

HOUSE BILL REPORT

ESHB 1569

As Passed House:
March 11, 2019

Title: An act relating to marketing the degradability of products.

Brief Description: Concerning marketing the degradability of products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Ramos, Chapman, Callan, Peterson, Fitzgibbon and Slatter).

Brief History:

Committee Activity:

Environment & Energy: 2/5/19, 2/14/19 [DPS];
Appropriations: 2/25/19, 2/26/19 [DPS(ENVI)].

Floor Activity:

Passed House: 3/11/19, 60-37.

Brief Summary of Engrossed Substitute Bill

- Restricts the labeling and marketing of the degradability of certain products, including plastic products, film bags, food service products, and film products.
- Empowers the Attorney General, cities, and counties to enforce marketing and labeling requirements.
- Establishes penalties for violations and a revolving account in the custody of the State Treasurer for state receipts of penalties, for use in enforcement of marketing and labeling requirements.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 1 member: Representative DeBolt.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland, Volz and Ybarra.

Staff: Dan Jones (786-7118).

Background:

Under the state's solid waste management laws, local governments are the primary government entity responsible for implementing state solid waste management requirements. County and city comprehensive solid waste management plans must contain certain elements, including a waste reduction and recycling element, and must consider source separation of recyclable materials and organic materials from other solid wastes. Cities and counties determine which materials may be accepted for curbside recycling in each jurisdiction, and whether organic materials are collected separately from other solid wastes.

The American Society of Testing and Materials (ASTM) is an international organization that adopts technical standards applicable to a variety consumer products.

The United States Federal Trade Commission (FTC) is a federal agency with responsibility for addressing marketplace competitiveness and consumer protection. The FTC has issued federal regulations known as "green guides" that include general principles that apply to environmental marketing claims and guidance on how marketers can qualify their claims to avoid deceiving consumers.

Summary of Engrossed Substitute Bill:

Restrictions are established for the labeling and marketing of the degradability of products, plastic products, film bags, food packaging and service ware, and film products. A number of defined terms are provided, including:

- "film products," which include sheet film bags, sacks, and wraps;
- "food service products," which includes products intended for one-time use and used for food or drink, including plates, bowls, containers, cups, utensils, lids, clamshells, condiment packaging, and other items;

- "readily and easily identifiable," which refers to products that meet industry standards for being distinguishable at sorting areas and processing facilities, and when compostable, use distinctive and distinguishing brown or green color schemes, striping, or other symbols, marks, and designs; and
- "supplier," which does not include entities that sell products to end users as retailers.

Products.

Products that are labeled as compostable and sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier, must:

- either be comprised of only wood or fiber-based substrate, or must meet the American Society of Testing and Materials (ASTM) standards for products designed to be composted in municipal or industrial facilities that are made of plastic or that incorporate plastic coatings onto paper or another substrate;
- meet Federal Trade Commission (FTC) green guide labeling requirements; and
- feature labeling that uses a logo indicating that the product has been third-party certified as meeting ASTM standard specification, displays the word "compostable" and meets industry standards for being distinguishable upon quick inspection.

Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks.

Plastic Products.

Manufacturers or suppliers may not sell, offer for sale, or distribute plastic products that are labeled in a way that will imply the product will break down, biodegrade, or decompose. As part of this restriction, plastic products may not be labeled with the terms "biodegradable," "degradable," "decomposable," or "oxo-degradable." However, biodegradable mulch film that meets ASTM standards and other technical specifications is exempt from this restriction.

Film Bags.

Manufacturers or suppliers of film bags that meet ASTM composting standards for plastics and that are distributed or sold by retailers must ensure that the bag is readily and easily identifiable in a manner consistent with the FTC green guides. Readily and easily identifiable film bags must be of a uniform green or brown color or meet certain other specified requirements regarding the size, location and color of the word "compostable" on the bag. Film bags that meet ASTM composting standards may not display recycling symbols, such as the "chasing arrow" symbol. To the extent that film bag labeling requirements conflict with the FTC guides, manufacturers or suppliers are not required to comply.

Film Products and Food Service Products.

Manufacturers or suppliers of food service products and film products, other than film bags, that meet ASTM composting standards for plastics or plastic-coated substrates must ensure that the items are readily and easily identifiable. Readily and easily identifiable film wrap and food service products must be labeled with a logo indicating the product has met ASTM standards, and labeled with the word "compostable," where possible. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks. Specified additional characteristics, such as color and graphic elements, are encouraged for compostable film

wrap and food packaging and food service ware. To the extent that these product labeling requirements conflict with the FTC guides, manufacturers or suppliers are not required to comply.

Food service products and film products, including film bags, that do not meet ASTM standards are:

- prohibited from using tinting, labeling and terms that are required of products that meet ASTM standards;
- discouraged from using coloration, labeling, images, and terms that confuse customers into mistakenly identifying noncompostable products as compostable; and
- encouraged to use identifying features that indicate whether a product is recyclable or must be disposed of as waste.

Enforcement and Administration.

Manufacturers and suppliers, upon request, must submit non-confidential business information to persons demonstrating their compliance with labeling and marketing requirements. Manufacturers are encouraged to provide additional information upon request to commercial compost facilities regarding the environment in which their products are capable of composting.

The Attorney General, cities, and counties have concurrent authority to enforce labeling and marketing requirements. Violations occur upon the sale of a noncompliant product by stock-keeping number or unique item number, but repeated sales of the same product constitute a single violation. Prior to assessing a violation, a city, county, or the state, on behalf of the Attorney General, must send written notice to a manufacturer or supplier of an alleged violation, providing 90 days to come into compliance. Civil penalties of up to \$1,000 are authorized for an initial violation, followed by \$5,000 for a second violation, and \$10,000 for a third violation. Second, third, and subsequent penalties may be imposed for each month of noncompliance. Penalty amounts are reduced by the amount of any penalty paid for the same violation to a different enforcing government entity. Penalties collected by local governments are retained by the local government office that brought the action, while state-collected penalties are deposited into a revolving account that is created for use by the Attorney General in bringing enforcement actions.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2020.

Staff Summary of Public Testimony (Environment & Energy):

(In support) This bill requires bags and products to be labeled or marketed as compostable when they are compostable and meet scientific composting standards, and prohibits products from being labeled or marketed as compostable when they are not compostable. Terms like "biodegradable" do not mean what most people think they mean and should not be used on

products. By reducing consumer confusion about composting, this bill will help people who want to do the right thing. Plastic contamination impacts businesses that manufacture compost and raises their costs of operation. Keeping plastic out of compost will reduce utility solid waste ratepayer fees.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Environment & Energy): Representative Ramos, prime sponsor; Michele Riggs, Washington Organic Recycling Council; Jay Blazey, Cedar Grove Composting; Susan Thoman, Compost Manufacturing Alliance; and Heather Trim, Zero Waste Washington.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.