**5077-S.E AMH ENVI H2670.3 - NOT FOR FLOOR USE**

**ESSB 5077** - H COMM AMD

By Committee on Environment & Energy

**NOT CONSIDERED 12/23/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility, and does not offer the food for resale.

(2) "Food service establishment" means establishments that serve food, beverages, or prepared food for consumption including establishments:

(a) With the primary business purpose of serving food to be consumed on the premises or providing prepared meals or other food or beverage items that a consumer purchases and intends to eat elsewhere; or

(b) That serve food, beverages, and prepackaged food and beverages: (i) Via a drive through; (ii) in a packaged form for take out or take away; or (iii) from stands or kiosks that provide no shelter or seating for consumers.

(3) "Local health jurisdiction" or "jurisdictional health department" means an administrative agency organized under chapter 70.05 RCW, a health district organized under chapter 70.46 RCW, or a combined city-county health department organized under chapter 70.08 RCW, that administers public health and safety regulations and codes, including food safety and restaurant inspections.

(4) "Plastic straw" means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, and including compostable and biodegradable petroleum or biologically based polymer straws, for transferring a beverage from its container to the mouth of the drinker.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2020, a food service establishment may not provide a single-use straw to a consumer unless a straw is requested by the consumer. In lieu of a straw, a food service establishment may also offer a tippy cup lid to a customer that requests a straw.

(2) In recognition that a straw is an adaptive utensil that may provide a basic accommodation for an individual with a disability to eat and drink, a food service establishment that provides straws of any type to customers must provide a single-use plastic straw to an individual with a disability upon request by the individual for a plastic straw.

(3)(a) Nothing in this section is intended to create any requirement, power, or duty that is in conflict with any federal law, including the Americans with disabilities act, 42 U.S.C. Sec. 12101, et. seq.

(b) Nothing in this section creates a private right of action against a food service establishment.

(4) Nothing in this section authorizes a food service establishment to make single-use plastic straws available to customers using cylinders, bins, dispensers, containers, or other self-service means of allowing a customer to obtain a single-use plastic straw or to offer to provide a single-use plastic straw that a customer has not requested.

(5) Nothing in this section limits the ability of a hospital or other medical facility to provide a plastic straw to a person that needs the straw for medical purposes.

NEW SECTION. **Sec.**  (1) The local health jurisdiction or a jurisdictional health department must enforce this chapter. The local board of health may establish regulations to enforce this chapter. The local board of health may establish and collect fees of up to twenty-five dollars per food service establishment per year, as necessary to cover costs incurred in carrying out its duties under this chapter, consistent with RCW 70.05.060(7).

(a) The local health jurisdiction or a jurisdictional health department must provide notice of violation to any person permitted to operate the food service establishment for the first and second violation of section 2 of this act.

(b) For the third and subsequent violations of section 2 of this act, a person permitted to operate the food service establishment is subject to a civil penalty of up to two hundred fifty dollars for each day, not to exceed three thousand dollars per year.

(2) Penalties collected under this section may be retained by the local health jurisdiction or jurisdictional health department for enforcement activities.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2020, a city, county, town, or municipal corporation may not enact an ordinance restricting the provision of plastic straws applicable to food service establishments.

(2) Any local ordinance that restricts the provision of single-use straws that is in effect as of January 1, 2020, is not preempted, limited, or repealed, except that the requirements of section 2 of this act also apply in such a local jurisdiction.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 70 RCW."

Correct the title.

EFFECT: (1) Specifies that a person must specifically request a straw in order to be provided a single-use straw.

(2) Prohibits food service establishments from offering single-use plastic straws without a customer request or from making single-use plastic straws available in self-service containers.

(3) Preempts new local ordinances restricting the provision of plastic straws that are applicable to food service establishments, beginning January 1, 2020.

(4) Declares that restrictions on the provision of plastic straws are not intended to create a conflict with any federal law, including the federal Americans with Disabilities Act, and that a private right of action against food service establishments is not created by the straw provision requirements.

(5) Authorizes local boards of health to adopt annual fees of up to $25 per food service establishment to cover their costs in carrying out straw enforcement duties.

(6) Specifies that a person authorized to operate a food service establishment is the person that must receive notices of violation of straw requirements that is subject to fees or civil penalties.

(7) Increases the penalties to up to $250 per day for third or subsequent violations, or up to $3,000 per year.