

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1569

66th Legislature
2019 Regular Session

Passed by the House March 11, 2019
Yeas 60 Nays 37

Speaker of the House of Representatives

Passed by the Senate April 15, 2019
Yeas 30 Nays 17

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1569** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1569

Passed Legislature - 2019 Regular Session

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" certification scheme, as that certification existed as of
17 January 1, 2019;

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

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

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

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

34 (5) "Food service product" means a product including, but not
35 limited to, containers, plates, bowls, cups, lids, meat trays,
36 straws, deli rounds, cocktail picks, splash sticks, condiment
37 packaging, clam shells and other hinged or lidded containers,
38 sandwich wrap, utensils, sachets, portion cups, and other food

1 service products that are intended for one-time use and used for food
2 or drink offered for sale or use.

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

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

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

10 (a) Plastic; or

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

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

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

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

21 (c) A film product; or

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

23 (10) "Standard specification" means either:

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

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

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

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

38 (12) "Utensil" means a product designed to be used by a consumer
39 to facilitate the consumption of food or beverages, including knives,

1 forks, spoons, cocktail picks, chopsticks, splash sticks, and
2 stirrers.

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

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

13 NEW SECTION. **Sec. 4.** (1)(a) A product labeled as "compostable"
14 that is sold, offered for sale, or distributed for use in Washington
15 by a supplier or manufacturer must:

- 16 (i) Meet ASTM standard specification D6400;
17 (ii) Meet ASTM standard specification D6868; or
18 (iii) Be comprised of wood, which includes renewable wood, or
19 fiber-based substrate only;

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

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

24 (ii) Feature labeling that:

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

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

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

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

36 (a) Has green or brown labeling;

37 (b) Is labeled as compostable; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) Has green or brown labeling;

24 (b) Is labeled as compostable; and

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

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

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

35 (b) Be tinted green or brown.

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

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

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

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

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

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

19 NEW SECTION. **Sec. 8.** (1) Upon the request by a person, a
20 manufacturer or supplier shall submit to that person, within ninety
21 days of the request, nonconfidential business information and
22 documentation demonstrating compliance with this chapter, in a format
23 that is easy to understand and scientifically accurate.

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

30 NEW SECTION. **Sec. 9.** (1) The state, acting through the attorney
31 general, and cities and counties have concurrent authority to enforce
32 this chapter and to collect civil penalties for a violation of this
33 chapter, subject to the conditions in this section. An enforcing
34 government entity may impose a civil penalty in the amount of up to
35 two thousand dollars for the first violation of this chapter, up to
36 five thousand dollars for the second violation of this chapter, and
37 up to ten thousand dollars for the third and any subsequent violation

1 of this chapter. If a manufacturer or supplier has paid a prior
2 penalty for the same violation to a different government entity with
3 enforcement authority under this subsection, the penalty imposed by a
4 government entity is reduced by the amount of the payment.

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

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

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

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

33 NEW SECTION. **Sec. 11.** The compostable products revolving
34 account is created in the custody of the state treasurer. All
35 receipts from civil penalties or other amounts recovered by the state
36 in enforcement actions under section 9 of this act must be deposited
37 in the account. Expenditures from the account must be used by the
38 attorney general for the payment of costs, expenses, and charges

1 incurred in the enforcement of this chapter. Only the attorney
2 general or the attorney general's designee may authorize expenditures
3 from the account. The account is subject to allotment procedures
4 under chapter 43.88 RCW, but an appropriation is not required for
5 expenditures.

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

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

9 NEW SECTION. **Sec. 14.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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