

SHB 1569 - H AMD 234

By Representative Ramos

ADOPTED AS AMENDED 03/11/2019

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

24 NEW SECTION. **Sec. 2.** The definitions in this section apply
25 throughout this chapter unless the context clearly requires
26 otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) Plastic; or

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

39 (9) "Plastic product" means a product made of plastic, whether
40 alone or in combination with another material including, but not

1 limited to, paperboard. A plastic product includes, but is not
2 limited to, any of the following:

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

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

7 (c) A film product; or

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

9 (10) "Standard specification" means either:

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

13 (b) ASTM D6868 - standard specification for labeling of end items
14 that incorporate plastics and polymers as coatings or additives with
15 paper and other substrates designed to be aerobically composted in
16 municipal or industrial facilities, as it existed as of January 1,
17 2019.

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

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

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

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

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

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

4 (i) Meet ASTM standard specification D6400;

5 (ii) Meet ASTM standard specification D6868; or

6 (iii) Be comprised of wood or fiber-based substrate only;

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

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

11 (ii) Feature labeling that:

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

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

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

20 (2) A compostable product described in subsection (1)(a)(i) or
21 (ii) of this section must be considered compliant with the
22 requirements of this 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 NEW SECTION. **Sec. 5.** (1) A manufacturer or supplier of a film
30 bag that meets ASTM standard specification D6400 and is distributed
31 or sold by retailers must ensure that the film bag is readily and
32 easily identifiable from other film bags in a manner that is
33 consistent with the federal trade commission guides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Has green or brown labeling;

7 (b) Is labeled as compostable; and

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

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

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

18 (b) Be tinted green or brown.

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

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 9.** (1) The state, acting through the attorney
13 general, and cities and counties have concurrent authority to enforce
14 this chapter and to collect civil penalties for a violation of this
15 chapter, subject to the conditions in this section. An enforcing
16 government entity may impose a civil penalty in the amount of up to
17 two thousand dollars for the first violation of this chapter, up to
18 five thousand dollars for the second violation of this chapter, and
19 up to ten thousand dollars for the third and any subsequent violation
20 of this chapter. If a manufacturer or supplier has paid a prior
21 penalty for the same violation to a different government entity with
22 enforcement authority under this subsection, the penalty imposed by a
23 government entity is reduced by the amount of the payment.

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

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

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

36 NEW SECTION. **Sec. 10.** Manufacturers and suppliers who violate
37 the requirements of this chapter are subject to civil penalties
38 described in section 9 of this act. A specific violation is deemed to

1 have occurred upon the sale of noncompliant product by stock-keeping
2 unit number or unique item number. The repeated sale of the same
3 noncompliant product by stock-keeping unit number or unique item
4 number is considered a single violation. A city, county, or the state
5 must send a written notice and a copy of the requirements to a
6 noncompliant manufacturer or supplier of an alleged violation, who
7 will have ninety days to become compliant. A city, county, or the
8 state may assess a first penalty if the manufacturer or supplier has
9 not met the requirements ninety days following the date the
10 notification was sent. A city, county, or the state may impose
11 second, third, and subsequent penalties on a manufacturer or supplier
12 that remains noncompliant with the requirements of this chapter for
13 every month of noncompliance.

14 NEW SECTION. **Sec. 11.** The compostable products revolving
15 account is created in the custody of the state treasurer. All
16 receipts from civil penalties or other amounts recovered by the state
17 in enforcement actions under section 9 of this act must be deposited
18 in the account. Expenditures from the account must be used by the
19 attorney general for the payment of costs, expenses, and charges
20 incurred in the enforcement of this chapter. Only the attorney
21 general or the attorney general's designee may authorize expenditures
22 from the account. The account is subject to allotment procedures
23 under chapter 43.88 RCW, but an appropriation is not required for
24 expenditures.

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

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

28 NEW SECTION. **Sec. 14.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected."

32 Correct the title.

EFFECT: Makes the following changes to the substitute bill:

(1) Authorizes biodegradable mulch film that meets certain European Union standards to be labeled as biodegradable, in addition to such film that meets other specified standards;

(2) Eliminates a broadly-applicable definition of "readily and easily identifiable," and instead applies labeling and identification requirements that are specific to each of the categories of products addressed: Products; compostable products; film bags; and nonbag film products and plastic food service products;

(3) Eliminates requirements that compostable products be documented to be compostable in the commercial composting facility that accepts the product;

(4) Specifies that compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use distinctive color schemes, green or brown striping, or other differentiating symbols, colors, or patterns; and

(5) Encourages manufacturers of compostable products to provide information, upon request, to commercial composting facilities regarding the technical aspects of a commercial composting environment in which the manufacturer's products have been field tested and found to degrade.

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