

SSB 5323 - S AMD 123

By Senator Das

ADOPTED 03/05/2019

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

3 "NEW SECTION. **Sec. 1.** (1) State policy has long placed waste
4 reduction as the highest priority in the collection, handling, and
5 management of solid waste. Reducing plastic bag waste holds
6 particular importance among state waste reduction efforts for a
7 number of reasons:

8 (a) Single-use plastic carryout bags are made of nonrenewable
9 resources and never biodegrade; instead, over time, they break down
10 into tiny particles. Single-use plastic carryout bags, and the
11 particles they break into, are carried into rivers, lakes, Puget
12 Sound, and the world's oceans, posing a threat to animal life and the
13 food chain;

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

16 (c) Even when plastic bags avoid the common fate of becoming
17 litter, they are a drain on public resources and a burden on
18 environment and resource conservation goals. For example, if plastic
19 bags are disposed of in commingled recycling systems rather than as
20 garbage or in retailer drop-off programs, they clog processing and
21 sorting machinery, resulting in missorted materials and costly
22 inefficiencies that are ultimately borne by utility ratepayers.
23 Likewise, when green or brown-tinted plastic bags confuse consumers
24 into attempting to dispose of them as compost, the resultant plastic
25 contamination undercuts the ability to use the compost in gardens,
26 farms, landscaping, and surface water and transportation projects.

27 (2) Alternatives to single-use plastic carryout bags are
28 convenient, functional, widely available, and measure as superior
29 across most environmental performance metrics. Alternatives to
30 single-use plastic carryout bags feature especially superior
31 environmental performance with respect to litter and marine debris,
32 since plastic bags do not biodegrade.

1 (3) As of 2019, many local governments in Washington have shown
2 leadership in regulating the use of single-use plastic carryout bags.
3 This local leadership has shown the value of establishing state
4 standards that will streamline regulatory inconsistency and reduce
5 burdens on covered retailers caused by a patchwork of inconsistent
6 local requirements across the state.

7 (4) Therefore, in order to reduce waste, litter, and marine
8 pollution, conserve resources, and protect fish and wildlife, it is
9 the intent of the legislature to:

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

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

14 (c) Require the use of recycled content bags; and

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

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

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

24 (2) "Compostable" means that a product that is capable of being
25 completely broken down in a timely manner, consistent with the
26 standard specification as established in section 3(6) of this act,
27 into a material safe and desirable as a soil amendment.

28 (3) "Compostable film bag" means a compostable bag that is
29 designed and suitable only to be used once and disposed of or
30 composted.

31 (4) "Department" means the department of ecology.

32 (5) "Pass-through charge" means a charge to be collected and
33 retained by retailers from their customers when providing recycled
34 content paper carryout bags and reusable carryout bags made of film
35 plastic.

36 (6) "Recycled content paper carryout bag" means a paper carryout
37 bag provided by a store to a customer at the point of sale that meets
38 the requirements in section 3(6)(a) of this act.

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

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

10 (9) "Single-use plastic carryout bag" means any bag that is made
11 from plastic that is designed and suitable only to be used once and
12 disposed.

13 (10) "Standard specification" means the entire American society
14 for testing and materials (ASTM) specification and associated test
15 methods that must be met for:

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

19 (b) ASTM D6868 - standard specification for labeling of end items
20 that incorporate plastics and polymers as coatings or additives with
21 paper and other substrates designed to be aerobically composted in
22 municipal or industrial facilities, as it existed as of January 1,
23 2019.

24 NEW SECTION. **Sec. 3.** (1) Except as provided in this section and
25 section 4 of this act, a retail establishment may not provide to a
26 customer or a person at an event:

27 (a) A single-use plastic carryout bag; or

28 (b) A paper carryout bag or reusable carryout bag made of film
29 plastic that does not meet recycled content requirements.

30 (2)(a) A retail establishment may provide a reusable carryout bag
31 or a recycled content paper carryout bag of any size to a customer at
32 the point of sale.

33 (b) A retail establishment must collect a pass-through charge of
34 not less than ten cents for every recycled content paper carryout bag
35 or reusable carryout bag made of film plastic it provides, except as
36 provided in subsection (5) of this section and section 4 of this act.
37 A retail establishment may make reusable carryout bags available to
38 customers through sale.

1 (c) A retail establishment must keep all revenue from pass-
2 through charges. The pass-through charge is a taxable retail sale. A
3 retail establishment must show all pass-through charges on any
4 receipts provided to customers.

5 (3) Carryout bags provided by a retail establishment do not
6 include:

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

8 (i) Package bulk items, such as fruit, vegetables, nuts, grains,
9 candy, greeting cards, or small hardware items such as nails, bolts,
10 or screws;

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

13 (A) Frozen foods;

14 (B) Meat;

15 (C) Fish;

16 (D) Flowers; and

17 (E) Potted plants;

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

19 (iv) Contain prescription drugs; or

20 (v) Protect a purchased item from damaging or contaminating other
21 purchased items when placed in a recycled content paper carryout bag
22 or reusable carryout bag; or

23 (b) Newspaper bags, door hanger bags, laundry/dry cleaning bags,
24 or bags sold in packages containing multiple bags for uses such as
25 food storage, garbage, or pet waste.

26 (4)(a) Any compostable film bag that a retail establishment
27 provides to customers for products, including for products bagged in
28 stores prior to checkout, must be tinted green or brown, and be
29 labeled "compostable," as required under subsection (6)(c)(i) of this
30 section.

31 (b) A retail establishment may not use or provide polyethylene or
32 other noncompostable plastic bags:

33 (i) That are tinted green or brown for bagging of customer
34 products in stores, as carryout bags, or for home delivery;

35 (ii) To customers to bag products in stores, as a carryout bag,
36 or for home delivery that is labeled with the term "biodegradable,"
37 "compostable," "degradable," "decomposable," "oxo-degradable," or any
38 similar terms, or in any way imply that the plastic bag will break
39 down, fragment, biodegrade, or decompose in a landfill or other
40 environment.

1 (5) Except as provided by local regulations in effect as of
2 January 1, 2019, a retail establishment may provide a bag restricted
3 under subsections (1) and (4) of this section from existing inventory
4 until one year after the effective date of this section. The retail
5 establishment, upon request by the department, must provide purchase
6 invoices, distribution receipts, or other information documenting
7 that the bag was acquired prior to the effective date of this
8 section.

9 (6) For the purposes of this section:

10 (a) A recycled content paper carryout bag must:

11 (i) Contain a minimum of forty percent postconsumer recycled
12 materials;

13 (ii) Be capable of composting, consistent with the timeline and
14 specifications of ASTM D6868, as it existed as of January 1, 2019;
15 and

16 (iii) Display the minimum percentage of postconsumer content in
17 print on the exterior of the paper bag.

18 (b) A reusable carryout bag must:

19 (i) Have a minimum lifetime of one hundred twenty-five uses,
20 which for purposes of this subsection means the capacity to carry a
21 minimum of twenty-two pounds one hundred twenty-five times over a
22 distance of at least one hundred seventy-five feet;

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

25 (iii) If made of film plastic:

26 (A) Be made from a minimum of forty percent postconsumer recycled
27 material;

28 (B) Display the minimum percentage of postconsumer content in
29 print on the exterior of the plastic bag;

30 (C) Have a minimum thickness of no less than three mils; and

31 (D) Display wording that the bag is reusable.

32 (c) A compostable film bag must:

33 (i) Be labeled as "compostable" consistent with green guides
34 published by the United States federal trade commission (16 C.F.R.
35 part 260, as published October 11, 2012) or similar formal guidance
36 issued by the federal trade commission regarding misleading
37 environmental claims; and

38 (ii) Meet the standard specification established in ASTM D6400,
39 as it existed as of January 1, 2019.

1 (d) Except for the purposes of subsection (4) of this section,
2 food banks and other food assistance programs are not retail
3 establishments, but are encouraged to take actions to reduce the use
4 of single-use plastic carryout bags.

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

14 NEW SECTION. **Sec. 5.** (1) The department may adopt rules as
15 necessary for the purpose of implementing, administering, and
16 enforcing this chapter.

17 (2) The enforcement of this chapter must be based primarily on
18 complaints filed with the department. The department must establish a
19 forum, which may include a complaint form on the department's web
20 site, a telephone hotline, or a public outreach strategy relying upon
21 electronic social media to receive complaints that allege violations.
22 The department must provide education and outreach activities to
23 inform retail establishments, consumers, and other interested
24 individuals about the requirements of this chapter.

25 (3) The department may work with retail establishments, retail
26 associations, unions, and other organizations to create educational
27 elements regarding the benefits of reusable bags. Educational
28 elements may include signage at store locations, informational
29 literature, and employee training.

30 (4) Retail establishments are encouraged to educate their staff
31 to promote reusable bags as the best option for carry-out bags and to
32 post signs encouraging customers to use reusable bags.

33 (5) A violation of this chapter is subject to a civil penalty of
34 up to two hundred fifty dollars. Each calendar day of operation or
35 activity in violation of this chapter comprises a new violation.
36 Penalties issued under this section are appealable to the pollution
37 control hearings board established in chapter 43.21B RCW.

1 NEW SECTION. **Sec. 6.** (1) Except as provided in subsection (2)
2 of this section, a city, town, county, or municipal corporation may
3 not implement a local carryout bag ordinance. Any carryout bag
4 ordinance that was not in effect as of January 1, 2019, is preempted
5 by this chapter, as of the effective date of this section.

6 (2)(a) A city, town, county, or municipal corporation may, by
7 ordinance, increase the amount of the minimum pass-through charge
8 established in section 3(2)(b) of this act.

9 (b) A city, town, county, or municipal corporation ordinance in
10 effect as of January 1, 2019, is not preempted until January 1, 2020.

11 **Sec. 7.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
12 read as follows:

13 (1) The hearings board shall only have jurisdiction to hear and
14 decide appeals from the following decisions of the department, the
15 director, local conservation districts, the air pollution control
16 boards or authorities as established pursuant to chapter 70.94 RCW,
17 local health departments, the department of natural resources, the
18 department of fish and wildlife, the parks and recreation commission,
19 and authorized public entities described in chapter 79.100 RCW:

20 (a) Civil penalties imposed pursuant to RCW 18.104.155,
21 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 76.09.170,
22 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
23 90.56.310, 90.56.330, and 90.64.102.

24 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
25 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
26 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

27 (c) Except as provided in RCW 90.03.210(2), the issuance,
28 modification, or termination of any permit, certificate, or license
29 by the department or any air authority in the exercise of its
30 jurisdiction, including the issuance or termination of a waste
31 disposal permit, the denial of an application for a waste disposal
32 permit, the modification of the conditions or the terms of a waste
33 disposal permit, or a decision to approve or deny an application for
34 a solid waste permit exemption under RCW 70.95.300.

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

37 (e) Decisions of local health departments regarding the issuance
38 and enforcement of permits to use or dispose of biosolids under RCW
39 70.95J.080.

1 (f) Decisions of the department regarding waste-derived
2 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
3 decisions of the department regarding waste-derived soil amendments
4 under RCW 70.95.205.

5 (g) Decisions of local conservation districts related to the
6 denial of approval or denial of certification of a dairy nutrient
7 management plan; conditions contained in a plan; application of any
8 dairy nutrient management practices, standards, methods, and
9 technologies to a particular dairy farm; and failure to adhere to the
10 plan review and approval timelines in RCW 90.64.026.

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

14 (i) Decisions of the department of natural resources, the
15 department of fish and wildlife, and the department that are
16 reviewable under chapter 76.09 RCW, and the department of natural
17 resources' appeals of county, city, or town objections under RCW
18 76.09.050(7).

19 (j) Forest health hazard orders issued by the commissioner of
20 public lands under RCW 76.06.180.

21 (k) Decisions of the department of fish and wildlife to issue,
22 deny, condition, or modify a hydraulic project approval permit under
23 chapter 77.55 RCW.

24 (l) Decisions of the department of natural resources that are
25 reviewable under RCW 78.44.270.

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

30 (2) The following hearings shall not be conducted by the hearings
31 board:

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

34 (b) Hearings conducted by the department pursuant to RCW
35 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
36 90.44.180.

37 (c) Appeals of decisions by the department under RCW 90.03.110
38 and 90.44.220.

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

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

4 NEW SECTION. **Sec. 8.** If specific funding for the purposes of
5 this act, referencing this act by bill or chapter number, is not
6 provided by July 1, 2019, from the waste reduction, recycling, and
7 litter control account for purposes of implementing the education and
8 outreach activities required under section 5 of this act, then this
9 act is null and void.

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

14 NEW SECTION. **Sec. 10.** Sections 1 through 6 of this act
15 constitute a new chapter in Title 70 RCW."

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By Senator Das

ADOPTED 03/05/2019

16 On page 1, line 3 of the title, after "establishments;" strike
17 the remainder of the title and insert "amending RCW 43.21B.110;
18 adding a new chapter to Title 70 RCW; creating a new section; and
19 prescribing penalties."

EFFECT: Clarifies the violation is subject to a \$250 civil
penalty. Directs that penalties incurred under the new chapter are
appealable to the pollution control hearings board created in chapter
43.21B RCW.

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