
SUBSTITUTE HOUSE BILL 1569

State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 02/18/19.

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

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

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

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

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

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

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

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

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

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

15 (b) (i) Meets the requirements of Vincotte's "OK Biodegradable
16 Soil" standard, as that standard existed as of January 1, 2019; or

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

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

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

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

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

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

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

6 (a) Plastic; or

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

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

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

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

17 (c) A film product; or

18 (d) Plastic food packaging and food service products.

19 (10) "Readily and easily identifiable" means a product that:

20 (a) Meets industry standards for being distinguishable in both
21 public sorting areas or at a distance in processing facilities; and

22 (b) When compostable, uses distinctive brown or green color
23 schemes, green or brown color striping, or other adopted symbols,
24 colors, marks, or design patterns that help differentiate compostable
25 items from noncompostable materials.

26 (11) "Standard specification" means either:

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

30 (b) ASTM D6868 - standard specification for labeling of end items
31 that incorporate plastics and polymers as coatings or additives with
32 paper and other substrates designed to be aerobically composted in
33 municipal or industrial facilities, as it existed as of January 1,
34 2019.

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

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

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

5 NEW SECTION. **Sec. 3.** (1) Except as provided in this chapter, no
6 manufacturer or supplier may sell, offer for sale, or distribute for
7 use in this state a plastic product that is labeled with the term
8 "biodegradable," "degradable," "decomposable," "oxo-degradable," or
9 any similar form of those terms, or in any way imply that the plastic
10 product will break down, fragment, biodegrade, or decompose in a
11 landfill or other environment.

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

15 NEW SECTION. **Sec. 4.** A product labeled as "compostable" that is
16 sold, offered for sale, or distributed for use in Washington by a
17 supplier or manufacturer must:

- 18 (1) (a) Meet ASTM standard specification D6400;
- 19 (b) Meet ASTM standard specification D6868; or
- 20 (c) Be comprised of wood or fiber-based substrate only;
- 21 (2) Meet labeling requirements established under the United
22 States federal trade commission's guides; and
- 23 (3) Feature labeling that:
 - 24 (a) Is ready and easily identifiable;
 - 25 (b) Uses a logo indicating the product has been certified by a
26 recognized third-party independent verification body as meeting the
27 ASTM standard specification; and
 - 28 (c) Displays the word "compostable," where possible, indicating
29 the product has been tested by a recognized third-party independent
30 body and meets the ASTM standard specification and is documented to
31 be compostable in the commercial composting facility that accepts it.

32 NEW SECTION. **Sec. 5.** (1) A manufacturer or supplier of a film
33 bag that meets ASTM standard specification D6400 and is distributed
34 or sold by retailers must ensure that the film bag is readily and
35 easily identifiable from other film bags in a manner that is
36 consistent with the federal trade commission guides.

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

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

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

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

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

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

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

18 (c) If the bag is smaller than fourteen inches by fourteen
19 inches, the lettering and stripe must be in proportion to the size of
20 the bag.

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

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

27 NEW SECTION. **Sec. 6.** (1)(a) A manufacturer or supplier of food
28 service products or film products that meet ASTM standard
29 specification D6400 or ASTM standard specification D6868 must ensure
30 that the items are readily and easily identifiable from other plastic
31 food service products or plastic film products in a manner that is
32 consistent with the federal trade commission guides.

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

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

37 (a) Labeled with a logo indicating the product has been certified
38 by a recognized third-party independent verification body as meeting
39 the ASTM standard specification.

1 (b) Labeled with the word "compostable," where possible,
2 indicating the food packaging or film product has been tested by a
3 recognized third-party independent body and meets the ASTM standard
4 specification and is documented to be compostable in the commercial
5 composting facility that accepts it.

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

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

12 (b) Be tinted green or brown.

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

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

19 NEW SECTION. **Sec. 7.** A manufacturer or supplier of film
20 products or food service products sold, offered for sale, or
21 distributed for use in Washington that does not meet the applicable
22 ASTM standard specifications provided in sections 5 and 6 of this act
23 is:

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

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

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

34 NEW SECTION. **Sec. 8.** Upon the request by a person, a
35 manufacturer or supplier shall submit to that person, within ninety
36 days of the request, nonconfidential business information and
37 documentation demonstrating compliance with this chapter, in a format
38 that is easy to understand and scientifically accurate.

1 NEW SECTION. **Sec. 9.** (1) The state, acting through the attorney
2 general, and cities and counties have concurrent authority to enforce
3 this chapter and to collect civil penalties for a violation of this
4 chapter, subject to the conditions in this section. An enforcing
5 government entity may impose a civil penalty in the amount of up to
6 two thousand dollars for the first violation of this chapter, up to
7 five thousand dollars for the second violation of this chapter, and
8 up to ten thousand dollars for the third and any subsequent violation
9 of this chapter. If a manufacturer or supplier has paid a prior
10 penalty for the same violation to a different government entity with
11 enforcement authority under this subsection, the penalty imposed by a
12 government entity is reduced by the amount of the payment.

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

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

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

25 NEW SECTION. **Sec. 10.** Manufacturers and suppliers who violate
26 the requirements of this chapter are subject to civil penalties
27 described in section 9 of this act. A specific violation is deemed to
28 have occurred upon the sale of noncompliant product by stock-keeping
29 unit number or unique item number. The repeated sale of the same
30 noncompliant product by stock-keeping unit number or unique item
31 number is considered a single violation. A city, county, or the state
32 must send a written notice and a copy of the requirements to a
33 noncompliant manufacturer or supplier of an alleged violation, who
34 will have ninety days to become compliant. A city, county, or the
35 state may assess a first penalty if the manufacturer or supplier has
36 not met the requirements ninety days following the date the
37 notification was sent. A city, county, or the state may impose
38 second, third, and subsequent penalties on a manufacturer or supplier

1 that remains noncompliant with the requirements of this chapter for
2 every month of noncompliance.

3 NEW SECTION. **Sec. 11.** The compostable products revolving
4 account is created in the custody of the state treasurer. All
5 receipts from civil penalties or other amounts recovered by the state
6 in enforcement actions under section 9 of this act must be deposited
7 in the account. Expenditures from the account must be used by the
8 attorney general for the payment of costs, expenses, and charges
9 incurred in the enforcement of this chapter. Only the attorney
10 general or the attorney general's designee may authorize expenditures
11 from the account. The account is subject to allotment procedures
12 under chapter 43.88 RCW, but an appropriation is not required for
13 expenditures.

14 NEW SECTION. **Sec. 12.** Sections 1 through 11 and 13 of this act
15 constitute a new chapter in Title 70 RCW.

16 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2020.

17 NEW SECTION. **Sec. 14.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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