
HOUSE BILL 1569

State of Washington

66th Legislature

2019 Regular Session

By Representatives Ramos, Chapman, Callan, Peterson, Fitzgibbon, and Slatter

Read first time 01/24/19. Referred to Committee on Environment & Energy.

1 AN ACT Relating to marketing the degradability of products;
2 adding a new chapter to Title 70 RCW; prescribing penalties; and
3 providing an effective date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares
6 that it is the public policy of the state that:

7 (a) Environmental marketing claims for plastic products, whether
8 implicit or implied, should adhere to uniform and recognized
9 standards for "compostability" and "biodegradability," since
10 misleading, confusing, and deceptive labeling can negatively impact
11 local composting programs and compost processors. Plastic products
12 marketed as being "compostable" should be readily and easily
13 identifiable as meeting these standards;

14 (b) Legitimate and responsible packaging and plastic product
15 manufacturers are already properly labeling their compostable
16 products, but many manufacturers are not. Not all compost facilities
17 and their associated processing technologies accept or are required
18 to accept compostable packaging as feedstocks. However, implementing
19 a standardized system and test methods may create the ability for
20 them to take these products in the future.

1 (2) Therefore, it is the intent of the legislature to authorize
2 the state's attorney general and local governments to pursue false or
3 misleading environmental claims and "greenwashing" for plastic
4 products claiming to be "compostable" or "biodegradable" when in fact
5 they are not.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "ASTM" means the American society for testing and materials.

10 (2) "Federal trade commission guides" means the United States
11 federal trade commission's guides for the use of environmental
12 marketing claims (Part 260, commencing at section 260.1),
13 compostability claims, including section 260.8, and degradation
14 claims (subchapter B of chapter I of Title 16 of the Code of Federal
15 Regulations), as those guides existed as of January 1, 2019.

16 (3) "Film product" means a bag, sack, wrap, or other sheet film
17 product.

18 (4) "Food packaging and food serviceware" means a product
19 including, but not limited to, containers, plates, bowls, cups, lids,
20 meat trays, straws, deli rounds, cocktail picks, splash sticks,
21 utensils, sachets, portion cups, and other foodservice ware that is
22 intended for one-time use and used for food or drink offered for sale
23 or use.

24 (5) "Manufacturer" means a person, firm, association,
25 partnership, or corporation that produces a product.

26 (6) "Person" means individual, firm, association, copartnership,
27 political subdivision, government agency, municipality, industry,
28 public or private corporation, or any other entity whatsoever.

29 (7) "Plastic food packaging and food serviceware" means food
30 packaging and food serviceware that is composed of:

31 (a) Plastic; or

32 (b) Fiber or paper with a plastic coating, window, component, or
33 additive.

34 (8) "Plastic product" means a product made of plastic, whether
35 alone or in combination with another material including, but not
36 limited to, paperboard. A plastic product includes, but is not
37 limited to, any of the following:

38 (a) A product or part of a product that is used, bought, or
39 leased for use by a person for any purpose;

1 (b) A package or a packaging component including, but not limited
2 to, packaging peanuts;

3 (c) A film product; or

4 (d) Plastic food packaging and food serviceware.

5 (9) "Readily and easily identifiable" means a product that:

6 (a) Meets industry standards for being distinguishable in both
7 public sorting areas or at a distance in processing facilities; and

8 (b) When compostable, uses distinctive brown or green color
9 schemes, green or brown color striping, or other adopted symbols,
10 colors, marks, or design patterns that help differentiate compostable
11 items from noncompostable materials.

12 (10)(a) "Standard specification" means either:

13 (i) ASTM D6400 - standard specification labeling of plastics
14 designed to be aerobically composted in municipal or industrial
15 facilities, as it existed as of January 1, 2019; or

16 (ii) ASTM D6868 - standard specification for labeling of end
17 items that incorporate plastics and polymers as coatings or additives
18 with paper and other substrates designed to be aerobically composted
19 in municipal or industrial facilities, as it existed as of January 1,
20 2019.

21 (b) "Standard specification" does not include an ASTM standard
22 guide, a standard practice, or a standard test method. It does
23 include the entire specification and associated test methods that
24 need to be met.

25 (11) "Supplier" means a person, firm, association, partnership,
26 company, or corporation that sells, offers for sale, offers for
27 promotional purposes, or takes title to a product. Supplier does not
28 include a person, firm, association, partnership, company, or
29 corporation that sells products to end users as a retailer.

30 NEW SECTION. **Sec. 3.** Except as provided in this chapter, no
31 manufacturer or supplier may sell, offer for sale, or distribute for
32 use in this state a plastic product that is labeled with the term
33 "biodegradable," "degradable," "decomposable," "oxo-degradable," or
34 any similar form of those terms, or in any way imply that the plastic
35 product will break down, fragment, biodegrade, or decompose in a
36 landfill or other environment.

1 NEW SECTION. **Sec. 4.** A product labeled as "compostable" that is
2 sold, offered for sale, or distributed for use in Washington by a
3 supplier or manufacturer must:

4 (1) (a) Meet ASTM standard specification D6400;

5 (b) Meet ASTM standard specification D6868; or

6 (c) Be comprised of wood or fiber-based substrate only;

7 (2) Meet labeling requirements established under the United
8 States federal trade commission's guides; and

9 (3) Feature labeling that:

10 (a) Is ready and easily identifiable;

11 (b) Uses a logo indicating the product has been certified by a
12 recognized third-party independent verification body as meeting the
13 ASTM standard specification; and

14 (c) Displays the word "compostable," where possible, indicating
15 the product has been tested by a recognized third-party independent
16 body and meets the ASTM standard specification and is documented to
17 be compostable in the commercial composting facility that accepts it.

18 NEW SECTION. **Sec. 5.** (1) A manufacturer or supplier of a film
19 bag that meets ASTM standard specification D6400 and is distributed
20 or sold by retailers must ensure that the film bag is readily and
21 easily identifiable from other film bags in a manner that is
22 consistent with the federal trade commission guides.

23 (2) For purposes of this section, "readily and easily
24 identifiable" products must meet the following requirements:

25 (a) Be labeled with a certification logo indicating the bag meets
26 the ASTM D6400 standard specification if the bag has been certified
27 as meeting that standard by a recognized third-party independent
28 verification body;

29 (b) Be labeled in accordance with one of the following:

30 (i) The bag is made of a uniform color of green or brown and
31 labeled with the word "compostable" on one side of the bag and the
32 label must be at least one inch in height; or

33 (ii) Be labeled with the word "compostable" on both sides of the
34 bag and the label must be one of the following:

35 (A) Green or brown color lettering at least one inch in height;
36 or

37 (B) Within a contrasting green or brown color band of at least
38 one inch in height on both sides of the bag with color contrasting
39 lettering of at least one-half inch in height; and

1 (c) If the bag is smaller than fourteen inches by fourteen
2 inches, the lettering and stripe must be in proportion to the size of
3 the bag.

4 (3) A film bag that meets ASTM standard specification D6400 that
5 is sold or distributed in this state may not display a chasing arrow
6 resin identification code or recycling type of symbol in any form.

7 (4) A manufacturer or supplier is required to comply with this
8 section only to the extent that the labeling requirements do not
9 conflict with the federal trade commission guides.

10 NEW SECTION. **Sec. 6.** (1)(a) A manufacturer or supplier of food
11 packaging, food serviceware, or film products that meet ASTM standard
12 specification D6400 or ASTM standard specification D6868 must ensure
13 that the items are readily and easily identifiable from other plastic
14 food packaging, food serviceware, or plastic film products in a
15 manner that is consistent with the federal trade commission guides.

16 (b) Film bags are exempt from the requirements of this section,
17 and are instead subject to the requirements of section 5 of this act.

18 (2) For the purposes of this section, "readily and easily
19 identifiable" products must meet all the following requirements:

20 (a) Labeled with a logo indicating the product has been certified
21 by a recognized third-party independent verification body as meeting
22 the ASTM standard specification.

23 (b) Labeled with the word "compostable," where possible,
24 indicating the food packaging or film product has been tested by a
25 recognized third-party independent body and meets the ASTM standard
26 specification and is documented to be compostable in the commercial
27 composting facility that accepts it.

28 (3) It is encouraged that each product described in subsection
29 (1) of this section:

30 (a) Display labeling language via printing, embossing, or
31 compostable adhesive stickers using, when possible, either the colors
32 green or brown that contrast with background product color for easy
33 identification; or

34 (b) Be tinted green or brown.

35 (4) Graphic elements are encouraged to increase legibility of the
36 word "compostable" and overall product distinction that may include
37 text boxes, stripes, bands, or a green or brown tint of the product.

1 (5) A manufacturer or supplier is required to comply with this
2 section only to the extent that the labeling requirements do not
3 conflict with the federal trade commission guides.

4 NEW SECTION. **Sec. 7.** A manufacturer or supplier of film
5 products or food packaging and food serviceware sold, offered for
6 sale, or distributed for use in Washington that does not meet the
7 applicable ASTM standard specifications provided in sections 5 and 6
8 of this act is:

9 (1) Prohibited from using tinting, labeling, and terms that are
10 required of products that meet the applicable ASTM standard
11 specifications under sections 5 and 6 of this act;

12 (2) Discouraged from using coloration, labeling, images, and
13 terms that confuse consumers into believing that noncompostable bags
14 and food service packaging are compostable; and

15 (3) Encouraged to use coloration, labeling, images, and terms to
16 help consumers identify noncompostable bags and food service
17 packaging as either: (a) Suitable for recycling; or (b) necessary to
18 dispose as waste.

19 NEW SECTION. **Sec. 8.** Upon the request by a person, a
20 manufacturer or supplier shall submit to that person, within ninety
21 days of the request, nonconfidential business information and
22 documentation demonstrating compliance with this chapter, in a format
23 that is easy to understand and scientifically accurate.

24 NEW SECTION. **Sec. 9.** (1) The state, acting through the attorney
25 general, and cities and counties have concurrent authority to enforce
26 this chapter and to collect civil penalties for a violation of this
27 chapter, subject to the conditions in this section. An enforcing
28 government entity may impose a civil penalty in the amount of up to
29 two thousand dollars for the first violation of this chapter, up to
30 five thousand dollars for the second violation of this chapter, and
31 up to ten thousand dollars for the third and any subsequent violation
32 of this chapter. If a manufacturer or supplier has paid a prior
33 penalty for the same violation to a different government entity with
34 enforcement authority under this subsection, the penalty imposed by a
35 government entity is reduced by the amount of the payment.

36 (2) Any civil penalties collected pursuant to this section must
37 be paid to the office of the city attorney, city prosecutor, district

1 attorney, or attorney general, whichever office brought the action.
2 Penalties collected by the attorney general on behalf of the state
3 must be deposited in the compostable products revolving account
4 created in section 11 of this act.

5 (3) The remedies provided by this section are not exclusive and
6 are in addition to the remedies that may be available pursuant to
7 chapter 19.86 RCW or other consumer protection laws, if applicable.

8 (4) In addition to penalties recovered under this section, the
9 enforcing government entity may recover reasonable enforcement costs
10 and attorneys' fees from the liable manufacturer or supplier.

11 NEW SECTION. **Sec. 10.** Manufacturers and suppliers who violate
12 the requirements of this chapter are subject to civil penalties
13 described in section 9 of this act. A specific violation is deemed to
14 have occurred upon the sale of noncompliant product by stock-keeping
15 unit number or unique item number. The repeated sale of the same
16 noncompliant product by stock-keeping unit number or unique item
17 number is considered a single violation. A city, county, or the state
18 must send a written notice and a copy of the requirements to a
19 noncompliant manufacturer or supplier of an alleged violation, who
20 will have ninety days to become compliant. A city, county, or the
21 state may assess a first penalty if the manufacturer or supplier has
22 not met the requirements ninety days following the date the
23 notification was sent. A city, county, or the state may impose
24 second, third, and subsequent penalties on a manufacturer or supplier
25 that remains noncompliant with the requirements of this chapter for
26 every month of noncompliance.

27 NEW SECTION. **Sec. 11.** The compostable products revolving
28 account is created in the custody of the state treasurer. All
29 receipts from civil penalties or other amounts recovered by the state
30 in enforcement actions under section 9 of this act must be deposited
31 in the account. Expenditures from the account must be used by the
32 attorney general for the payment of costs, expenses, and charges
33 incurred in the enforcement of this chapter. Only the attorney
34 general or the attorney general's designee may authorize expenditures
35 from the account. The account is subject to allotment procedures
36 under chapter 43.88 RCW, but an appropriation is not required for
37 expenditures.

1 NEW SECTION. **Sec. 12.** Sections 1 through 11 and 13 of this act
2 constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2020.

4 NEW SECTION. **Sec. 14.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

--- END ---