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**ENGROSSED SUBSTITUTE SENATE BILL 5323**

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**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)

AN ACT Relating to reducing pollution from plastic bags by establishing minimum state standards for the use of bags at retail establishments; amending RCW 43.21B.110; adding a new chapter to Title 70 RCW; creating a new section; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A retail establishment must collect a pass-through charge of eight cents for every recycled content paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (eight hundred eighty-two cubic inches) or greater or reusable carryout bag made of film plastic it provides, except as provided in subsection (5) of this section and section 4 of this act. A retail establishment may make reusable carryout bags available to customers through sale.

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

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

(a) Bags used by consumers inside stores to:

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

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

(A) Frozen foods;

(B) Meat;

(C) Fish;

(D) Flowers; and

(E) Potted plants;

(iii) Contain unwrapped prepared foods or bakery goods;

(iv) Contain prescription drugs; or

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

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

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

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

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

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

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

(6) For the purposes of this section:

(a) A recycled content paper carryout bag must:

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

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

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

(b) A reusable carryout bag must:

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

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

(iii) If made of film plastic:

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

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

(C) Have a minimum thickness of no less than 2.25 mils; and

(D) Display wording that the bag is reusable.

(c) A compostable film bag must:

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

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

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

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

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

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

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

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

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

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

(2)(a) A city, town, county, or municipal corporation ordinance in effect as of January 1, 2019, that has established a pass-through charge of ten cents is not preempted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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