of commerce may request, but not require, retail establishments and bag distributors to furnish information regarding the cost of various types of paper and plastic carryout bags provided to retail establishments; and

(c) Recommendations for revisions to this chapter ((~~70A.530 RCW [this chapter]~~)), if needed.

(2) This section expires July 1, 2027.

**Sec.**  RCW 70A.530.050 and 2020 c 138 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a city, town, county, or municipal corporation may not implement a local carryout bag ordinance. Except as provided in subsection (2) of this section, any carryout bag ordinance that was enacted as of April 1, 2020, is preempted by this chapter.

(2)(a) A city, town, county, or municipal corporation carryout bag ordinance enacted as of April 1, 2020, that has established a pass-through charge of ten cents is not preempted with respect to the amount of the pass-through charge until January 1, 2026.

(b) A city, town, county, or municipal corporation ordinance not specified in (a) of this subsection and enacted as of April 1, 2020, is not preempted until ((~~January~~)) either July 1, 2021, or the date established in an order issued by the governor under RCW 70A.530.020(5).

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**