

SENATE BILL REPORT

SB 5658

As of January 18, 2022

Title: An act relating to the recyclability of products and packaging.

Brief Description: Concerning the recyclability of products and packaging.

Sponsors: Senators Stanford, Das, Hunt, Rivers, Saldaña and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/18/22.

Brief Summary of Bill

- Prohibits a person from offering for sale, selling, distributing, or importing into the state any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made.
- Directs the Department of Ecology to produce a material characterization study to provide information to the public for evaluating whether a product or packaging is recyclable in the state and are of material types and forms that routinely become feedstock used for new products or packaging by January 1, 2025.
- Establishes minimum postconsumer recycled content requirements for producers of single-use plastic cups, plastic tubs, and thermoform plastic containers.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: Department of Ecology Plastics and Recycling Evaluations. In 2019, the Legislature directed the Department of Ecology (Ecology) to evaluate and assess the

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amount and types of plastic packaging sold into the state, as well as its management and disposal. The report was required to assess specified aspects of plastic packaging markets and processing infrastructure, and to include recommendations to meet the following goals of reducing plastic packaging through industry lead or product stewardship:

- achieve 100 percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;
- achieve at least 20 percent postconsumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

In December 2020, Ecology submitted a report to the Legislature that included ten policy recommendations related to the management of packaging materials.

2021 Plastics Legislation. In 2021, the Legislature established minimum recycled content requirements, a prohibition on certain expanded polystyrene (EPS) products, and optional food service ware requirements. The legislation sets varying minimum content rates and implementation dates for plastic beverage containers, plastic household cleaning and personal care product containers, and plastic bags. The sale and distribution of certain EPS products is prohibited, beginning June 1, 2023, for void filling packaging products, and June 1, 2024, for cold storage containers and food service products.

Beginning January 1, 2022, food service businesses may only provide single-use utensils, condiment packaging, and beverage cup lids only after affirming the customer wants the product. Exemptions are provided for hot beverages, delivery services or pickup, service via a drive-through, or at certain large music and sports venues.

Solid Waste Services. The Utilities and Transportation Commission (UTC) regulates haulers transporting solid waste, garbage, and recyclables from residential sites. The certificate to transport garbage and recyclables sets the geographic areas in which the company is authorized to collect waste. Cities and towns have the authority to provide their own solid waste services or to contract for solid waste services. Solid waste services provided or contracted by cities and towns are not subject to UTC regulation. Materials collected for recycling are transported to material recovery facilities, which receive, compact, repackage, or sort materials for the purposes of recycling.

Summary of Bill: Recycling Labeling. A person may not offer for sale, sell, distribute, or import into the state any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made.

A product or packaging that displays a chasing arrows symbol or any other symbol or statement indicating the product or packaging is recyclable or to be recycled is deemed to be a deceptive or misleading claim unless the product or packaging is considered recyclable in the state and is of a material type and form that becomes feedstock used in the production of new products or packaging.

A product or packaging is considered recyclable in the state if, based on a material characterization study, the product or packaging is of a material type and form that:

- is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state; and
- are sorted into defined streams for recycling processes by large volume transfer or processing facilities that process materials and collectively serve at least 60 percent of recycling programs statewide.

A product or packaging is not considered recyclable in the state unless it is designed to be recyclable and does not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging. A product or packaging is considered recyclable in the state if the product or packaging has a demonstrated recycling rate of at least 75 percent, meaning no less than 75 percent is reprocessed into new products or packaging.

Before January 1, 2031, noncurbside collected material is considered recyclable in the state if it meets a 60 percent reprocessing rate subject to certain conditions. The rate is increased to 75 percent in 2031.

The prohibition does not apply to any product or packaging manufactured up to 18 months after Ecology publishes the first material characterization study or before January 1, 2025, whichever is later, or product or packaging manufactured up to 18 months after any update of the study, if the product or packaging would have satisfied requirements in the previous study.

For products or packaging not considered to be recyclable in the state, displaying a chasing arrows symbol or other statement indicating the product is recyclable is deemed to be deceptive or misleading.

A city, county, or the state may impose civil penalties in the amount of \$500 for the first violation of labeling requirements, \$1,000 for the second violation, and \$2,000 for the third and any subsequent violation.

By January 1, 2026, Ecology must implement an enforcement program to investigate and identify violations.

Material Characterization Study. By January 1, 2025, Ecology is directed to produce a material characterization study to provide information to the public for evaluating whether a product or packaging is recyclable in the state and are of material types and forms that routinely become feedstock used for new products or packaging.

To get a representative sample of recycling programs in the state, Ecology must conduct a study of material types and forms that are collected, sorted, sold, or transferred by facilities that process recyclable materials from curbside recycling programs and other solid waste

facilities.

The study must identify what materials types and forms are actively recovered by operations and facilities, and how the material collected or processed by the operations and facilities was collected.

Ecology must update the study every five years, with the first update in 2028.

For each study, Ecology must conduct a public meeting to receive comment on preliminary findings.

Minimum Recycled Content. Minimum postconsumer recycled content requirements are established for producers of single-use plastic cups, plastic tubs, or thermoform plastic containers sold, offered for sale, or distributed into Washington.

For plastic tubs and thermoform plastic containers, the requirements are:

- January 1, 2026, through December 31, 2030—no less than 10 percent postconsumer recycled content plastic by weight; and
- on and after January 1, 2031—no less than 30 percent.

For single-use plastic cups, the requirements are:

- January 1, 2029, through December 31, 2030—no less than 15 percent postconsumer recycled content plastic by weight; and
- on and after January 1, 2031—no less than 30 percent.

Producers of the categories of products must comply with existing registration and reporting requirements for covered products subject to minimum recycled content standards.

Appropriation: None.

Fiscal Note: Requested on January 6, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The most efficient way to increase recycling is to increase the markets by increasing recycled content. One of the biggest obstacles to recycling is contamination, and this bill would ensure that packaging is actually recyclable. This bill will address problematic plastics, as adding recycled content standards and truth in labeling really hits on this issue. A single statewide list of recyclables is critical. The best way to address plastics recycling is to increase the market.

CON: Businesses have concerns over the truth in labeling provisions in the bill. This bill

mirrors a California law that is not yet implemented and will undergo further changes. This will lead to more consumer confusion and less materials recycled. Labeling should be addressed at the national level. The labeling restrictions are tied to department actions and evaluations in Washington State. There needs to be some space for communication with consumers.

OTHER: The labeling requirements may make illegal certain labels allowed in other jurisdictions. On recycled content, we are asking for alignment with the recommendations of the stakeholder advisory committee. We do understand the commodities have been carefully vetted and debated. Before passing truth in labeling provisions, we would like to see how it works in California.

The truth in labeling needs to be at the producer level as the retailer does not put the label on the product. Ecology supports the accuracy of labeling for products. We are concerned that the study may not achieve the required goals and some of the goals may not be possible to attain. For the recycled content requirements, it would be beneficial to wait and work out details on current products before adding new categories.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Rodd Pemble, SSC, Inc.; Paul Jewell, Washington State Association of Counties; Vicki Christophersen, Washington Refuse and Recycling Association.

CON: John Worthington; Dan Felton, AMERIPEN; Christopher Finarelli, The Household & Commercial Products Association (HCPA); Tim Shestek, American Chemistry Council.

OTHER: Katie Reilly, Consumer Technology Association; Holly Chisa, NW Grocery Association; Carolyn Logue, Washington Food Industry Association; Mark Johnson, Washington Retail Association; Kara Steward, WA Dept of Ecology; Amber Carter, Novolex; Samantha Louderback, Washington Hospitality Association; Peter Godlewski, Association of Washington Business; Rowland Thompson, Allied Daily Newspapers Of Washington; Rowland Thompson, Wine Institute; Rowland Thompson, Wine Institute.

Persons Signed In To Testify But Not Testifying: No one.