H-3957.2

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**HOUSE BILL 2722**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Mead, Fitzgibbon, Peterson, Doglio, Goodman, Gregerson, Slatter, Tarleton, Davis, Duerr, Ramel, Walen, Cody, Senn, and Pollet

AN ACT Relating to minimum recycled content requirements; adding a new section to chapter 42.56 RCW; adding a new chapter to Title 70 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) Sustainable and resilient markets for recycled materials are essential to any successful recycling system. For many years, Washington has depended on foreign markets to accept the recyclable materials that are collected for recycling in the state. Developing domestic markets for recycled materials benefits the environment and the state's economy and is critical due to the loss of foreign markets.

(2) China's 2018 national sword policy bans the importation of recycled mixed paper and certain types of recycled plastic and imposes a stringent one-half of one percent contamination limit on all other recycled material imports. Washington's recycling facilities are struggling to find markets for recycled materials, resulting in the stockpiling of these materials. Washington must reduce its reliance on unpredictable foreign markets for its recycled materials.

(3) Plastic and glass bottles can be recycled and can contain recycled content in order to close the loop in the recycling stream. Many companies have already taken the initiative at closing the loop by using plastic bottles that contain one hundred percent recycled content. Since November 2010, one national juice company has been using bottles made with one hundred percent postconsumer recycled content for all of its juices and juice smoothies. In January 2018, an international beverage producer announced that it will make all its bottles from one hundred percent recycled plastic by 2025.

(4) The requirements imposed by this chapter are reasonable and are achievable at minimal cost relative to the burden imposed by the continued excessive use of virgin materials in beverage containers in Washington.

NEW SECTION. **Sec.**  (1)(a) Between January 1, 2021, and December 31, 2024, inclusive, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than fifteen percent postconsumer recycled plastic.

(b) Between January 1, 2025, and December 31, 2029, inclusive, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than twenty-five percent postconsumer recycled plastic.

(c) Between January 1, 2030, and December 31, 2034, inclusive, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than fifty percent postconsumer recycled plastic.

(d) On and after January 1, 2035, the total number of plastic beverage containers filled with a beverage described in section 4 of this act that are sold, offered for sale, or distributed in Washington by a beverage manufacturer must, on an average annual basis, contain no less than seventy-five percent postconsumer recycled plastic.

(2) The department of ecology may grant extensions to the minimum recycled plastic content requirements required under subsection (1) of this section if the department of ecology makes a finding that a beverage manufacturer has made a substantial effort but has failed to meet the minimum recycled plastic content requirements due to extenuating circumstances that are out of the beverage manufacturer's control.

(3) On or before March 1, 2021, and annually thereafter, a beverage manufacturer of a beverage described in section 4 of this act sold in a plastic beverage container described in section 4 of this act shall report to the department of ecology in pounds and by resin type the amount of virgin plastic and postconsumer recycled plastic used by the beverage manufacturer for plastic beverage containers containing a beverage described in section 4 of this act sold, offered for sale, or distributed in Washington in the previous calendar year.  The beverage manufacturer shall submit this information to the department of ecology under penalty of perjury.

(a) The department of ecology shall post the information reported under this subsection on the department's web site.

(b) This subsection does not apply to a refillable plastic beverage container.

(4)(a) A beverage manufacturer that does not meet the minimum recycled plastic content requirements established in subsection (1) of this section is subject to a civil penalty pursuant to this subsection. The amount of the penalty is as follows for each plastic beverage container described in section 4 of this act:

(i) Two and one-half mills ($0.0025) for each plastic beverage container reported when the overall compliance rate is at least seventy-five percent but less than one hundred percent of the required recycled plastic content percentage established in subsection (1) of this section.

(ii) Five mills ($0.005) for each plastic beverage container reported when the overall compliance rate is at least fifty percent but less than seventy-five percent of the required recycled plastic content percentage established in subsection (1) of this section.

(iii) One cent ($0.01) for each plastic beverage container reported when the overall compliance rate is at least twenty-five percent but less than fifty percent of the required recycled plastic content percentage established in subsection (1) of this section.

(iv) One and one-half cents ($0.015) for each plastic beverage container reported when the overall compliance rate is at least fifteen percent but less than twenty-five percent of the required recycled plastic content percentage established in subsection (1) of this section.

(v) Two cents ($0.02) for each plastic beverage container reported when the overall compliance rate is less than fifteen percent of the required recycled plastic content percentage established in subsection (1) of this section.

(b) The department of ecology shall adjust, at the beginning of each biennium, the penalty amounts assessed pursuant to this subsection to reflect changes in the consumer price index for all urban consumers for the previous biennium as calculated by the United States department of labor.

(5) A beverage manufacturer shall pay the penalties assessed pursuant to this section, as applicable, based on the information reported to the department of ecology under subsection (3) of this section in the form and manner prescribed by the department of ecology.

(6) A beverage manufacturer that is assessed penalties under this section may pay those penalties to the department of ecology in quarterly installments or may arrange an alternative payment schedule subject to the approval of the department of ecology.

(7) Penalties assessed under this subsection may be appealed to the pollution control hearings board pursuant to the administrative procedure act, chapter 34.05 RCW.

(8) The department of ecology may conduct audits and inspections and take enforcement action pursuant to subsection (4) of this section against a beverage manufacturer for the purpose of ensuring compliance with this section based on the information reported under subsection (3) of this section.

(9) If it is established through an audit, inspection, or other means that the actual average postconsumer recycled plastic content used by a beverage manufacturer in a given year was lower than the percentage reported pursuant to this section, the beverage manufacturer is liable for an additional civil penalty equal to one hundred fifteen percent of the difference between the beverage manufacturer's audited actual average postconsumer recycled plastic content percentage and the percentage reported under this section, multiplied by the total number of pounds of plastic used by that beverage manufacturer for beverage containers described in section 4 of this act, multiplied by one dollar.

(10) The department of ecology shall keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment that the department gathers or becomes aware of through the course of conducting audits or inspections pursuant to subsection (8) of this section.

(11) This section does not apply to:

(a) Refillable plastic beverage containers; or

(b) Rigid plastic containers or rigid plastic bottles that are medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products.

(12) The legislature encourages beverage manufacturers to use plastic beverage containers that contain one hundred percent recycled plastic content.

(13) For the purposes of this section, "beverage manufacturer" means a manufacturer of one or more beverages described in section 4 of this act that are sold, offered for sale, or distributed in Washington.

NEW SECTION. **Sec.**  The recycling enhancement penalty account is created in the custody of the state treasurer. All penalties collected by the department of ecology pursuant to section 2 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of ecology only for supporting waste reduction, litter collection, and the recycling, infrastructure, collection, and processing of plastic beverage containers in this state.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act apply only to any individual, separate, sealed plastic bottle, bladder, or pouch, except for polycoated cartons, foil pouches, and drink boxes that contain the following beverages, intended for human or animal consumption and in a quantity less than or equal to one gallon, offered for sale, sold, or distributed in Washington:

(1) The following beverages, intended for human or animal consumption and in a quantity less than or equal to one gallon:

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine; and

(d) Mineral waters, soda water, and similar carbonated soft drinks;

(2) Any beverage other than those specified in subsection (1) of this section that is intended for human or animal consumption and is in a quantity more than or equal to two fluid ounces and less than or equal to one gallon, except infant formula or any other exemptions adopted by the department of ecology by rule.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

Information submitted to the department of ecology under chapter 70.--- RCW (the new chapter created in section 6 of this act), that contains business trade secrets or proprietary information about manufacturing processes and equipment, is exempt from disclosure under this chapter.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act constitute a new chapter in Title 70 RCW.

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