

SENATE BILL REPORT

ESHB 1569

As of March 26, 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: Passed House: 3/11/19, 60-37.

Committee Activity: Environment, Energy & Technology: 3/20/19.

Brief Summary of Bill

- Establishes labeling requirements for compostable products.
- Authorizes the attorney general, cities, and counties to enforce labeling requirements.
- Establishes penalties for violation of labeling requirements.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Jan Odano (786-7486)

Background: Local jurisdictions have the primary responsibility to manage solid waste. Each county must prepare a coordinated, comprehensive solid waste management plan and adopt regulations or ordinances to implement the plan. The plan must include solid waste handling, recovery, and recycling that can be integrated into the comprehensive county plan. The waste reduction and recycling element must include waste-reduction and source-separation strategies, as well as the levels of service provided.

The Department of Ecology reviews and approves locally issued permits and solid waste management plans, and defines minimum functional standards for all types of solid waste facilities. The regulations must address storage, collection, transportation, and treatment.

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.

ASTM International (ASTM) is a non-profit organization that develops voluntary consensus standards for materials, products, systems, and services. ASTM standards are used by individuals, companies, and other institutions.

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 applying to environmental marketing claims and guidance on how marketers can qualify their claims to avoid deceiving consumers.

Summary of Bill: Compostable Products. Requirements are established for products labeled as compostable sold, offered for sale, or distributed by a manufacturer or supplier in that state. Products labeled as compostable must:

- be either comprised of only wood or fiber-based substrate, or meet 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 FTC green guide labeling requirements; and
- feature labeling that uses a logo indicating 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 are distributed or sold by retailers must ensure the bag is readily and easily identifiable in a manner consistent with the FTC green guides. Readily and easily identifiable requirements include labeling as compostable; being a uniform green or brown color, or meeting 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 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 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.

Terms are specified and defined, 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.

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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The biggest problem for composting materials is contamination. Good labels will let the public know the product is compostable. We want to make sure the products are clearly labeled for composting. California and other states have labeling requirements for compostable. There is a difference between compostable and biodegradable. People want to do the right thing and this will clear up confusion. Local governments have a growing need for composting. Composting facilities spend a lot of money to clean out contamination.

Persons Testifying: PRO: Representative Bill Ramos, Prime Sponsor; Heather Trim, Zero Waste Washington; Jay Blazey, Cedar Grove.

Persons Signed In To Testify But Not Testifying: No one.