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**ENGROSSED SUBSTITUTE HOUSE BILL 1569**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Ramos, Chapman, Callan, Peterson, Fitzgibbon, and Slatter)

AN ACT Relating to marketing the degradability of products; adding a new chapter to Title 70 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature finds and declares that it is the public policy of the state that:

(a) Environmental marketing claims for plastic products, whether implicit or implied, should adhere to uniform and recognized standards for "compostability" and "biodegradability," since misleading, confusing, and deceptive labeling can negatively impact local composting programs and compost processors. Plastic products marketed as being "compostable" should be readily and easily identifiable as meeting these standards;

(b) Legitimate and responsible packaging and plastic product manufacturers are already properly labeling their compostable products, but many manufacturers are not. Not all compost facilities and their associated processing technologies accept or are required to accept compostable packaging as feedstocks. However, implementing a standardized system and test methods may create the ability for them to take these products in the future.

(2) Therefore, it is the intent of the legislature to authorize the state's attorney general and local governments to pursue false or misleading environmental claims and "greenwashing" for plastic products claiming to be "compostable" or "biodegradable" when in fact they are not.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "ASTM" means the American society for testing and materials.

(2) "Biodegradable mulch film" means film plastic used as a technical tool in commercial farming applications that biodegrades in soil after being used, and:

(a) The film product fulfills plant growth and regulated metals requirements of ASTM D6400; and

(b)(i) Meets the requirements of Vincotte's "OK Biodegradable Soil" certification scheme, as that certification existed as of January 1, 2019;

(ii) At ambient temperatures and in soil, shows at least ninety percent biodegradation absolute or relative to microcrystalline cellulose in less than two years' time, tested according to ISO 17556 or ASTM 5988 standard test methods, as those test methods existed as of January 1, 2019; or

(iii) Meets the requirements of EN 17033 "plastics-biodegradable mulch films for use in agriculture and horticulture" as it existed on January 1, 2019.

(3) "Federal trade commission guides" means the United States federal trade commission's guides for the use of environmental marketing claims (Part 260, commencing at section 260.1), compostability claims, including section 260.8, and degradation claims (subchapter B of chapter I of Title 16 of the Code of Federal Regulations), as those guides existed as of January 1, 2019.

(4) "Film product" means a bag, sack, wrap, or other sheet film product.

(5) "Food service product" means a product including, but not limited to, containers, plates, bowls, cups, lids, meat trays, straws, deli rounds, cocktail picks, splash sticks, condiment packaging, clam shells and other hinged or lidded containers, sandwich wrap, utensils, sachets, portion cups, and other food service products that are intended for one-time use and used for food or drink offered for sale or use.

(6) "Manufacturer" means a person, firm, association, partnership, or corporation that produces a product.

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

(8) "Plastic food packaging and food service products" means food packaging and food service products that is composed of:

(a) Plastic; or

(b) Fiber or paper with a plastic coating, window, component, or additive.

(9) "Plastic product" means a product made of plastic, whether alone or in combination with another material including, but not limited to, paperboard. A plastic product includes, but is not limited to, any of the following:

(a) A product or part of a product that is used, bought, or leased for use by a person for any purpose;

(b) A package or a packaging component including, but not limited to, packaging peanuts;

(c) A film product; or

(d) Plastic food packaging and food service products.

(10) "Standard specification" means either:

(a) ASTM D6400 – standard specification labeling of plastics designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019; or

(b) ASTM D6868 – standard specification for labeling of end items that incorporate plastics and polymers as coatings or additives with paper and other substrates designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019.

(11)(a) "Supplier" means a person, firm, association, partnership, company, or corporation that sells, offers for sale, offers for promotional purposes, or takes title to a product.

(b) "Supplier" does not include a person, firm, association, partnership, company, or corporation that sells products to end users as a retailer.

(12) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers.

NEW SECTION. **Sec.**  (1) Except as provided in this chapter, no manufacturer or supplier may sell, offer for sale, or distribute for use in this state a plastic product that is labeled with the term "biodegradable," "degradable," "decomposable," "oxo-degradable," or any similar form of those terms, or in any way imply that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

 (2) This section does not apply to biodegradable mulch film that meets the required testing and has the appropriate third-party certifications.

NEW SECTION. **Sec.**  (1)(a) A product labeled as "compostable" that is sold, offered for sale, or distributed for use in Washington by a supplier or manufacturer must:

(i) Meet ASTM standard specification D6400;

(ii) Meet ASTM standard specification D6868; or

(iii) Be comprised of wood, which includes renewable wood, or fiber-based substrate only;

(b) A product described in (a)(i) or (ii) of this subsection must:

(i) Meet labeling requirements established under the United States federal trade commission's guides; and

(ii) Feature labeling that:

(A) Meets industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities;

(B) Uses a logo indicating the product has been certified by a recognized third-party independent verification body as meeting the ASTM standard specification; and

(C) Displays the word "compostable," where possible, indicating the product has been tested by a recognized third-party independent body and meets the ASTM standard specification.

(2) A compostable product described in subsection (1)(a)(i) or (ii) of this section must be considered compliant with the requirements of this section if it:

(a) Has green or brown labeling;

(b) Is labeled as compostable; and

(c) Uses distinctive color schemes, green or brown color striping, or other adopted symbols, colors, marks, or design patterns that help differentiate compostable items from noncompostable materials.

NEW SECTION. **Sec.**  (1) A manufacturer or supplier of a film bag that meets ASTM standard specification D6400 and is distributed or sold by retailers must ensure that the film bag is readily and easily identifiable from other film bags in a manner that is consistent with the federal trade commission guides.

(2) For purposes of this section, "readily and easily identifiable" products must meet the following requirements:

(a) Be labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification if the bag has been certified as meeting that standard by a recognized third-party independent verification body;

(b) Be labeled in accordance with one of the following:

(i) The bag is made of a uniform color of green or brown and labeled with the word "compostable" on one side of the bag and the label must be at least one inch in height; or

(ii) Be labeled with the word "compostable" on both sides of the bag and the label must be one of the following:

(A) Green or brown color lettering at least one inch in height; or

(B) Within a contrasting green or brown color band of at least one inch in height on both sides of the bag with color contrasting lettering of at least one-half inch in height;

(c) Meet industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities.

(3) If a bag is smaller than fourteen inches by fourteen inches, the lettering and stripe required under subsection (2)(b)(ii) of this section must be in proportion to the size of the bag.

(4) A film bag that meets ASTM standard specification D6400 that is sold or distributed in this state may not display a chasing arrow resin identification code or recycling type of symbol in any form.

(5) A manufacturer or supplier is required to comply with this section only to the extent that the labeling requirements do not conflict with the federal trade commission guides.

NEW SECTION. **Sec.**  (1)(a) A manufacturer or supplier of food service products or film products that meet ASTM standard specification D6400 or ASTM standard specification D6868 must ensure that the items are readily and easily identifiable from other plastic food service products or plastic film products in a manner that is consistent with the federal trade commission guides.

(b) Film bags are exempt from the requirements of this section, and are instead subject to the requirements of section 5 of this act.

(2) For the purposes of this section, "readily and easily identifiable" products must:

(a) Be labeled with a logo indicating the product has been certified by a recognized third-party independent verification body as meeting the ASTM standard specification;

(b) Be labeled with the word "compostable," where possible, indicating the food packaging or film product has been tested by a recognized third-party independent body and meets the ASTM standard specification; and

(c) Meet industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities.

(3) A compostable product described in subsection (1) of this section must be considered compliant with the requirements of this section if it:

(a) Has green or brown labeling;

(b) Is labeled as compostable; and

(c) Uses distinctive color schemes, green or brown color striping, or other adopted symbols, colors, marks, or design patterns that help differentiate compostable items from noncompostable materials.

(4) It is encouraged that each product described in subsection (1) of this section:

(a) Display labeling language via printing, embossing, or compostable adhesive stickers using, when possible, either the colors green or brown that contrast with background product color for easy identification; or

(b) Be tinted green or brown.

(5) Graphic elements are encouraged to increase legibility of the word "compostable" and overall product distinction that may include text boxes, stripes, bands, or a green or brown tint of the product.

(6) A manufacturer or supplier is required to comply with this section only to the extent that the labeling requirements do not conflict with the federal trade commission guides.

NEW SECTION. **Sec.**  A manufacturer or supplier of film products or food service products sold, offered for sale, or distributed for use in Washington that does not meet the applicable ASTM standard specifications provided in sections 5 and 6 of this act is:

(1) Prohibited from using tinting, labeling, and terms that are required of products that meet the applicable ASTM standard specifications under sections 5 and 6 of this act;

(2) Discouraged from using coloration, labeling, images, and terms that confuse consumers into believing that noncompostable bags and food service packaging are compostable; and

(3) Encouraged to use coloration, labeling, images, and terms to help consumers identify noncompostable bags and food service packaging as either: (a) Suitable for recycling; or (b) necessary to dispose as waste.

NEW SECTION. **Sec.**  (1) Upon the request by a person, a manufacturer or supplier shall submit to that person, within ninety days of the request, nonconfidential business information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

(2) Upon request by a commercial compost processing facility, manufacturers of compostable products are encouraged to provide the facility with information regarding the technical aspects of a commercial composting environment, such as heat or moisture, in which the manufacturer's product has been field tested and found to degrade.

NEW SECTION. **Sec.**  (1) The state, acting through the attorney general, and cities and counties have concurrent authority to enforce this chapter and to collect civil penalties for a violation of this chapter, subject to the conditions in this section. An enforcing government entity may impose a civil penalty in the amount of up to two thousand dollars for the first violation of this chapter, up to five thousand dollars for the second violation of this chapter, and up to ten thousand dollars for the third and any subsequent violation of this chapter. If a manufacturer or supplier has paid a prior penalty for the same violation to a different government entity with enforcement authority under this subsection, the penalty imposed by a government entity is reduced by the amount of the payment.

(2) Any civil penalties collected pursuant to this section must be paid to the office of the city attorney, city prosecutor, district attorney, or attorney general, whichever office brought the action. Penalties collected by the attorney general on behalf of the state must be deposited in the compostable products revolving account created in section 11 of this act.

(3) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to chapter 19.86 RCW or other consumer protection laws, if applicable.

(4) In addition to penalties recovered under this section, the enforcing government entity may recover reasonable enforcement costs and attorneys' fees from the liable manufacturer or supplier.

NEW SECTION. **Sec.**  Manufacturers and suppliers who violate the requirements of this chapter are subject to civil penalties described in section 9 of this act. A specific violation is deemed to have occurred upon the sale of noncompliant product by stock-keeping unit number or unique item number. The repeated sale of the same noncompliant product by stock-keeping unit number or unique item number is considered a single violation. A city, county, or the state must send a written notice and a copy of the requirements to a noncompliant manufacturer or supplier of an alleged violation, who will have ninety days to become compliant. A city, county, or the state may assess a first penalty if the manufacturer or supplier has not met the requirements ninety days following the date the notification was sent. A city, county, or the state may impose second, third, and subsequent penalties on a manufacturer or supplier that remains noncompliant with the requirements of this chapter for every month of noncompliance.

NEW SECTION. **Sec.**  The compostable products revolving account is created in the custody of the state treasurer. All receipts from civil penalties or other amounts recovered by the state in enforcement actions under section 9 of this act must be deposited in the account. Expenditures from the account must be used by the attorney general for the payment of costs, expenses, and charges incurred in the enforcement of this chapter. Only the attorney general or the attorney general's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  Sections 1 through 11 and 13 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  This act takes effect July 1, 2020.

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

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