

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5323

66th Legislature
2020 Regular Session

Passed by the Senate March 9, 2020
Yeas 33 Nays 15

President of the Senate

Passed by the House March 7, 2020
Yeas 67 Nays 29

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5323** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5323

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Das, Carlyle, Kuderer, Palumbo, Hunt, Rolfes, Frockt, Keiser, Pedersen, and Saldaña)

READ FIRST TIME 02/01/19.

1 AN ACT Relating to reducing pollution from plastic bags by
2 establishing minimum state standards for the use of bags at retail
3 establishments; reenacting and amending RCW 43.21B.110 and
4 43.21B.110; adding a new section to chapter 82.04 RCW; adding a new
5 chapter to Title 70 RCW; creating a new section; prescribing
6 penalties; providing an effective date; and providing expiration
7 dates.

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

9 NEW SECTION. **Sec. 1.** (1) State policy has long placed waste
10 reduction as the highest priority in the collection, handling, and
11 management of solid waste. Reducing plastic bag waste holds
12 particular importance among state waste reduction efforts for a
13 number of reasons:

14 (a) Single-use plastic carryout bags are made of nonrenewable
15 resources and never biodegrade; instead, over time, they break down
16 into tiny particles. Single-use plastic carryout bags, and the
17 particles they break into, are carried into rivers, lakes, Puget
18 Sound, and the world's oceans, posing a threat to animal life and the
19 food chain;

20 (b) Plastic bags are one of the most commonly found items that
21 litter state roads, beaches, and other public spaces; and

1 (c) Even when plastic bags avoid the common fate of becoming
2 litter, they are a drain on public resources and a burden on
3 environment and resource conservation goals. For example, if plastic
4 bags are disposed of in commingled recycling systems rather than as
5 garbage or in retailer drop-off programs, they clog processing and
6 sorting machinery, resulting in missorted materials and costly
7 inefficiencies that are ultimately borne by utility ratepayers.
8 Likewise, when green or brown-tinted plastic bags confuse consumers
9 into attempting to dispose of them as compost, the resultant plastic
10 contamination undercuts the ability to use the compost in gardens,
11 farms, landscaping, and surface water and transportation projects.

12 (2) Alternatives to single-use plastic carryout bags are
13 convenient, functional, widely available, and measure as superior
14 across most environmental performance metrics. Alternatives to
15 single-use plastic carryout bags feature especially superior
16 environmental performance with respect to litter and marine debris,
17 since plastic bags do not biodegrade.

18 (3) As of 2020, many local governments in Washington have shown
19 leadership in regulating the use of single-use plastic carryout bags.
20 This local leadership has shown the value of establishing state
21 standards that will streamline regulatory inconsistency and reduce
22 burdens on covered retailers caused by a patchwork of inconsistent
23 local requirements across the state.

24 (4) Data provided from grocery retailers has shown that requests
25 for paper bags have skyrocketed where plastic bag bans have been
26 implemented. To accommodate the anticipated consequences of a
27 statewide plastic bag ban, it is rational to expect additional
28 capacity will be needed in Washington state for manufacturing paper
29 bags. The legislature intends to provide that capacity by
30 prioritizing and expediting siting and permitting of expansions or
31 reconfiguring for paper manufacturing.

32 (5) Therefore, in order to reduce waste, litter, and marine
33 pollution, conserve resources, and protect fish and wildlife, it is
34 the intent of the legislature to:

35 (a) Prohibit the use of single-use plastic carryout bags;

36 (b) Require a pass-through charge on recycled content paper
37 carryout bags and reusable carryout bags made of film plastic, to
38 encourage shoppers to bring their own reusable carryout bags;

39 (c) Require that bags provided by a retail establishment contain
40 recycled content; and

1 (d) Encourage the provision of reusable and recycled content
2 paper carryout bags by retail establishments.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Carryout bag" means any bag that is provided by a retail
7 establishment at home delivery, the check stand, cash register, point
8 of sale, or other point of departure to a customer for use to
9 transport or carry away purchases.

10 (2) "Department" means the department of ecology.

11 (3) "Pass-through charge" means a charge to be collected and
12 retained by retail establishments from their customers when providing
13 recycled content paper carryout bags and reusable carryout bags made
14 of film plastic.

15 (4) "Recycled content paper carryout bag" means a paper carryout
16 bag provided by a retail establishment to a customer that meets the
17 requirements in section 3(6)(a) of this act.

18 (5) "Retail establishment" means any person, corporation,
19 partnership, business, facility, vendor, organization, or individual
20 that sells or provides food, merchandise, goods, or materials
21 directly to a customer including home delivery, temporary stores, or
22 vendors at farmers markets, street fairs, and festivals.

23 (6) "Reusable carryout bag" means a carryout bag made of cloth or
24 other durable material with handles that is specifically designed and
25 manufactured for long-term multiple reuse and meets the requirements
26 of section 3(6)(b) of this act.

27 (7) "Single-use plastic carryout bag" means any carryout bag that
28 is made from plastic that is designed and suitable only to be used
29 once and disposed.

30 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2021, except as
31 provided in this section and section 4 of this act, a retail
32 establishment may not provide to a customer or a person at an event:

33 (a) A single-use plastic carryout bag;

34 (b) A paper carryout bag or reusable carryout bag made of film
35 plastic that does not meet recycled content requirements; or

36 (c) Beginning January 1, 2026, a reusable carryout bag made of
37 film plastic with a thickness of less than four mils, in the event
38 that the 2025 legislature does not amend this section to reflect the

1 recommendations to the legislature made consistent with section 7 of
2 this act.

3 (2) (a) A retail establishment may provide a reusable carryout bag
4 or a recycled content paper carryout bag of any size to a customer at
5 the point of sale. A retail establishment may make reusable carryout
6 bags available to customers through sale.

7 (b) (i) Until December 31, 2025, a retail establishment must
8 collect a pass-through charge of eight cents for every recycled
9 content paper carryout bag with a manufacturer's stated capacity of
10 one-eighth barrel (eight hundred eighty-two cubic inches) or greater
11 or reusable carryout bag made of film plastic it provides, except as
12 provided in subsection (5) of this section and section 4 of this act.

13 (ii) Beginning January 1, 2026, a retail establishment must
14 collect a pass-through charge of twelve cents for reusable carryout
15 bags made of film plastic and eight cents for recycled content paper
16 carryout bags, in the event that the 2025 legislature does not amend
17 this section to reflect the recommendations to the legislature made
18 consistent with section 7 of this act. It is the intent of the
19 legislature for the 2025 legislature to reassess the amount of the
20 pass-through charge authorized under this subsection (2) (b), taking
21 into consideration the content of the report to the legislature under
22 section 7 of this act.

23 (c) A retail establishment must keep all revenue from pass-
24 through charges. The pass-through charge is a taxable retail sale. A
25 retail establishment must show all pass-through charges on a receipt
26 provided to the customer.

27 (3) Carryout bags provided by a retail establishment do not
28 include:

29 (a) Bags used by consumers inside stores to:

30 (i) Package bulk items, such as fruit, vegetables, nuts, grains,
31 candy, greeting cards, or small hardware items such as nails, bolts,
32 or screws;

33 (ii) Contain or wrap items where dampness or sanitation might be
34 a problem including, but not limited to:

35 (A) Frozen foods;

36 (B) Meat;

37 (C) Fish;

38 (D) Flowers; and

39 (E) Potted plants;

40 (iii) Contain unwrapped prepared foods or bakery goods;

1 (iv) Contain prescription drugs; or
2 (v) Protect a purchased item from damaging or contaminating other
3 purchased items when placed in a recycled content paper carryout bag
4 or reusable carryout bag; or
5 (b) Newspaper bags, mailing pouches, sealed envelopes, door
6 hanger bags, laundry/dry cleaning bags, or bags sold in packages
7 containing multiple bags for uses such as food storage, garbage, or
8 pet waste.
9 (4)(a) Any compostable film bag that a retail establishment
10 provides to customers for products, including for products bagged in
11 stores prior to checkout, must meet the requirements for compostable
12 products and film bags in chapter 70.360 RCW.
13 (b) A retail establishment may not use or provide polyethylene or
14 other noncompostable plastic bags for bagging of customer products in
15 stores, as carryout bags, or for home delivery that do not meet the
16 requirements for noncompostable products and film bags in chapter
17 70.360 RCW.
18 (5) Except as provided by local regulations enacted as of April
19 1, 2020, a retail establishment may provide a bag restricted under
20 subsection (1) of this section from existing inventory until one year
21 after the effective date of this section. The retail establishment,
22 upon request by the department, must provide purchase invoices,
23 distribution receipts, or other information documenting that the bag
24 was acquired prior to the effective date of this section.
25 (6) For the purposes of this section:
26 (a) A recycled content paper carryout bag must:
27 (i) Contain a minimum of forty percent postconsumer recycled
28 materials;
29 (ii) Be capable of composting, consistent with the timeline and
30 specifications of the entire American society of testing materials
31 D6868 and associated test methods that must be met, as it existed as
32 of January 1, 2020; and
33 (iii) Display in print on the exterior of the paper bag the
34 minimum percentage of postconsumer content.
35 (b) A reusable carryout bag must:
36 (i) Have a minimum lifetime of one hundred twenty-five uses,
37 which for purposes of this subsection means the capacity to carry a
38 minimum of twenty-two pounds one hundred twenty-five times over a
39 distance of at least one hundred seventy-five feet;

1 (ii) Be machine washable or made from a durable material that may
2 be cleaned or disinfected; and

3 (iii) If made of film plastic:

4 (A) Be made from a minimum of twenty percent postconsumer
5 recycled content until July 1, 2022, and thereafter must be made from
6 a minimum of forty percent postconsumer recycled content;

7 (B) Display in print on the exterior of the plastic bag the
8 minimum percentage of postconsumer recycled content, the mil
9 thickness, and that the bag is reusable; and

10 (C) Have a minimum thickness of no less than 2.25 mils until
11 December 31, 2025, and beginning January 1, 2026, must have a minimum
12 thickness of four mils.

13 (c) Except for the purposes of subsection (4) of this section,
14 food banks and other food assistance programs are not retail
15 establishments, but are encouraged to take actions to reduce the use
16 of single-use plastic carryout bags.

17 NEW SECTION. **Sec. 4.** It is a violation of section 3 of this act
18 for any retail establishment to pay or otherwise reimburse a customer
19 for any portion of the pass-through charge; provided that retail
20 establishments may not collect a pass-through charge from anyone
21 using a voucher or electronic benefits card issued under the women,
22 infants, and children (WIC) or temporary assistance for needy
23 families (TANF) support programs, or the federal supplemental
24 nutrition assistance program (SNAP, also known as basic food), or the
25 Washington state food assistance program (FAP).

26 NEW SECTION. **Sec. 5.** (1) Until June 1, 2025, the department
27 shall prioritize the expedited processing of applications for permits
28 related to the expansion or reconfiguration of an existing pulp and
29 paper mill for the purpose of manufacturing paper bags or raw
30 materials used to manufacture paper bags.

31 (2) The department may adopt rules as necessary for the purpose
32 of implementing, administering, and enforcing this chapter.

33 (3) The enforcement of this chapter must be based primarily on
34 complaints filed with the department and local governments. The
35 department must establish a forum for the filing of complaints. Local
36 governments and any person may file complaints with the department
37 using the forum and local governments may review complaints filed
38 with the department via the forum for purposes of the local

1 government carrying out education and outreach to retail
2 establishments. The forum established by the department may include a
3 complaint form on the department's web site, a telephone hotline, or
4 a public outreach strategy relying upon electronic social media to
5 receive complaints that allege violations. The department, in
6 collaboration with the local governments, must provide education and
7 outreach activities to inform retail establishments, consumers, and
8 other interested individuals about the requirements of this chapter.

9 (4) The department or local government shall work with retail
10 establishments, retail associations, unions, and other organizations
11 to create educational elements regarding the ban and the benefits of
12 reusable carryout bags. Educational elements may include signage at
13 store locations, informational literature, and employee training by
14 October 1, 2020.

15 (5) Retail establishments are encouraged to educate their staff
16 to promote reusable bags as the best option for carryout bags and to
17 post signs encouraging customers to use reusable carryout bags.

18 (6) A violation of this chapter is subject to a civil penalty of
19 up to two hundred fifty dollars. Each calendar day of operation or
20 activity in violation of this chapter comprises a new violation.
21 Penalties issued under this section are appealable to the pollution
22 control hearings board established in chapter 43.21B RCW.

23 (7) If specific funding for the purposes of this act, referencing
24 this act by bill or chapter number, is not provided by July 1, 2020,
25 from the waste reduction, recycling, and litter control account for
26 purposes of implementing the education and outreach activities
27 required under this section, then this act is null and void.

28 NEW SECTION. **Sec. 6.** (1) Except as provided in subsection (2)
29 of this section, a city, town, county, or municipal corporation may
30 not implement a local carryout bag ordinance. Except as provided in
31 subsection (2) of this section, any carryout bag ordinance that was
32 enacted as of April 1, 2020, is preempted by this chapter.

33 (2)(a) A city, town, county, or municipal corporation carryout
34 bag ordinance enacted as of April 1, 2020, that has established a
35 pass-through charge of ten cents is not preempted with respect to the
36 amount of the pass-through charge until January 1, 2026.

37 (b) A city, town, county, or municipal corporation ordinance not
38 specified in (a) of this subsection and enacted as of April 1 2020,
39 is not preempted until January 1, 2021.

1 NEW SECTION. **Sec. 7.** (1) By December 1, 2024, the department of
2 commerce, in consultation with the department, must submit a report
3 to the appropriate committees of the legislature in order to allow an
4 opportunity for the legislature to amend the mil thickness
5 requirements for reusable carryout bags made of film plastic, the
6 amount of the pass-through charges for bags, or to make other needed
7 revisions to this chapter during the 2025 legislative session. The
8 report required under this section must include:

9 (a) An assessment of the effectiveness of the pass-through charge
10 for reducing the total volume of bags purchased and encouraging the
11 use of reusable carryout bags;

12 (b) An assessment of the sufficiency of the amount of the pass-
13 through charge allowed under chapter 70.--- RCW (the new chapter
14 created in section 13 of this act) relative to the cost of the
15 authorized bags to retail establishments and an assessment of the
16 pricing and availability of various types of carryout bags. For
17 purposes of conducting this assessment, the department and the
18 department of commerce may request, but not require, retail
19 establishments and bag distributors to furnish information regarding
20 the cost of various types of paper and plastic carryout bags provided
21 to retail establishments; and

22 (c) Recommendations for revisions to chapter 70.--- RCW (the new
23 chapter created in section 13 of this act), if needed.

24 (2) This section expires July 1, 2027.

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.04
26 RCW to read as follows:

27 In computing the tax due under this chapter, there may be
28 deducted any amounts derived from the pass-through charge collected
29 by a taxpayer pursuant to chapter 70.--- RCW (the new chapter created
30 in section 13 of this act).

31 NEW SECTION. **Sec. 9.** RCW 82.32.805 and 82.32.808 do not apply
32 to this act.

33 **Sec. 10.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
34 and 2019 c 290 s 12 are each reenacted and amended to read as
35 follows:

36 (1) The hearings board shall only have jurisdiction to hear and
37 decide appeals from the following decisions of the department, the

1 director, local conservation districts, the air pollution control
2 boards or authorities as established pursuant to chapter 70.94 RCW,
3 local health departments, the department of natural resources, the
4 department of fish and wildlife, the parks and recreation commission,
5 and authorized public entities described in chapter 79.100 RCW:

6 (a) Civil penalties imposed pursuant to RCW 18.104.155,
7 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 70.365.070,
8 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
9 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

10 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
11 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
12 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

13 (c) A final decision by the department or director made under
14 chapter 183, Laws of 2009.

15 (d) Except as provided in RCW 90.03.210(2), the issuance,
16 modification, or termination of any permit, certificate, or license
17 by the department or any air authority in the exercise of its
18 jurisdiction, including the issuance or termination of a waste
19 disposal permit, the denial of an application for a waste disposal
20 permit, the modification of the conditions or the terms of a waste
21 disposal permit, or a decision to approve or deny an application for
22 a solid waste permit exemption under RCW 70.95.300.

23 (e) Decisions of local health departments regarding the grant or
24 denial of solid waste permits pursuant to chapter 70.95 RCW.

25 (f) Decisions of local health departments regarding the issuance
26 and enforcement of permits to use or dispose of biosolids under RCW
27 70.95J.080.

28 (g) Decisions of the department regarding waste-derived
29 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
30 decisions of the department regarding waste-derived soil amendments
31 under RCW 70.95.205.

32 (h) Decisions of local conservation districts related to the
33 denial of approval or denial of certification of a dairy nutrient
34 management plan; conditions contained in a plan; application of any
35 dairy nutrient management practices, standards, methods, and
36 technologies to a particular dairy farm; and failure to adhere to the
37 plan review and approval timelines in RCW 90.64.026.

38 (i) Any other decision by the department or an air authority
39 which pursuant to law must be decided as an adjudicative proceeding
40 under chapter 34.05 RCW.

1 (j) Decisions of the department of natural resources, the
2 department of fish and wildlife, and the department that are
3 reviewable under chapter 76.09 RCW, and the department of natural
4 resources' appeals of county, city, or town objections under RCW
5 76.09.050(7).

6 (k) Forest health hazard orders issued by the commissioner of
7 public lands under RCW 76.06.180.

8 (l) Decisions of the department of fish and wildlife to issue,
9 deny, condition, or modify a hydraulic project approval permit under
10 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
11 comply, to issue a civil penalty, or to issue a notice of intent to
12 disapprove applications.

13 (m) Decisions of the department of natural resources that are
14 reviewable under RCW 78.44.270.

15 (n) Decisions of an authorized public entity under RCW 79.100.010
16 to take temporary possession or custody of a vessel or to contest the
17 amount of reimbursement owed that are reviewable by the hearings
18 board under RCW 79.100.120.

19 (2) The following hearings shall not be conducted by the hearings
20 board:

21 (a) Hearings required by law to be conducted by the shorelines
22 hearings board pursuant to chapter 90.58 RCW.

23 (b) Hearings conducted by the department pursuant to RCW
24 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
25 90.44.180.

26 (c) Appeals of decisions by the department under RCW 90.03.110
27 and 90.44.220.

28 (d) Hearings conducted by the department to adopt, modify, or
29 repeal rules.

30 (3) Review of rules and regulations adopted by the hearings board
31 shall be subject to review in accordance with the provisions of the
32 administrative procedure act, chapter 34.05 RCW.

33 **Sec. 11.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
34 and 2019 c 290 s 12 are each reenacted and amended to read as
35 follows:

36 (1) The hearings board shall only have jurisdiction to hear and
37 decide appeals from the following decisions of the department, the
38 director, local conservation districts, the air pollution control
39 boards or authorities as established pursuant to chapter 70.94 RCW,

1 local health departments, the department of natural resources, the
2 department of fish and wildlife, the parks and recreation commission,
3 and authorized public entities described in chapter 79.100 RCW:

4 (a) Civil penalties imposed pursuant to RCW 18.104.155,
5 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 70.365.070,
6 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
7 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

8 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
9 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
10 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

11 (c) Except as provided in RCW 90.03.210(2), the issuance,
12 modification, or termination of any permit, certificate, or license
13 by the department or any air authority in the exercise of its
14 jurisdiction, including the issuance or termination of a waste
15 disposal permit, the denial of an application for a waste disposal
16 permit, the modification of the conditions or the terms of a waste
17 disposal permit, or a decision to approve or deny an application for
18 a solid waste permit exemption under RCW 70.95.300.

19 (d) Decisions of local health departments regarding the grant or
20 denial of solid waste permits pursuant to chapter 70.95 RCW.

21 (e) Decisions of local health departments regarding the issuance
22 and enforcement of permits to use or dispose of biosolids under RCW
23 70.95J.080.

24 (f) Decisions of the department regarding waste-derived
25 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
26 decisions of the department regarding waste-derived soil amendments
27 under RCW 70.95.205.

28 (g) Decisions of local conservation districts related to the
29 denial of approval or denial of certification of a dairy nutrient
30 management plan; conditions contained in a plan; application of any
31 dairy nutrient management practices, standards, methods, and
32 technologies to a particular dairy farm; and failure to adhere to the
33 plan review and approval timelines in RCW 90.64.026.

34 (h) Any other decision by the department or an air authority
35 which pursuant to law must be decided as an adjudicative proceeding
36 under chapter 34.05 RCW.

37 (i) Decisions of the department of natural resources, the
38 department of fish and wildlife, and the department that are
39 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW
2 76.09.050(7).

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4 public lands under RCW 76.06.180.

5 (k) Decisions of the department of fish and wildlife to issue,
6 deny, condition, or modify a hydraulic project approval permit under
7 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
8 comply, to issue a civil penalty, or to issue a notice of intent to
9 disapprove applications.

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11 reviewable under RCW 78.44.270.

12 (m) Decisions of an authorized public entity under RCW 79.100.010
13 to take temporary possession or custody of a vessel or to contest the
14 amount of reimbursement owed that are reviewable by the hearings
15 board under RCW 79.100.120.

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17 board:

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22 90.44.180.

23 (c) Appeals of decisions by the department under RCW 90.03.110
24 and 90.44.220.

25 (d) Hearings conducted by the department to adopt, modify, or
26 repeal rules.

27 (3) Review of rules and regulations adopted by the hearings board
28 shall be subject to review in accordance with the provisions of the
29 administrative procedure act, chapter 34.05 RCW.

30 NEW SECTION. **Sec. 12.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 13.** Sections 1 through 7 of this act
35 constitute a new chapter in Title 70 RCW.

36 NEW SECTION. **Sec. 14.** Section 10 of this act expires June 30,
37 2021.

1 NEW SECTION. **Sec. 15.** Section 11 of this act takes effect June
2 30, 2021.

--- END ---