
SENATE BILL 5323

State of Washington

66th Legislature

2019 Regular Session

By Senators Das, Carlyle, Kuderer, Palumbo, Hunt, and Rolfes

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; adding a new chapter to Title 70 RCW; creating a new
4 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 not less than ten cents for every recycled content paper carryout bag
9 or reusable carryout bag made of film plastic it provides, except as
10 provided in subsection (5) of this section and section 4 of this act.
11 A retail establishment may make reusable carryout bags available to
12 customers through sale.

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

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

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

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

23 (ii) Contain or wrap frozen foods, meat, fish, flowers, potted
24 plants, or other items where dampness or sanitation might be a
25 problem;

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

27 (iv) Contain prescription drugs; or

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

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

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

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

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

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

9 (5) Except as provided by local regulations in effect as of
10 January 1, 2019, a retail establishment may provide a bag restricted
11 under subsections (1) and (4) of this section from existing inventory
12 until January 1, 2020. The retail establishment, upon request by the
13 department, must provide purchase invoices, distribution receipts, or
14 other information documenting that the bag was acquired prior to the
15 effective date of this section.

16 (6) For the purposes of this section:

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

18 (i) Contain an average of forty percent postconsumer recycled
19 materials;

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

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

25 (b) A reusable carryout bag must:

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

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

32 (iii) If made of film plastic:

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

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

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

38 (D) Display wording that the bag is reusable.

39 (c) A compostable film bag must:

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

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

8 (d) Food banks and other food assistance programs are not retail
9 establishments, but are encouraged to take actions to reduce the use
10 of single-use plastic carryout bags.

11 NEW SECTION. **Sec. 4.** It is a violation of section 3 of this act
12 for any retail establishment to pay or otherwise reimburse a customer
13 for any portion of the pass-through charge; provided that retail
14 establishments may not collect a pass-through charge from anyone with
15 a voucher or electronic benefits card issued under the women,
16 infants, and children (WIC) or temporary assistance for needy
17 families (TANF) support programs, or the federal supplemental
18 nutrition assistance program (SNAP, also known as basic food), or the
19 Washington state food assistance program (FAP).

20 NEW SECTION. **Sec. 5.** (1) The department may adopt rules as
21 necessary for the purpose of implementing, administering, and
22 enforcing this chapter.

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

31 (3) A violation of this chapter is a class 1 civil infraction
32 under chapter 7.80 RCW. Each calendar day of operation or activity in
33 violation of this chapter comprises a new violation.

34 NEW SECTION. **Sec. 6.** (1) Except as provided in subsection (2)
35 of this section, a city, town, county, or municipal corporation may
36 not implement a local carryout bag ordinance. Any carryout bag
37 ordinance that is in effect as of the effective date of this section

1 is preempted by this chapter, as of the effective date of this
2 section.

3 (2)(a) A city, town, county, or municipal corporation may, by
4 ordinance, increase the amount of the minimum pass-through charge
5 established in section 3(2)(b) of this act.

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

8 NEW SECTION. **Sec. 7.** If specific funding for the purposes of
9 this act, referencing this act by bill or chapter number, is not
10 provided by July 1, 2019, from the waste reduction, recycling, and
11 litter control account for purposes of implementing the education and
12 outreach activities required under section 5 of this act, then this
13 act is null and void.

14 NEW SECTION. **Sec. 8.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act
19 constitute a new chapter in Title 70 RCW.

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