

---

**SUBSTITUTE SENATE BILL 5323**

---

**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; adding a new chapter to Title 70 RCW; creating a new  
4 section; and prescribing penalties.

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

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

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

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

19 (c) Even when plastic bags avoid the common fate of becoming  
20 litter, they are a drain on public resources and a burden on  
21 environment and resource conservation goals. For example, if plastic

1 bags are disposed of in commingled recycling systems rather than as  
2 garbage or in retailer drop-off programs, they clog processing and  
3 sorting machinery, resulting in missorted materials and costly  
4 inefficiencies that are ultimately borne by utility ratepayers.  
5 Likewise, when green or brown-tinted plastic bags confuse consumers  
6 into attempting to dispose of them as compost, the resultant plastic  
7 contamination undercuts the ability to use the compost in gardens,  
8 farms, landscaping, and surface water and transportation projects.

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 2.** The definitions in this section apply  
32 throughout this chapter unless the context clearly requires  
33 otherwise.

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

38 (2) "Compostable" means that a product that is capable of being  
39 completely broken down in a timely manner, consistent with the

1 standard specification as established in section 3(6) of this act,  
2 into a material safe and desirable as a soil amendment.

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

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

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

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

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

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

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

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

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

32 (b) ASTM D6868 - standard specification for labeling of end items  
33 that incorporate plastics and polymers as coatings or additives with  
34 paper and other substrates designed to be aerobically composted in  
35 municipal or industrial facilities, as it existed as of January 1,  
36 2019.

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

1 (a) A single-use plastic carryout bag; or  
2 (b) A paper carryout bag or reusable carryout bag made of film  
3 plastic that does not meet recycled content requirements.

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

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

13 (c) A retail establishment must keep all revenue from pass-  
14 through charges. The pass-through charge is a taxable retail sale. A  
15 retail establishment must show all pass-through charges on any  
16 receipts provided to customers.

17 (3) Carryout bags provided by a retail establishment do not  
18 include:

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

20 (i) Package bulk items, such as fruit, vegetables, nuts, grains,  
21 candy, greeting cards, or small hardware items such as nails, bolts,  
22 or screws;

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

25 (A) Frozen foods;

26 (B) Meat;

27 (C) Fish;

28 (D) Flowers; and

29 (E) Potted plants;

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

31 (iv) Contain prescription drugs; or

32 (v) Protect a purchased item from damaging or contaminating other  
33 purchased items when placed in a recycled content paper carryout bag  
34 or reusable carryout bag; or

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

38 (4) (a) Any compostable film bag that a retail establishment  
39 provides to customers for products, including for products bagged in  
40 stores prior to checkout, must be tinted green or brown, and be

1 labeled "compostable," as required under subsection (6)(c)(i) of this  
2 section.

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

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

7 (ii) To customers to bag products in stores, as a carryout bag,  
8 or for home delivery that is labeled with the term "biodegradable,"  
9 "compostable," "degradable," "decomposable," "oxo-degradable," or any  
10 similar terms, or in any way imply that the plastic bag will break  
11 down, fragment, biodegrade, or decompose in a landfill or other  
12 environment.

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

21 (6) For the purposes of this section:

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

23 (i) Contain a minimum of forty percent postconsumer recycled  
24 materials;

25 (ii) Be capable of composting, consistent with the timeline and  
26 specifications of ASTM D6868, as it existed as of January 1, 2019;  
27 and

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

30 (b) A reusable carryout bag must:

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

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

37 (iii) If made of film plastic:

38 (A) Be made from a minimum of forty percent postconsumer recycled  
39 material;

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

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

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

5 (c) A compostable film bag must:

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

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

13 (d) 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) The department may adopt rules as  
27 necessary for the purpose of implementing, administering, and  
28 enforcing this chapter.

29 (2) The enforcement of this chapter must be based primarily on  
30 complaints filed with the department. The department must establish a  
31 forum, which may include a complaint form on the department's web  
32 site, a telephone hotline, or a public outreach strategy relying upon  
33 electronic social media to receive complaints that allege violations.  
34 The department must provide education and outreach activities to  
35 inform retail establishments, consumers, and other interested  
36 individuals about the requirements of this chapter.

37 (3) The department may work with retail establishments, retail  
38 associations, unions, and other organizations to create educational

1 elements regarding the benefits of reusable bags. Educational  
2 elements may include signage at store locations, informational  
3 literature, and employee training.

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

7 (5) A violation of this chapter is a class 1 civil infraction  
8 under chapter 7.80 RCW. Each calendar day of operation or activity in  
9 violation of this chapter comprises a new violation.

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

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

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

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

26 NEW SECTION. **Sec. 8.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act  
31 constitute a new chapter in Title 70 RCW.

--- END ---