

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5022**

67th Legislature  
2021 Regular Session

Passed by the Senate April 19, 2021  
Yeas 31 Nays 18

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**President of the Senate**

Passed by the House April 7, 2021  
Yeas 73 Nays 24

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**Speaker of the House of  
Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5022** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5022**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington                      67th Legislature                      2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Das, Rolfes, Carlyle, Dhingra, Keiser, Kuderer, Liiias, Lovelett, Nobles, Nguyen, Pedersen, Saldaña, Salomon, Stanford, Wellman, and Wilson, C.)

READ FIRST TIME 02/22/21.

1            AN ACT Relating to managing solid waste through prohibitions on  
2 expanded polystyrene, providing for food serviceware upon customer  
3 request, and addressing plastic packaging; amending RCW 43.21B.300  
4 and 70A.220.020; reenacting and amending RCW 43.21B.110; adding a new  
5 section to chapter 39.26 RCW; adding a new chapter to Title 70A RCW;  
6 creating a new section; prescribing penalties; and providing  
7 expiration dates.

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

9            NEW SECTION.    **Sec. 1.** FINDINGS—INTENT. (1) The legislature finds  
10 that minimum recycled content requirements for plastic beverage  
11 containers, trash bags, and household cleaning and personal care  
12 product containers, bans on problematic and unnecessary plastic  
13 packaging, and standards for customer opt-in for food service  
14 packaging and accessories are among actions needed to improve the  
15 state's recycling system as well as reduce litter.

16            (2) By implementing a minimum recycled content requirement for  
17 plastic beverage containers, trash bags, and household cleaning and  
18 personal care product containers; prohibiting the sale and  
19 distribution of certain expanded polystyrene products; and  
20 establishing optional serviceware requirements as provided for in  
21 this chapter; the legislature intends to take another step towards

1 ensuring plastic packaging and other packaging materials are reduced,  
2 recycled, and reused.

3 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
4 section apply throughout this chapter unless the context clearly  
5 requires otherwise.

6 (1) "Beverage" means beverages identified in (a) through (f) of  
7 this subsection, intended for human or animal consumption, and in a  
8 quantity more than or equal to two fluid ounces and less than or  
9 equal to one gallon:

10 (a) Water and flavored water;

11 (b) Beer or other malt beverages;

12 (c) Wine;

13 (d) Distilled spirits;

14 (e) Mineral water, soda water, and similar carbonated soft  
15 drinks; and

16 (f) Any beverage other than those specified in (a) through (e) of  
17 this subsection, except infant formula as defined in 21 U.S.C. Sec.  
18 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or  
19 fortified oral nutritional supplements used for persons who require  
20 supplemental or sole source nutritional needs due to special dietary  
21 needs directly related to cancer, chronic kidney disease, diabetes,  
22 or other medical conditions as determined by the department.

23 (2) "Beverage manufacturing industry" means an association that  
24 represents beverage producers.

25 (3) "Condiment packaging" means packaging used to deliver single-  
26 serving condiments to customers. Condiment packaging includes, but is  
27 not limited to, single-serving packaging for ketchup, mustard,  
28 relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly,  
29 jam, and soy sauce.

30 (4)(a) "Covered product" means an item in one of the following  
31 categories subject to minimum postconsumer recycled content  
32 requirements:

33 (i) Plastic trash bags;

34 (ii) Household cleaning and personal care products that use  
35 plastic household cleaning and personal care product containers; and

36 (iii) Beverages that use plastic beverage containers.

37 (b) "Covered product" does not include any type of container or  
38 bag for which the state is preempted from regulating content of the  
39 container material or bag material under federal law.

1 (5) "Dairy milk" means a beverage that designates milk as the  
2 predominant (first) ingredient in the ingredient list on the  
3 container's label.

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

5 (7) "Expanded polystyrene" means blown polystyrene and expanded  
6 and extruded foams that are thermoplastic petrochemical materials  
7 utilizing a styrene monomer and processed by any number of techniques  
8 including, but not limited to, fusion of polymer spheres (expandable  
9 bead polystyrene), injection molding, foam molding, and extrusion-  
10 blow molding (extruded foam polystyrene).

11 (8) "Food service business" means a business selling or providing  
12 food for consumption on or off the premises, and includes full-  
13 service restaurants, fast food restaurants, cafes, delicatessens,  
14 coffee shops, grocery stores, vending trucks or carts, home delivery  
15 services, delivery services provided through an online application,  
16 and business or institutional cafeterias.

17 (9) "Food service product" means a product intended for one-time  
18 use and used for food or drink offered for sale or use. Food service  
19 products include, but are not limited to, containers, plates, bowls,  
20 cups, lids, beverage containers, meat trays, deli rounds, utensils,  
21 sachets, straws, condiment packaging, clamshells and other hinged or  
22 lidded containers, wrap, and portion cups.

23 (10) "Household cleaning and personal care product" means any of  
24 the following:

25 (a) Laundry detergents, softeners, and stain removers;

26 (b) Household cleaning products;

27 (c) Liquid soap;

28 (d) Shampoo, conditioner, styling sprays and gels, and other hair  
29 care products; or

30 (e) Lotion, moisturizer, facial toner, and other skin care  
31 products.

32 (11) "Household cleaning and personal care product manufacturing  
33 industry" means an association that represents companies that  
34 manufacture household cleaning and personal care products.

35 (12) "Licensee" means a manufacturer or entity who licenses a  
36 brand and manufactures a covered product under that brand.

37 (13) "Oral nutritional supplement" means a manufactured liquid,  
38 powder capable of being reconstituted, or solid product that contains  
39 a combination of carbohydrates, proteins, fats, fiber, vitamins, and

1 minerals intended to supplement a portion of a patient's nutrition  
2 intake.

3 (14) "Plastic beverage container" means a bottle or other rigid  
4 container that is capable of maintaining its shape when empty,  
5 comprised solely of one or multiple plastic resins designed to  
6 contain a beverage. Plastic beverage container does not include:

7 (a) Refillable beverage containers, such as containers that are  
8 sufficiently durable for multiple rotations of their original or  
9 similar purpose and are intended to function in a system of reuse;

10 (b) Rigid plastic containers or plastic bottles that are or are  
11 used for medical devices, medical products that are required to be  
12 sterile, nonprescription and prescription drugs, or dietary  
13 supplements as defined in RCW 82.08.0293;

14 (c) Bladders or pouches that contain wine; or

15 (d) Liners, caps, corks, closures, labels, and other items added  
16 externally or internally but otherwise separate from the structure of  
17 the bottle or container.

18 (15)(a) "Plastic household cleaning and personal care product  
19 container" means a bottle, jug, or other rigid container with a neck  
20 or mouth narrower than the base, and:

21 (i) A minimum capacity of eight fluid ounces or its equivalent  
22 volume;

23 (ii) A maximum capacity of five fluid gallons or its equivalent  
24 volume;

25 (iii) That is capable of maintaining its shape when empty;

26 (iv) Comprised solely of one or multiple plastic resins; and

27 (v) Containing a household cleaning or personal care product.

28 (b) "Plastic household cleaning and personal care product  
29 container" does not include:

30 (i) Refillable household cleaning and personal care product  
31 containers, such as containers that are sufficiently durable for  
32 multiple rotations of their original or similar purpose and are  
33 intended to function in a system of reuse; and

34 (ii) Rigid plastic containers or plastic bottles that are medical  
35 devices, medical products that are required to be sterile, and  
36 nonprescription and prescription drugs, dietary supplements as  
37 defined in RCW 82.08.0293, and packaging used for those products.

38 (16) "Plastic trash bag" means a bag that is made of  
39 noncompostable plastic, is at least 0.70 mils thick, and is designed  
40 and manufactured for use as a container to hold, store, or transport

1 materials to be discarded or recycled, and includes, but is not  
2 limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner  
3 bag, kitchen bag, or compactor bag. "Plastic trash bag" does not  
4 include any compostable bags meeting the requirements of chapter  
5 70A.455 RCW.

6 (17) "Plastic trash bag manufacturing industry" means an  
7 association that represents companies that manufacture plastic trash  
8 bags.

9 (18) "Postconsumer recycled content" means the content of a  
10 covered product made of recycled materials derived specifically from  
11 recycled material generated by households or by commercial,  
12 industrial, and institutional facilities in their role as end users  
13 of a product that can no longer be used for its intended purpose.  
14 "Postconsumer recycled content" includes returns of material from the  
15 distribution chain.

16 (19)(a) "Producer" means the following person responsible for  
17 compliance with minimum postconsumer recycled content requirements  
18 under this chapter for a covered product sold, offered for sale, or  
19 distributed in or into this state:

20 (i) If the covered product is sold under the manufacturer's own  
21 brand or lacks identification of a brand, the producer is the person  
22 who manufactures the covered product;

23 (ii) If the covered product is manufactured by a person other  
24 than the brand owner, the producer is the person who is the licensee  
25 of a brand or trademark under which a covered product is sold,  
26 offered for sale, or distributed in or into this state, whether or  
27 not the trademark is registered in this state, unless the  
28 manufacturer or brand owner of the covered product has agreed to  
29 accept responsibility under this chapter; or

30 (iii) If there is no person described in (a)(i) and (ii) of this  
31 subsection over whom the state can constitutionally exercise  
32 jurisdiction, the producer is the person who imports or distributes  
33 the covered product in or into the state.

34 (b) "Producer" does not include:

35 (i) Government agencies, municipalities, or other political  
36 subdivisions of the state;

37 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)  
38 social welfare organizations; or

39 (iii) De minimis producers that annually sell, offer for sale,  
40 distribute, or import in or into the country for sale in Washington:

1 (A) Less than one ton of a single category of plastic beverage  
2 containers, plastic household cleaning and personal care containers,  
3 or plastic trash bags each year; or

4 (B) A single category of a covered product that in aggregate  
5 generates less than \$1,000,000 each year in revenue.

6 (20)(a) "Retail establishment" means any person, corporation,  
7 partnership, business, facility, vendor, organization, or individual  
8 that sells or provides merchandise, goods, or materials directly to a  
9 customer.

10 (b) "Retail establishment" includes, but is not limited to, food  
11 service businesses, grocery stores, department stores, hardware  
12 stores, home delivery services, pharmacies, liquor stores,  
13 restaurants, catering trucks, convenience stores, or other retail  
14 stores or vendors, including temporary stores or vendors at farmers  
15 markets, street fairs, and festivals.

16 (21)(a) "Utensil" means a product designed to be used by a  
17 consumer to facilitate the consumption of food or beverages,  
18 including knives, forks, spoons, cocktail picks, chopsticks, splash  
19 sticks, and stirrers.

20 (b) "Utensil" does not include plates, bowls, cups, and other  
21 products used to contain food or beverages.

22 NEW SECTION. **Sec. 3.** POSTCONSUMER RECYCLED CONTENT. (1)(a)  
23 Beginning January 1, 2023, producers that offer for sale, sell, or  
24 distribute in or into Washington:

25 (i) Beverages other than wine in 187 milliliter plastic beverage  
26 containers and dairy milk in plastic beverage containers must meet  
27 minimum postconsumer recycled content requirements established under  
28 subsection (4) of this section; and

29 (ii) Plastic trash bags must meet minimum postconsumer recycled  
30 content requirements established under subsection (6) of this  
31 section.

32 (b) Beginning January 1, 2025, producers that offer for sale,  
33 sell, or distribute in or into Washington household cleaning and  
34 personal care products in plastic household cleaning and personal  
35 care product containers must meet minimum postconsumer recycled  
36 content as required under subsection (5) of this section.

37 (c) Beginning January 1, 2028, producers that offer for sale,  
38 sell, or distribute in or into Washington wine in 187 milliliter  
39 plastic beverage containers or dairy milk in plastic beverage

1 containers must meet minimum postconsumer recycled content as  
2 required under subsection (4) of this section.

3 (2) (a) On or before April 1, 2022, and annually thereafter, a  
4 producer that offers for sale, sells, or distributes in or into  
5 Washington covered products must register with the department  
6 individually or through a third-party representative registering on  
7 behalf of a group of producers.

8 (b) The registration information submitted to the department  
9 under this section must include a list of the producers of covered  
10 products and the brand names of the covered products represented in  
11 the registration submittal. Beginning April 1, 2024, for plastic  
12 trash bags and plastic beverage containers other than wine in 187  
13 milliliter plastic beverage containers and dairy milk in plastic  
14 beverage containers, April 1, 2026, for plastic household and  
15 personal care product containers, and April 1, 2029, for wine in 187  
16 milliliter plastic beverage containers and dairy milk, a producer may  
17 submit registration information at the same time as the information  
18 submitted through the annual reporting required under section 4 of  
19 this act.

20 (3) (a) By January 31, 2022, and every January 31st thereafter,  
21 the department must:

22 (i) Prepare an annual workload analysis for public comment that  
23 identifies the annual costs it expects to incur to implement,  
24 administer, and enforce this section and sections 4 through 7 and  
25 12(1), (2), and (4) of this act, including rule making, in the next  
26 fiscal year for each category of covered products;

27 (ii) Determine a total annual fee payment by producers or their  
28 third-party representatives for each category of covered products  
29 that is adequate to cover, but not exceed, the workload identified in  
30 (a)(i) of this subsection;

31 (iii) Until rules are adopted under (a)(iv) of this subsection,  
32 issue a general order to all entities falling within the definition  
33 of producer. The department must equitably determine fee amounts for  
34 an individual producer or third-party representatives within each  
35 category of covered product;

36 (iv) By 2024, adopt rules to equitably determine annual fee  
37 payments by producers or their third-party representatives within  
38 each category of covered product. Once such rules are adopted, the  
39 general order issued under (a)(iii) of this subsection is no longer  
40 effective; and



1 (v) Send notice to producers or their third-party representatives  
2 of fee amounts due consistent with either the general order issued  
3 under (a)(iii) of this subsection or rules adopted under (a)(iv) of  
4 this subsection.

5 (b) The department must:

6 (i) Apply any remaining annual payment funds from the current  
7 year to the annual payment for the coming year, if the collected  
8 annual payment exceeds the department's costs for a given year; and

9 (ii) Increase annual payments for the coming year to cover the  
10 department's costs, if the collected annual payment was less than the  
11 department's costs for a given year.

12 (c) By April 1, 2022, and every April 1st thereafter, producers  
13 or their third-party representative must submit a fee payment as  
14 determined by the department under (a) of this subsection.

15 (4) A producer of a beverage in a plastic beverage container must  
16 meet the following annual minimum postconsumer recycled content  
17 percentage on average for the total quantity of plastic beverage  
18 containers, by weight, that are sold, offered for sale, or  
19 distributed in or into Washington by the producer effective:

20 (a) For beverages except wine in 187 milliliter plastic beverage  
21 containers and dairy milk:

22 (i) January 1, 2023, through December 31, 2025: No less than 15  
23 percent postconsumer recycled content plastic by weight;

24 (ii) January 1, 2026, through December 31, 2030: No less than 25  
25 percent postconsumer recycled content plastic by weight; and

26 (iii) On and after January 1, 2031: No less than 50 percent  
27 postconsumer recycled content plastic by weight.

28 (b) For wine in 187 milliliter plastic beverage containers and  
29 dairy milk:

30 (i) January 1, 2028, through December 31, 2030: No less than 15  
31 percent postconsumer recycled content plastic by weight;

32 (ii) January 1, 2031, through December 31, 2035: No less than 25  
33 percent postconsumer recycled content plastic by weight; and

34 (iii) On and after January 1, 2036: No less than 50 percent  
35 postconsumer recycled content plastic by weight.

36 (5) A producer of household cleaning and personal care products  
37 in plastic containers must meet the following annual minimum  
38 postconsumer recycled content percentage on average for the total  
39 quantity of plastic containers, by weight, that are sold, offered for  
40 sale, or distributed in or into Washington by the producer effective:

1 (a) January 1, 2025, through December 31, 2027: No less than 15  
2 percent postconsumer recycled content plastic by weight;

3 (b) January 1, 2028, through December 31, 2030: No less than 25  
4 percent postconsumer recycled content plastic by weight; and

5 (c) On and after January 1, 2031: No less than 50 percent  
6 postconsumer recycled content plastic by weight.

7 (6) A producer of plastic trash bags must meet the following  
8 annual minimum postconsumer recycled content percentage on average  
9 for the total quantity of plastic trash bags, by weight, that are  
10 sold, offered for sale, or distributed in or into Washington by the  
11 producer effective:

12 (a) January 1, 2023, through December 31, 2024: No less than 10  
13 percent postconsumer recycled content plastic by weight;

14 (b) January 1, 2025, through December 31, 2026: No less than 15  
15 percent postconsumer recycled content plastic by weight; and

16 (c) On and after January 1, 2027: No less than 20 percent  
17 postconsumer recycled content plastic by weight.

18 (7)(a) Beginning January 1, 2024, or when rule making is  
19 complete, whichever is sooner, the department may, on an annual basis  
20 on January 1st, review and determine for the following year whether  
21 to adjust the minimum postconsumer recycled content percentage  
22 required for a type of container or product or category of covered  
23 products pursuant to subsection (4), (5), or (6) of this section. The  
24 department's review may be initiated by the department or at the  
25 petition of a producer or a covered product manufacturing industry  
26 not more than once annually. When submitting a petition, producers or  
27 a producer manufacturing industry must provide necessary information  
28 that will allow the department to make a determination under (b) of  
29 this subsection.

30 (b) In making a determination pursuant to this subsection, the  
31 department must consider, at a minimum, all of the following factors:

32 (i) Changes in market conditions, including supply and demand for  
33 postconsumer recycled content plastics, collection rates, and bale  
34 availability both domestically and globally;

35 (ii) Recycling rates;

36 (iii) The availability of recycled plastic suitable to meet the  
37 minimum postconsumer recycled content requirements pursuant to  
38 subsection (4), (5), or (6) of this section, including the  
39 availability of high quality recycled plastic, and food-grade  
40 recycled plastic from recycling programs;

1 (iv) The capacity of recycling or processing infrastructure;

2 (v) The technical feasibility of achieving the minimum  
3 postconsumer recycled content requirements in covered products that  
4 are regulated under 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec.  
5 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec.  
6 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101  
7 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R.  
8 Sec. 178.600-609, and other federal laws; and

9 (vi) The progress made by producers in achieving the goals of  
10 this section.

11 (c) Under (a) of this subsection:

12 (i) The department may not adjust the minimum postconsumer  
13 recycled content requirements above the minimum postconsumer recycled  
14 content percentages for the year under review required pursuant to  
15 subsection (4), (5), or (6) of this section.

16 (ii) For plastic household cleaning and personal care product  
17 containers, the department may not adjust the minimum postconsumer  
18 recycled content requirements above the minimum postconsumer recycled  
19 content percentages for the year under review required pursuant to  
20 subsection (5) of this section or below a minimum of 10 percent.

21 (iii) For plastic trash bags, the department may not adjust the  
22 minimum postconsumer recycled content requirements above the minimum  
23 postconsumer recycled content percentages for the year under review  
24 required pursuant to subsection (6) of this section or below the  
25 minimum percentage required in subsection (6)(a) of this section.

26 (d) A producer or the manufacturing industry for a covered  
27 product may appeal a decision by the department to adjust  
28 postconsumer recycled content percentages under (a) of this  
29 subsection or to temporarily exclude covered products from minimum  
30 postconsumer recycled content requirements under subsection (8) of  
31 this section to the pollution control hearings board within 30 days  
32 of the department's determination.

33 (8) The department must temporarily exclude from minimum  
34 postconsumer recycled content requirements for the upcoming year any  
35 types of covered products in plastic containers for which a producer  
36 annually demonstrates to the department by December 31st of a given  
37 year that the achievement of postconsumer recycled content  
38 requirements in the container material is not technically feasible in  
39 order to comply with health or safety requirements of federal law,  
40 including the federal laws specified in subsection (7)(b)(v) of this

1 section. A producer must continue to register and report consistent  
2 with the requirements of this chapter for covered products  
3 temporarily excluded from minimum postconsumer recycled content  
4 requirements under this subsection.

5 (9) A producer that does not achieve the postconsumer recycled  
6 content requirements established under this section is subject to  
7 penalties established in section 5 of this act.

8 (10)(a) A city, town, county, or municipal corporation may not  
9 implement local recycled content requirements for a covered product  
10 that is subject to minimum postconsumer recycled content requirements  
11 established in this section.

12 (b) A city, town, county, or municipal corporation may establish  
13 local purchasing requirements that include recycled content standards  
14 that exceed the minimum recycled content requirements established by  
15 this chapter for plastic household cleaning and personal care product  
16 containers or plastic trash bags purchased by a city, town, or  
17 municipal corporation, or its contractor.

18 (11) The department may enter into contracts for the services  
19 required to implement this chapter and related duties of the  
20 department.

21 (12) In-state distributors, wholesalers, and retailers in  
22 possession of covered products manufactured before the date that  
23 postconsumer recycled content requirements become effective may  
24 exhaust their existing stock through sales to the public.

25 NEW SECTION. **Sec. 4.** PRODUCER REPORTING REQUIREMENTS. (1)(a)  
26 Except as provided in (b) and (c) of this subsection, beginning April  
27 1, 2024, each producer of covered products, individually or through a  
28 third party representing a group of producers, must provide an annual  
29 report to the department that includes the amount in pounds of virgin  
30 plastic and the amount in pounds of postconsumer recycled content by  
31 resin type used for each category of covered products that are sold,  
32 offered for sale, or distributed in or into Washington state,  
33 including the total postconsumer recycled content resins as a  
34 percentage of total weight. The report must be submitted in a format  
35 and manner prescribed by the department. A manufacturer may submit  
36 national data allocated on a per capita basis for Washington to  
37 approximate the information required in this subsection if the  
38 producer or third-party representative demonstrates to the department  
39 that state level data are not available or feasible to generate.

1 (b) The requirements of (a) of this subsection apply to household  
2 cleaning and personal care products in plastic containers beginning  
3 April 1, 2026.

4 (c) The requirements of (a) of this subsection apply to wine in  
5 187 milliliter plastic beverage containers and dairy milk in plastic  
6 beverage containers beginning April 1, 2029.

7 (d) The department must post the information reported under this  
8 subsection on its website, except as provided in subsection (2) of  
9 this section.

10 (2) A producer that submits information or records to the  
11 department under this chapter may request that the information or  
12 records be made available only for the confidential use of the  
13 department, the director, or the appropriate division of the  
14 department. The director of the department must give consideration to  
15 the request and if this action is not detrimental to the public  
16 interest and is otherwise in accordance with the policies and  
17 purposes of chapter 43.21A RCW, the director must grant the request  
18 for the information to remain confidential as authorized in  
19 RCW 43.21A.160.

20 NEW SECTION. **Sec. 5.** PENALTIES FOR POSTCONSUMER RECYCLED  
21 CONTENT REQUIREMENTS. (1)(a) A producer that does not meet the  
22 minimum postconsumer recycled content requirements pursuant to  
23 section 3 of this act is subject to a penalty pursuant to this  
24 section. Beginning June 1st of the year following the first year that  
25 minimum postconsumer recycled product content requirements apply to a  
26 category of covered product, the penalty must be calculated  
27 consistent with subsection (2) of this section unless a penalty  
28 reduction or corrective action plan has been approved pursuant to  
29 subsection (3) of this section.

30 (b) A producer that is assessed a penalty pursuant to this  
31 section may pay the penalty to the department in one payment, in  
32 quarterly installments, or arrange an alternative payment schedule  
33 subject to the approval of the department, not to exceed a 12-month  
34 payment schedule unless the department determines an extension is  
35 needed due to unforeseen circumstances, such as a public health  
36 emergency, state of emergency, or natural disaster.

37 (2) Beginning June 1st of the year following the first year that  
38 minimum postconsumer recycled product content requirements apply to a  
39 category of covered product, and annually thereafter, the department

1 shall determine the penalty for the previous calendar year based on  
2 the postconsumer recycled content requirement of the previous  
3 calendar year. The department shall calculate the amount of the  
4 penalty based upon the amounts in pounds in the aggregate of virgin  
5 plastic, postconsumer recycled content plastic, and any other plastic  
6 per category used by the producer to produce covered products sold or  
7 offered for sale in or into Washington state, in accordance with the  
8 following:

9 (a) (i) The annual penalty amount assessed to a producer must  
10 equal the product of both of the following: The total pounds of  
11 plastic used per category multiplied by the relevant minimum  
12 postconsumer recycled plastic target percentage, less the pounds of  
13 total plastic multiplied by the percent of postconsumer recycled  
14 plastic used; multiplied by 20 cents.

15 (ii) Example: [(Total pounds of plastic used x minimum  
16 postconsumer recycled plastic target percentage) - (Total pounds of  
17 plastic used x postconsumer recycled plastic percentage used)] x 20  
18 cents.

19 (b) For the purposes of (a) of this subsection, both of the  
20 following apply:

21 (i) The total pounds of plastic used must equal the sum of the  
22 amount of virgin plastic, postconsumer recycled content plastic, and  
23 any other plastic used by the producer, as reported pursuant to  
24 section 4 of this act.

25 (ii) If the product calculated pursuant to (a) of this subsection  
26 is equal to or less than zero, the department may not assess a  
27 penalty.

28 (3) (a) (i) The department shall consider granting a reduction of  
29 penalties assessed pursuant to this section for the purpose of  
30 meeting the minimum postconsumer recycled content requirements  
31 required pursuant to section 3 of this act.

32 (ii) In determining whether to grant the reduction pursuant to  
33 (a) (i) of this subsection, the department shall consider, at a  
34 minimum, all of the following factors:

35 (A) Anomalous market conditions;

36 (B) Disruption in, or lack of supply of, recycled plastics; and

37 (C) Other factors that have prevented a producer from meeting the  
38 requirements.

39 (b) In lieu of or in addition to assessing a penalty under this  
40 section, the department may require a producer to submit a corrective

1 action plan detailing how the producer plans to come into compliance  
2 with section 3 of this act.

3 (4) For the purposes of determining compliance with the  
4 postconsumer recycled content requirements of this chapter, the  
5 department may consider the date of manufacture of a covered product  
6 or the container of a covered product.

7 (5) A producer shall pay the penalty assessed pursuant to this  
8 section, as applicable, based on the information reported to the  
9 department as required under section 4 of this act in the form and  
10 manner prescribed by the department.

11 (6) A producer may appeal the penalty assessed under this section  
12 to the pollution control hearings board within 30 days of assessment.

13 (7) Penalties collected under this section must be deposited in  
14 the recycling enhancement account created in section 13 of this act.

15 NEW SECTION. **Sec. 6.** PENALTIES FOR REGISTRATION, LABELING, AND  
16 REPORTING. (1) For producers out of compliance with the registration,  
17 reporting, or labeling requirements of section 3, 4, or 7 of this  
18 act, the department shall provide written notification and offer  
19 information to producers. For the purposes of this section, written  
20 notification serves as notice of the violation. The department must  
21 issue at least two notices of violation by certified mail prior to  
22 assessing a penalty under subsection (2) of this section.

23 (2) A producer in violation of the registration, reporting, or  
24 labeling requirements in section 3, 4, or 7 of this act is subject to  
25 a civil penalty for each day of violation in an amount not to exceed  
26 \$1,000.

27 (3) Penalties collected under this section must be deposited in  
28 the recycling enhancement account created in section 13 of this act.

29 (4) Penalties issued under this section are appealable to the  
30 pollution control hearings board established in chapter 43.21B RCW.

31 NEW SECTION. **Sec. 7.** TRASH BAG LABELING REQUIREMENTS. (1)  
32 Beginning January 1, 2023, producers shall label each package  
33 containing plastic trash bags sold, offered for sale, or distributed  
34 in or into Washington with:

35 (a) The name of the producer and the city, state, and country  
36 where the producer is located, which may be designated as the  
37 location of the producer's corporate headquarters; or

1 (b) A uniform resource locator or quick response code to an  
2 internet website that contains the information required pursuant to  
3 (a) of this subsection.

4 (2)(a) The provisions of subsection (1) of this section do not  
5 apply to a plastic bag that is designed and manufactured to hold,  
6 store, or transport dangerous waste or biomedical waste.

7 (b) For the purposes of this subsection:

8 (i) "Biomedical waste" means any waste defined as that term under  
9 RCW 70A.228.010; and

10 (ii) "Dangerous waste" means any waste defined as dangerous  
11 wastes under RCW 70A.300.010.

12 NEW SECTION. **Sec. 8.** A new section is added to chapter 39.26  
13 RCW to read as follows:

14 POSTCONSUMER RECYCLED CONTENT IN PLASTIC TRASH BAGS—PURCHASING  
15 PRIORITY. (1) Beginning July 1, 2024, all state agencies may only  
16 purchase plastic trash bags manufactured by producers that comply  
17 with the minimum recycled content requirements established in section  
18 3 of this act.

19 (2) By July 1, 2024, the department of ecology shall provide to  
20 the department a list of the plastic trash bag producer brands that  
21 comply with the minimum recycled content requirements established in  
22 section 3 of this act, in order for state agencies to purchase  
23 compliant products, updated annually.

24 NEW SECTION. **Sec. 9.** (1)(a) By July 1, 2021, the departments of  
25 commerce and ecology shall jointly select an impartial, third-party  
26 facilitator to convene a stakeholder advisory committee housed within  
27 the recycling development center. The advisory committee shall make  
28 recommendations to the appropriate committees of the legislature on  
29 the development of mandatory postconsumer recycled content  
30 requirements for types of plastic packaging not subject to the  
31 minimum postconsumer recycled content requirements established in  
32 this act, and that are present in the municipal solid waste material  
33 stream or are regularly received by facilities that process  
34 recyclable materials from residential curbside recycling programs.  
35 The recommendations may include rates of mandatory postconsumer  
36 recycled content required by material type, target implementation  
37 dates, and potential exemptions or alternate compliance pathways for  
38 some materials.



1 (b) The facilitator must:

2 (i) Work with the recycling development center to subcontract for

3 any relevant information regarding recycled plastic market conditions

4 and barriers to the use of recycled content to provide to the

5 stakeholder advisory committee to aid in the development of

6 recommendations, to the extent practicable;

7 (ii) Provide staff and support to the stakeholder advisory

8 committee meetings; and

9 (iii) Draft reports and other materials for review by the

10 stakeholder advisory committee.

11 (2) The facilitator identified in subsection (1) of this section

12 must be selected based on the following criteria:

13 (a) Impartiality regarding policy outcomes;

14 (b) Professional qualifications, relevant experience, and

15 degrees; and

16 (c) The facilitator must be an environmental conflict resolution

17 specialist recognized by a national center for environmental conflict

18 resolution.

19 (3) By December 1, 2021, the facilitator shall submit a report to

20 the legislature containing the recommendations of the stakeholder

21 advisory committee after review and approval by the facilitator and

22 committee. The stakeholder advisory committee shall make

23 recommendations using consensus-based decision making. The report

24 must include recommendations where general stakeholder consensus has

25 been achieved and note dissenting opinions where stakeholder

26 consensus has not been achieved.

27 (4) The stakeholder advisory committee shall consider information

28 and findings by a variety of authoritative bodies related to recycled

29 content, including mechanical and advanced recycling technologies.

30 (5) The facilitator shall select at least one member to the

31 stakeholder advisory committee from each of the following:

32 (a) The department of commerce;

33 (b) The department of ecology;

34 (c) The utilities and transportation commission;

35 (d) Cities, including both small and large cities and cities

36 located in urban and rural counties;

37 (e) Counties, including both small and large counties and urban

38 and rural counties;

39 (f) Municipal collectors;

- 1 (g) A representative from the private sector waste and recycling  
2 industry that owns or operates a curbside recycling program and a  
3 material recovery facility;
- 4 (h) A solid waste collection company regulated under chapter  
5 81.77 RCW that provides curbside recycling services;
- 6 (i) A material recovery facility operator that processes  
7 municipal solid waste from curbside recycling programs;
- 8 (j) A company that provides curbside recycling service pursuant  
9 to a municipal contract under RCW 81.77.020;
- 10 (k) A trade association that represents the private sector solid  
11 waste industry;
- 12 (l) Recycled plastic feedstock users;
- 13 (m) A trade association representing the plastics recycling  
14 industry;
- 15 (n) A recycled content certification organization;
- 16 (o) An environmental justice organization;
- 17 (p) An environmental nonprofit organization;
- 18 (q) An environmental nonprofit organization that specializes in  
19 waste and recycling issues;
- 20 (r) Plastic converters/manufacturers of resins;
- 21 (s) A manufacturer of plastic packaging;
- 22 (t) A statewide general business trade association;
- 23 (u) Associations that represent consumer brand companies;
- 24 (v) Representatives of consumer brands;
- 25 (w) A consumer-oriented organization;
- 26 (x) Representatives of the state's most marginalized communities;
- 27 (y) A retailer or representative of the retail association;
- 28 (z) A representative of an advanced recycling technology provider  
29 that processes plastic material;
- 30 (aa) An association that represents cities;
- 31 (bb) An association that represents county solid waste managers;
- 32 (cc) A representative from a retail grocery association;
- 33 (dd) A representative from a Washington headquartered online  
34 retailer;
- 35 (ee) A representative from a national consumer electronics  
36 association; and
- 37 (ff) A representative from the personal care products industry.
- 38 (6) The definitions in section 2 of this act apply throughout  
39 this section unless the context clearly requires otherwise.
- 40 (7) This section expires January 1, 2022.

1 NEW SECTION. **Sec. 10.** EXPANDED POLYSTYRENE PROHIBITIONS. (1) (a)

2 Beginning June 1, 2024, the sale and distribution of the following  
3 expanded polystyrene products in or into Washington state is  
4 prohibited:

5 (i) A portable container that is designed or intended to be used  
6 for cold storage, except for expanded polystyrene containers used for  
7 drugs, medical devices, and biological materials as defined in the  
8 federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or  
9 shipping perishable commodities from a wholesale or retail  
10 establishment; and

11 (ii) Food service products that include food containers, plates,  
12 clam shell-style containers, and hot and cold beverage cups. For the  
13 purposes of this subsection (1) (a) (ii), food service products do not  
14 include: Packaging for raw, uncooked, or butchered meat, fish,  
15 poultry, or seafood, vegetables, fruit, or egg cartons.

16 (b) Beginning June 1, 2023, the sale and distribution of expanded  
17 polystyrene void filling packaging products, which means loose fill  
18 packaging material, also referred to as packing peanuts, in or into  
19 Washington state is prohibited.

20 (2) (a) The department must provide technical assistance and  
21 guidance to manufacturers of prohibited expanded polystyrene  
22 products, upon request. For manufacturers out of compliance with the  
23 requirements of this section, the department shall provide written  
24 notification and offer information to manufacturers that sell  
25 prohibited expanded polystyrene products who are in violation of this  
26 section. For the purposes of this section, written notification  
27 serves as notice of the violation. The department must issue at least  
28 two notices of violation by certified mail prior to assessing a  
29 penalty.

30 (b) A manufacturer of products in violation of this section is  
31 subject to a civil penalty for each violation in an amount not to  
32 exceed:

33 (i) \$250 if it is the manufacturer's first penalty; and

34 (ii) \$1,000 if the manufacturer has previously been issued a  
35 civil penalty under this section.

36 (c) Penalties collected under this section must be deposited in  
37 the model toxics control operating account created in RCW  
38 70A.305.180.

39 (d) Penalties issued under this section are appealable to the  
40 pollution control hearings board established in chapter 43.21B RCW.

1 (3) A city, town, county, or municipal corporation may not  
2 implement a local ordinance restricting products prohibited under  
3 subsection (1) of this section unless the ordinance was filed by  
4 April 1, 2021, and enacted by June 1, 2021. An ordinance restricting  
5 products prohibited under subsection (1) of this section that was not  
6 enacted as of June 1, 2021, is preempted by this section.

7 (4) For the purposes of this section, "manufacturer" includes any  
8 person, firm, association, partnership, corporation, governmental  
9 entity, organization, or joint venture that:

10 (a) Produces the products subject to restrictions in subsection  
11 (1) of this section; or

12 (b) Is an importer or domestic distributor of a product subject  
13 to restrictions in subsection (1) of this section sold or offered for  
14 sale in or into the state.

15 NEW SECTION. **Sec. 11.** OPTIONAL SERVICEWARE. (1) Beginning  
16 January 1, 2022:

17 (a) Except as provided in (b) of this subsection, a food service  
18 business may provide the following single use food service products  
19 only after affirming that the customer wants the item or items:

20 (i) Utensils;

21 (ii) Straws;

22 (iii) Condiment packaging; and

23 (iv) Beverage cup lids.

24 (b) A food service business may provide beverage cup lids without  
25 customer affirmation for:

26 (i) Hot beverages;

27 (ii) Beverages provided through delivery service or curbside  
28 pickup; and

29 (iii) Beverages served to customers via a drive through or at  
30 large, permanent, venues that are designed for professional sport or  
31 music events and that have a fixed-seat capacity of at least 2,500  
32 customers and are enclosed or are surrounded by a perimeter fence.

33 (c) The requirements of this section do not apply to food service  
34 products provided to a patient, resident, or customer in:

35 (i) A health care facility or a health care provider as defined  
36 in RCW 70.02.010;

37 (ii) Long-term care facilities identified in RCW 18.51.010,  
38 18.20.020, 70.128.010, 70.97.010, or 18.390.010;

1 (iii) Senior nutrition programs authorized under 45 C.F.R. Sec.  
2 1321, and home delivered meals offered under chapters 74.39 and  
3 74.39A RCW;

4 (iv) Services to individuals with developmental disabilities  
5 under Title 71A RCW and chapter 74.39A RCW; and

6 (v) State hospitals as defined in RCW 72.23.010.

7 (d) The requirements of this subsection (1) apply to the  
8 activities of the department of corrections and the department of  
9 children, youth, and families only to the extent operationally  
10 feasible and practicable.

11 (2)(a) Nothing in this section prohibits a food service business  
12 from making utensils, straws, condiments, and beverage cup lids  
13 available to customers using cylinders, bins, dispensers, containers,  
14 or other means of allowing for single-use utensils, straws,  
15 condiments, and beverage cup lids to be obtained at the affirmative  
16 volition of the customer.

17 (b) Utensils provided by a food service business for use by  
18 customers may not be bundled or packaged in plastic in such a way  
19 that a customer is unable to take only the type of single-use utensil  
20 or utensils desired without also taking a different type or types of  
21 utensil.

22 (3)(a) The department may issue a civil penalty of no less than  
23 \$150 per day and no more than \$2,000 per day to the owner or operator  
24 of a food service business for each day single-use food service  
25 products are provided in violation of this section.

26 (b) The department must issue at least two notices of violation  
27 by certified mail prior to assessing a penalty.

28 (c) Penalties collected under this section must be deposited in  
29 the model toxics control operating account created in RCW  
30 70A.305.180.

31 (d) A food service business may appeal penalties assessed under  
32 this subsection to the pollution control hearings board within 30  
33 days of assessment.

34 (4) All food service businesses are encouraged, but not required,  
35 to take actions in addition to the requirements of this section that  
36 support a goal of reducing the use of and waste generated by single-  
37 use food service products.

38 (5) Beginning July 1, 2021, a city, town, county, or municipal  
39 corporation may not enact an ordinance to reduce pollution from  
40 single-use food service products by requiring affirmation that a

1 customer wants single-use food service products from the customer of  
2 the food service business or other retail establishment.

3 NEW SECTION. **Sec. 12.** DEPARTMENT DUTIES. (1) The department may  
4 conduct audits and investigations for the purpose of ensuring  
5 compliance with sections 3 and 5 of this act based on the information  
6 reported under section 4 of this act.

7 (2) The department shall annually publish a list of registered  
8 producers of covered products and associated brand names, their  
9 compliance status, and other information the department deems  
10 appropriate on the department's website.

11 (3) To assist regulated parties with the requirements specified  
12 under sections 10 and 11 of this act, the department:

13 (a) Must prepare and post on its website information regarding  
14 the prohibitions on the sale and distribution of expanded polystyrene  
15 products as specified under section 10 of this act and restrictions  
16 on the provision of optional serviceware under section 11 of this  
17 act;

18 (b) For education and outreach to help implement sections 10 and  
19 11 of this act, may develop culturally appropriate and translated  
20 educational materials and resources for the state's diverse ethnic  
21 populations from existing materials used by local jurisdictions and  
22 other states.

23 (4) The department may adopt rules as necessary to administer,  
24 implement, and enforce this chapter.

25 NEW SECTION. **Sec. 13.** RECYCLING ENHANCEMENT ACCOUNT. The  
26 recycling enhancement account is created in the custody of the state  
27 treasurer. All penalties collected by the department pursuant to  
28 sections 5 and 6 of this act must be deposited in the account. Only  
29 the director of the department or the director's designee may  
30 authorize expenditures from the account. The account is subject to  
31 the allotment procedures under chapter 43.88 RCW, but an  
32 appropriation is not required for expenditures. Expenditures from the  
33 account may be used by the department only for providing grants to  
34 local governments for the purpose of supporting local solid waste and  
35 financial assistance programs.

36 NEW SECTION. **Sec. 14.** RECYCLED CONTENT ACCOUNT. The recycled  
37 content account is created in the custody of the state treasurer. All

1 receipts received by the department under section 3 of this act must  
2 be deposited in the account. Only the director of the department or  
3 the director's designee may authorize expenditures from the account.  
4 The account is subject to the allotment procedures under chapter  
5 43.88 RCW, but an appropriation is not required for expenditures.  
6 Expenditures from the account may be used by the department only for  
7 implementing, administering, and enforcing the requirements of  
8 sections 3 through 7 and 12(1), (2), and (4) of this act.

9 NEW SECTION. **Sec. 15.** MARKET STUDY. (1) Subject to the  
10 availability of amounts appropriated for this specific purpose prior  
11 to January 1, 2028, the department shall contract with a research  
12 university or an independent third-party consultant to study the  
13 plastic resin markets for all of the following:

14 (a) Analyzing market conditions and opportunities in the state's  
15 recycling industry for meeting the minimum postconsumer recycled  
16 content requirements for covered products pursuant to sections 3 and  
17 4 of this act; and

18 (b) Determining the data needs and tracking opportunities to  
19 increase the transparency and support of a more effective, fact-based  
20 public understanding of the recycling industry.

21 (2) If funding is provided pursuant to subsection (1) of this  
22 section and the department undertakes the study, the study must be  
23 completed by May 1, 2029.

24 (3) This section expires July 1, 2029.

25 **Sec. 16.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035  
26 are each reenacted and amended to read as follows:

27 (1) The hearings board shall only have jurisdiction to hear and  
28 decide appeals from the following decisions of the department, the  
29 director, local conservation districts, the air pollution control  
30 boards or authorities as established pursuant to chapter 70A.15 RCW,  
31 local health departments, the department of natural resources, the  
32 department of fish and wildlife, the parks and recreation commission,  
33 and authorized public entities described in chapter 79.100 RCW:

34 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
35 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
36 70A.515.060, sections 5, 6, 10, and 11 of this act, 76.09.170,  
37 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
38 90.56.310, 90.56.330, and 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
3 section 3 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
4 90.48.120, and 90.56.330.

5 (c) Except as provided in RCW 90.03.210(2), the issuance,  
6 modification, or termination of any permit, certificate, or license  
7 by the department or any air authority in the exercise of its  
8 jurisdiction, including the issuance or termination of a waste  
9 disposal permit, the denial of an application for a waste disposal  
10 permit, the modification of the conditions or the terms of a waste  
11 disposal permit, or a decision to approve or deny an application for  
12 a solid waste permit exemption under RCW 70A.205.260.

13 (d) Decisions of local health departments regarding the grant or  
14 denial of solid waste permits pursuant to chapter 70A.205 RCW.

15 (e) Decisions of local health departments regarding the issuance  
16 and enforcement of permits to use or dispose of biosolids under RCW  
17 70A.226.090.

18 (f) Decisions of the department regarding waste-derived  
19 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
20 decisions of the department regarding waste-derived soil amendments  
21 under RCW 70A.205.145.

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

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

31 (i) Decisions of the department of natural resources, the  
32 department of fish and wildlife, and the department that are  
33 reviewable under chapter 76.09 RCW, and the department of natural  
34 resources' appeals of county, city, or town objections under RCW  
35 76.09.050(7).

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

38 (k) Decisions of the department of fish and wildlife to issue,  
39 deny, condition, or modify a hydraulic project approval permit under  
40 chapter 77.55 RCW, to issue a stop work order, to issue a notice to



1 comply, to issue a civil penalty, or to issue a notice of intent to  
2 disapprove applications.

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

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

9 (n) Decisions of the department of ecology that are appealable  
10 under section 3 of this act to set recycled minimum postconsumer  
11 content for covered products or to temporarily exclude types of  
12 covered products in plastic containers from minimum postconsumer  
13 recycled content requirements.

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

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

18 (b) Hearings conducted by the department pursuant to RCW  
19 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
20 70A.15.3110, and 90.44.180.

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

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

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

28 **Sec. 17.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to  
29 read as follows:

30 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
31 70A.205.280, 70A.300.090, 70A.20.050, sections 5, 6, 10, and 11 of  
32 this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
33 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by  
34 a notice in writing, either by certified mail with return receipt  
35 requested or by personal service, to the person incurring the penalty  
36 from the department or the local air authority, describing the  
37 violation with reasonable particularity. For penalties issued by  
38 local air authorities, within thirty days after the notice is  
39 received, the person incurring the penalty may apply in writing to

1 the authority for the remission or mitigation of the penalty. Upon  
2 receipt of the application, the authority may remit or mitigate the  
3 penalty upon whatever terms the authority in its discretion deems  
4 proper. The authority may ascertain the facts regarding all such  
5 applications in such reasonable manner and under such rules as it may  
6 deem proper and shall remit or mitigate the penalty only upon a  
7 demonstration of extraordinary circumstances such as the presence of  
8 information or factors not considered in setting the original  
9 penalty.

10 (2) Any penalty imposed under this section may be appealed to the  
11 pollution control hearings board in accordance with this chapter if  
12 the appeal is filed with the hearings board and served on the  
13 department or authority thirty days after the date of receipt by the  
14 person penalized of the notice imposing the penalty or thirty days  
15 after the date of receipt of the notice of disposition by a local air  
16 authority of the application for relief from penalty.

17 (3) A penalty shall become due and payable on the later of:

18 (a) Thirty days after receipt of the notice imposing the penalty;

19 (b) Thirty days after receipt of the notice of disposition by a  
20 local air authority on application for relief from penalty, if such  
21 an application is made; or

22 (c) Thirty days after receipt of the notice of decision of the  
23 hearings board if the penalty is appealed.

24 (4) If the amount of any penalty is not paid to the department  
25 within thirty days after it becomes due and payable, the attorney  
26 general, upon request of the department, shall bring an action in the  
27 name of the state of Washington in the superior court of Thurston  
28 county, or of any county in which the violator does business, to  
29 recover the penalty. If the amount of the penalty is not paid to the  
30 authority within thirty days after it becomes due and payable, the  
31 authority may bring an action to recover the penalty in the superior  
32 court of the county of the authority's main office or of any county  
33 in which the violator does business. In these actions, the procedures  
34 and rules of evidence shall be the same as in an ordinary civil  
35 action.

36 (5) All penalties recovered shall be paid into the state treasury  
37 and credited to the general fund except those penalties imposed  
38 pursuant to RCW 18.104.155, which shall be credited to the  
39 reclamation account as provided in RCW 18.104.155(7), RCW  
40 70A.15.3160, the disposition of which shall be governed by that

1 provision, sections 5 and 6 of this act, which shall be credited to  
2 the recycling enhancement account created in section 13 of this act,  
3 RCW 70A.300.090, which shall be credited to the model toxics control  
4 operating account created in RCW 70A.305.180, RCW 90.56.330, which  
5 shall be credited to the coastal protection fund created by RCW  
6 90.48.390, and RCW 70A.355.070, which shall be credited to the  
7 underground storage tank account created by RCW 70A.355.090.

8 **Sec. 18.** RCW 70A.220.020 and 2020 c 20 s 1228 are each amended  
9 to read as follows:

10 ~~((1) The provisions of this section and any rules adopted under~~  
11 ~~this section shall be interpreted to conform with nationwide plastics~~  
12 ~~industry standards.~~

13 ~~(2))~~ Except as provided in RCW 70A.220.030(2), after January 1,  
14 1992, no person may distribute, sell, or offer for sale in this state  
15 a plastic bottle or rigid plastic container unless the container is  
16 labeled with a code identifying the appropriate resin type used to  
17 produce the structure of the container. ~~((The code shall consist of a~~  
18 ~~number placed within three triangulated arrows and letters placed~~  
19 ~~below the triangle of arrows. The triangulated arrows shall be~~  
20 ~~equilateral, formed by three arrows with the apex of each point of~~  
21 ~~the triangle at the midpoint of each arrow, rounded with a short~~  
22 ~~radius. The pointer (arrowhead) of each arrow shall be at the~~  
23 ~~midpoint of each side of the triangle with a short gap separating the~~  
24 ~~pointer from the base of the adjacent arrow. The triangle, formed by~~  
25 ~~the three arrows curved at their midpoints shall depict a clockwise~~  
26 ~~path around the code number.))~~ The numbers and letters used shall be  
27 as follows:

- 28 (a) 1.= PETE (polyethylene terephthalate)
- 29 (b) 2.= HDPE (high density polyethylene)
- 30 (c) 3.= V (vinyl) or PVC (polyvinyl chloride)
- 31 (d) 4.= LDPE (low density polyethylene)
- 32 (e) 5.= PP (polypropylene)
- 33 (f) 6.= PS (polystyrene)
- 34 (g) 7.= OTHER

35 NEW SECTION. **Sec. 19.** Sections 2 through 7 and 9 through 15 of  
36 this act constitute a new chapter in Title 70A RCW.

1        NEW SECTION.    **Sec. 20.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

--- END ---