
ENGROSSED 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; amending RCW 43.21B.110; adding a new chapter to
4 Title 70 RCW; creating a new 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 eight cents for every recycled content paper carryout bag with a
9 manufacturer's stated capacity of one-eighth barrel (eight hundred
10 eighty-two cubic inches) or greater or reusable carryout bag made of
11 film plastic it provides, except as provided in subsection (5) of
12 this section and section 4 of this act. A retail establishment may
13 make reusable carryout bags available to customers through sale.

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

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

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

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

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

26 (A) Frozen foods;

27 (B) Meat;

28 (C) Fish;

29 (D) Flowers; and

30 (E) Potted plants;

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

32 (iv) Contain prescription drugs; or

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

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

39 (4) (a) Any compostable film bag that a retail establishment
40 provides to customers for products, including for products bagged in

1 stores prior to checkout, must be tinted green or brown, and be
2 labeled "compostable," as required under subsection (6)(c)(i) of this
3 section.

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

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

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

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

22 (6) For the purposes of this section:

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

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

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

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

31 (b) A reusable carryout bag must:

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

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

38 (iii) If made of film plastic:

39 (A) Be made from a minimum of forty percent postconsumer recycled
40 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 2.25 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 subject to a civil penalty of
8 up to two hundred fifty dollars. Each calendar day of operation or
9 activity in violation of this chapter comprises a new violation.
10 Penalties issued under this section are appealable to the pollution
11 control hearings board established in chapter 43.21B RCW.

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

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

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

22 **Sec. 7.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
23 read as follows:

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

31 (a) Civil penalties imposed pursuant to RCW 18.104.155,
32 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 76.09.170,
33 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
34 90.56.310, 90.56.330, and 90.64.102.

35 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
36 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
37 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

11 (e) Decisions of local health departments regarding the issuance
12 and enforcement of permits to use or dispose of biosolids under RCW
13 70.95J.080.

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

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

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

27 (i) Decisions of the department of natural resources, the
28 department of fish and wildlife, and the department that are
29 reviewable under chapter 76.09 RCW, and the department of natural
30 resources' appeals of county, city, or town objections under RCW
31 76.09.050(7).

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

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

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

39 (m) Decisions of an authorized public entity under RCW 79.100.010
40 to take temporary possession or custody of a vessel or to contest the

1 amount of reimbursement owed that are reviewable by the hearings
2 board under RCW 79.100.120.

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

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

7 (b) Hearings conducted by the department pursuant to RCW
8 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
9 90.44.180.

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

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

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

17 NEW SECTION. **Sec. 8.** If specific funding for the purposes of
18 this act, referencing this act by bill or chapter number, is not
19 provided by July 1, 2019, from the waste reduction, recycling, and
20 litter control account for purposes of implementing the education and
21 outreach activities required under section 5 of this act, then this
22 act is null and void.

23 NEW SECTION. **Sec. 9.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 10.** Sections 1 through 6 of this act
28 constitute a new chapter in Title 70 RCW.

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