
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5022

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 new sections; prescribing penalties; and providing an
7 expiration date.

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 this subsection,
17 except infant formula or medical food as defined in 21 U.S.C. Sec.
18 360ee(b)(3).

19 (2) "Beverage manufacturer" means a manufacturer of one or more
20 beverages described in subsection (1) of this section, that are sold,
21 offered for sale, or distributed in a plastic beverage container in
22 Washington.

23 (3) "Beverage manufacturing industry" means an association that
24 represents companies that manufacture beverages.

25 (4) "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 and jam, and soy sauce.

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

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

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

1 (8) "Food service business" means a business selling or providing
2 food for consumption on or off the premises, and includes full-
3 service restaurants, fast food restaurants, cafes, delicatessens,
4 coffee shops, grocery stores, vending trucks or carts, home delivery
5 services, delivery services provided through an online application,
6 and business or institutional cafeterias.

7 (9) "Food service product" means a product including, but not
8 limited to, containers, plates, bowls, cups, lids, beverage
9 containers, meat trays, deli rounds, utensils, sachets, straws,
10 condiment packaging, clamshells and other hinged or lidded
11 containers, wrap, portion cups, and other food service products that
12 are intended for one-time use and used for food or drink offered for
13 sale or use.

14 (10) "Household cleaning and personal care product" means
15 products identified in (a) through (f) of this subsection:

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

17 (b) Household cleaning products;

18 (c) Liquid soap;

19 (d) Shampoo, conditioner, styling sprays and gels, and other hair
20 care products;

21 (e) Lotion, moisturizer, facial toner, and other skin care
22 products; or

23 (f) Oral hygiene products.

24 (11) "Household cleaning and personal care product manufacturing
25 industry" means an association that represents companies that
26 manufacture household cleaning and personal care products.

27 (12) "Plastic beverage container" means a bottle or other rigid
28 container that is capable of maintaining its shape when empty,
29 comprised solely of one or multiple plastic resins and containing a
30 beverage. Plastic beverage container does not include:

31 (a) Refillable beverage containers (i.e., containers that are
32 sufficiently durable for multiple rotations of their original or
33 similar purpose and are intended to function in a system of reuse);

34 (b) 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 (c) Bladders or pouches that contain wine; or

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

4 (13) "Plastic household cleaning and personal care product
5 container" means a bottle, jug, or other rigid container with a neck
6 or mouth narrower than the base, a minimum capacity of eight fluid
7 ounces or its equivalent volume, a maximum capacity of five fluid
8 gallons or its equivalent volume that is capable of maintaining its
9 shape when empty, comprised solely of one or multiple plastic resins,
10 and containing a household cleaning or personal care product.
11 "Plastic household cleaning and personal care product container" does
12 not include:

13 (a) Refillable household cleaning and personal care product
14 containers (i.e., containers that are sufficiently durable for
15 multiple rotations of their original or similar purpose and are
16 intended to function in a system of reuse); and

17 (b) Rigid plastic containers or plastic bottles that are medical
18 devices, medical products that are required to be sterile, and
19 nonprescription and prescription drugs, dietary supplements as
20 defined in RCW 82.08.0293, and packaging used for those products.

21 (14) "Plastic trash bag" means a bag that is made of
22 noncompostable plastic, is at least 0.70 mils thick, and is designed
23 and manufactured for use as a container to hold, store, or transport
24 materials to be discarded or recycled, and includes, but is not
25 limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner
26 bag, kitchen bag, or compactor bag. "Plastic trash bag" does not
27 include any compostable bags meeting the requirements of chapter
28 70A.455 RCW.

29 (15) "Plastic trash bag manufacturing industry" means an
30 association that represents companies that manufacture plastic trash
31 bags.

32 (16) "Postconsumer recycled content" means the content of a
33 product or packaging made of recycled materials derived specifically
34 from recycled material generated by households or by commercial,
35 industrial, and institutional facilities in their role as end users
36 of the product that can no longer be used for its intended purpose.
37 This includes returns of material from the distribution chain.

38 (17) (a) "Producer of household cleaning and personal care product
39 containers" means a manufacturer or entity that uses containers that

1 are sold, offered for sale, or distributed at a physical retail
2 location or remote sale in this state, in the following hierarchy:

3 (i) A manufacturer or entity who uses a container and sells,
4 offers for sale, or distributes a product in a container under their
5 own brand;

6 (ii) If the container is used by a person other than the brand
7 owner, the producer of the container is the person who is the owner
8 or licensee of a brand or trademark under which a container is sold,
9 offered for sale, or distributed in or into this state;

10 (iii) If there is no person described in (a)(i) and (ii) of this
11 subsection within the United States, the producer of the container is
12 the person who imports the container into the United States for use
13 in a commercial enterprise that sells, offers for sale, or
14 distributes the container in this state; or

15 (iv) The manufacturer or entity under (a)(i) of this subsection
16 who uses a container, under their own brand, may notify the
17 department of another manufacturer or third-party entity that has
18 agreed to fulfill the duties of a producer for designated containers
19 used under this chapter. The notification must be submitted jointly
20 with the manufacturer or third-party entity. In the event that the
21 brand no longer maintains a contract with the manufacturer or entity,
22 the original producer in (a)(i) of this subsection must notify the
23 state within 30 days that the product container has been removed from
24 the market and is no longer reportable for that brand.

25 (b) A "producer of household cleaning and personal care product
26 containers" does not include:

27 (i) Government agencies, municipalities, or other political
28 subdivisions of the state;

29 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
30 social welfare organizations; or

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

33 (A) Less than one ton of household cleaning and personal care
34 product containers each year; or

35 (B) Household cleaning and personal care products that in
36 aggregate generate less than \$1,000,000 in revenue each year.

37 (18)(a) "Producer of plastic trash bags that are sold, offered
38 for sale, or distributed at physical retail location or remote sale
39 in this state" means, in the following hierarchy:

1 (i) A manufacturer or entity who sells, offers for sale, or
2 distributes plastic trash bags under their own brand;

3 (ii) The person who is the owner or licensee of a brand or
4 trademark under which the plastic trash bags are sold, offered for
5 sale, or distributed in or into this state;

6 (iii) If there is no person described in (a)(i) and (ii) of this
7 subsection within the United States, the producer of the plastic
8 trash bags is the person who imports the plastic trash bags into the
9 United States for use in a commercial enterprise that sells, offers
10 for sale, or distributes the plastic trash bags in this state; or

11 (iv) The manufacturer or entity under (a)(i) of this subsection
12 who sells, offers for sale, or distributes plastic trash bags under
13 their own brand, may notify the department of another manufacturer or
14 third-party entity that has agreed to fulfill the duties of a
15 producer under this chapter. The notification must be submitted
16 jointly with the manufacturer or third-party entity. In the event
17 that the brand no longer maintains a contract with the manufacturer
18 or entity, the original producer in (a)(i) of this subsection must
19 notify the state within 30 days that the product has been removed
20 from the market and is no longer reportable for that brand.

21 (b) A "producer of plastic trash bags" does not include:

22 (i) Government agencies, municipalities, or other political
23 subdivisions of the state;

24 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
25 social welfare organizations; or

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

28 (A) Less than one ton of plastic trash bags each year; or

29 (B) Plastic trash bags that in aggregate generate less than
30 \$1,000,000 each year in revenue.

31 (19)(a) "Retail establishment" means any person, corporation,
32 partnership, business, facility, vendor, organization, or individual
33 that sells or provides merchandise, goods, or materials directly to a
34 customer.

35 (b) "Retail establishment" includes, but is not limited to, food
36 service businesses, grocery stores, department stores, hardware
37 stores, home delivery services, pharmacies, liquor stores,
38 restaurants, catering trucks, convenience stores, or other retail
39 stores or vendors, including temporary stores or vendors at farmers
40 markets, street fairs, and festivals.

1 (20)(a) "Utensil" means a product designed to be used by a
2 consumer to facilitate the consumption of food or beverages,
3 including knives, forks, spoons, cocktail picks, chopsticks, splash
4 sticks, and stirrers.

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

7 NEW SECTION. **Sec. 3.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
8 BEVERAGE CONTAINERS. (1) Beginning January 1, 2023, beverage
9 manufacturers that offer for sale, sell, or distribute in Washington
10 beverages in plastic beverage containers must meet minimum
11 postconsumer recycled content as required under subsection (3) of
12 this section.

13 (2)(a) On or before April 1, 2022, and annually thereafter,
14 beverage manufacturers that offer for sale, sell, or distribute in
15 Washington beverages in plastic beverage containers must register
16 with the department individually or through a third-party
17 representative registering on behalf of a group of beverage
18 manufacturers.

19 (b) After January 1, 2023, a beverage manufacturer that offers
20 for sale, sells, or distributes in Washington beverages in plastic
21 beverage containers not registered with the department either
22 individually or through a third party may not sell or supply beverage
23 containers in or into Washington state.

24 (c) Registration information must include a list of the beverage
25 manufacturers and the brand names of the beverages represented in the
26 registration submittal. Beginning April 1, 2024, registration
27 information may accompany the annual reporting required under section
28 4 of this act.

29 (d)(i) By January 31, 2022, and every January 31st thereafter,
30 the department must identify the annual costs it will incur to
31 implement this section and sections 4 and 5 of this act in the next
32 fiscal year, including rule making, and invoices of costs for
33 beverage manufacturers or their third-party representatives. The
34 department must determine an annual payment by beverage manufacturers
35 or their third-party representative that is adequate to cover, but
36 not exceed, the department's full costs to implement, administer, and
37 enforce this chapter in the next fiscal year, including rule making.
38 The department must equitably determine payment amounts for an
39 individual beverage manufacturer and third-party representatives.

1 (ii) The department must:

2 (A) Apply any remaining annual payment funds from the current
3 year to the annual payment for the coming year, if the collected
4 annual payment exceeds the department's costs for a given year; and

5 (B) Increase annual payments for the coming year to cover the
6 department's costs, if the collected annual payment was less than the
7 department's costs for a given year.

8 (e) By April 1, 2022, and every April 1st thereafter, beverage
9 manufacturers or their third-party representative must submit a
10 payment as determined by the department under (d) of this subsection.

11 (3)(a) A beverage manufacturer that sells, offers for sale, or
12 distributes plastic beverage containers in or into Washington must
13 meet the following annual minimum postconsumer recycled content
14 percentage for the total quantity of plastic beverage containers, by
15 weight, that are sold, offered for sale, or distributed in Washington
16 effective for beverages except dairy milk:

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

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

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

23 (b) For dairy milk:

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

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

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

30 (4)(a) Beginning January 1, 2025, the department may, on an
31 annual basis, review and determine whether to adjust the minimum
32 postconsumer recycled content percentage required pursuant to
33 subsection (3) of this section. The department's review may be
34 initiated by the department or at the petition of the beverage
35 manufacturing industry not more than once annually. The department
36 may not adjust the minimum postconsumer recycled content requirements
37 above the minimum postconsumer recycled content percentages required
38 pursuant to subsection (3) of this section. In making a determination
39 pursuant to this subsection, the department must consider, at a
40 minimum, all of the following factors:

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

4 (ii) Recycling rates;

5 (iii) The availability of recycled plastic suitable to meet the
6 minimum postconsumer recycled content requirements pursuant to
7 subsection (3) of this section, including the availability of high
8 quality recycled plastic, and food-grade recycled plastic from
9 beverage container recycling programs;

10 (iv) The capacity of recycling or processing infrastructure; and

11 (v) The progress made by beverage manufacturers in achieving the
12 goals of this section.

13 (b) The beverage manufacturing industry or a beverage
14 manufacturer may appeal the department's decision under (a) of this
15 subsection to the pollution control hearings board within 30 days of
16 the department's determination.

17 (5) A beverage manufacturer that does not achieve the
18 postconsumer recycled content requirements established under this
19 section is subject to a penalty established in section 5 of this act.

20 (6) A city, town, county, or municipal corporation may not
21 implement local recycled content requirements for plastic beverage
22 containers that are subject to minimum postconsumer recycled content
23 as required under this section.

24 (7) The department may enter into a contract for the services
25 required to implement this chapter and related duties of the
26 department.

27 NEW SECTION. **Sec. 4.** BEVERAGE MANUFACTURER REPORTING
28 REQUIREMENTS. (1)(a) Beginning April 1, 2024, beverage manufacturers,
29 individually or through a third party representing a group of
30 manufacturers, must provide an annual report to the department that
31 includes the amount of virgin plastic and the amount of postconsumer
32 recycled content by resin type used for plastic beverage containers
33 for beverages manufactured by the beverage manufacturer that are
34 sold, offered for sale, or distributed into Washington state,
35 including the total postconsumer recycled content resins as a
36 percentage of total weight. The report must be submitted in a format
37 and manner prescribed by the department. A manufacturer may submit
38 national data allocated on a per capita basis for Washington to
39 approximate the information required in this subsection if the

1 manufacturer demonstrates to the department that state level data is
2 not available or feasible to generate.

3 (b) The department must post the information reported under this
4 subsection on its website.

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

15 NEW SECTION. **Sec. 5.** PENALTIES FOR PLASTIC BEVERAGE CONTAINERS.

16 (1)(a) Beginning January 1, 2023, a beverage manufacturer that does
17 not meet the minimum postconsumer recycled content requirements
18 pursuant to section 3 of this act is subject to a penalty pursuant to
19 this section. Beginning March 1, 2024, the penalty must be collected
20 annually, if a penalty reduction has not been approved pursuant to
21 subsection (3) of this section and calculated in accordance with
22 subsection (2) of this section.

23 (b) A beverage manufacturer that is assessed a penalty pursuant
24 to this section may pay the penalty to the department in quarterly
25 installments or arrange an alternative payment schedule subject to
26 the approval of the department, not to exceed a 12-month payment plan
27 unless an extension is needed due to unforeseen circumstances, such
28 as a public health emergency, state of emergency, or natural
29 disaster.

30 (2) Beginning June 1, 2024, and annually thereafter, the
31 department shall invoice any assessed penalty for the previous
32 calendar year based on the postconsumer recycled content requirement
33 of the previous calendar year. The department shall calculate the
34 amount of the penalty based upon the amounts in pounds in the
35 aggregate of virgin plastic, postconsumer recycled content plastic,
36 and any other plastic used by the beverage manufacturer to produce
37 beverage containers sold or offered for sale in the state, in
38 accordance with the following:

1 (a)(i) The annual penalty amount assessed to a beverage
2 manufacturer must equal the product of both of the following: The
3 total pounds of plastic used multiplied by the relevant minimum
4 postconsumer recycled plastic target percentage, less the pounds of
5 total plastic multiplied by the percent of postconsumer recycled
6 plastic used; multiplied by 20 cents.

7 (ii) Example: [(Total pounds of plastic used x minimum
8 postconsumer recycled plastic target percentage) - (Total pounds of
9 plastic used x postconsumer recycled plastic percentage used)] x 20
10 cents.

11 (b) For the purposes of (a) of this subsection, both of the
12 following apply:

13 (i) The total pounds of plastic used must equal the sum of the
14 amount of virgin plastic, postconsumer recycled content plastic, and
15 any other plastic used by the beverage manufacturer, as reported
16 pursuant to section 4 of this act.

17 (ii) If the product calculated pursuant to (a) of this subsection
18 is equal to or less than zero, a penalty may not be assessed.

19 (3)(a)(i) The department shall consider granting a reduction of
20 penalties assessed pursuant to this section for the purpose of
21 meeting the minimum postconsumer recycled content requirements
22 required pursuant to section 3 of this act.

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

26 (A) Anomalous market conditions;

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

28 (C) Other factors that have prevented a beverage manufacturer
29 from meeting the requirements.

30 (b) In lieu of or in addition to assessing a penalty under this
31 section, the department may require a beverage manufacturer to submit
32 a corrective action plan detailing how the beverage manufacturer
33 plans to come into compliance with section 3 of this act.

34 (4) A beverage manufacturer shall pay the penalty assessed
35 pursuant to this section, as applicable, based on the information
36 reported to the department as required under section 4 of this act in
37 the form and manner prescribed by the department.

38 (5) A beverage manufacturer may appeal the penalty assessed under
39 this section to the pollution control hearings board within 30 days
40 of assessment.

1 NEW SECTION. **Sec. 6.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
2 HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS. (1)
3 Beginning January 1, 2025, household cleaning and personal care
4 product producers that offer for sale, sell, or distribute in
5 Washington household cleaning and personal care products in plastic
6 household cleaning and personal care product containers must meet
7 minimum postconsumer recycled content as required under subsection
8 (3) of this section.

9 (2)(a) On or before April 1, 2024, and annually thereafter,
10 household cleaning and personal care product producers that offer for
11 sale, sell, or distribute in Washington household cleaning and
12 personal care products in plastic household cleaning and personal
13 care product containers must register with the department
14 individually or through a third-party representative registering on
15 behalf of a group of household cleaning and personal care product
16 producers.

17 (b) After January 1, 2025, a household cleaning and personal care
18 product producer that offers for sale, sells, or distributes in
19 Washington household cleaning and personal care products in plastic
20 household cleaning and personal care product containers not
21 registered with the department either individually or through a third
22 party may not sell or supply plastic household cleaning and personal
23 care product containers in or into Washington state.

24 (c) Registration information must include a list of the household
25 cleaning and personal care product producers and the brand names of
26 the household cleaning and personal care products represented in the
27 registration submittal. Beginning April 1, 2026, registration
28 information may accompany the annual reporting required under section
29 7 of this act.

30 (d)(i) By January 31, 2024, and every January 31st thereafter,
31 the department must identify the annual costs it will incur to
32 implement this section and sections 7 and 8 of this act in the next
33 fiscal year, including rule making, and invoices of costs for
34 household cleaning and personal care product producers or their
35 third-party representatives. The department must determine an annual
36 payment by household cleaning and personal care product producers or
37 their third-party representatives that is adequate to cover, but not
38 exceed, the department's full costs to implement, administer, and
39 enforce this section and sections 7 and 8 of this act in the next
40 fiscal year, including rule making. The department must equitably

1 determine payment amounts for an individual household cleaning and
2 personal care product producer and third-party representatives.

3 (ii) The department must:

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

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

10 (e) By April 1, 2024, and every April 1st thereafter, household
11 cleaning and personal care product producers or their third-party
12 representatives must submit a payment as determined by the department
13 under (d) of this subsection.

14 (3) A household cleaning and personal care product producer that
15 sells, offers for sale, or distributes plastic household cleaning and
16 personal care product containers in or into Washington must meet the
17 following annual minimum postconsumer recycled content percentage for
18 the total quantity, by weight, of plastic household cleaning and
19 personal care product containers that are sold, offered for sale, or
20 distributed in Washington:

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

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

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

27 (4)(a) Beginning January 1, 2025, the department may, on an
28 annual basis, review and determine whether to adjust the minimum
29 postconsumer recycled content percentage required pursuant to
30 subsection (3) of this section. The department's review may be
31 initiated by the department or at the petition of the household
32 cleaning and personal care product manufacturing industry not more
33 than once annually. The department may not adjust the minimum
34 postconsumer recycled content requirements above the minimum
35 postconsumer recycled content percentages required pursuant to
36 subsection (3) of this section or below a minimum of 10 percent. In
37 making a determination pursuant to this subsection, the department
38 must consider, at a minimum, all of the following factors:

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

4 (ii) Recycling rates;

5 (iii) The availability of recycled plastic suitable to meet the
6 minimum postconsumer recycled content requirements pursuant to
7 subsection (3) of this section, including the availability of high
8 quality recycled plastic from plastic container recycling programs;

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

10 (v) The technical feasibility of achieving the minimum
11 postconsumer recycled content requirements pursuant to subsection (3)
12 of this section in plastic household cleaning and personal care
13 product containers that are regulated under 21 C.F.R., chapter I,
14 subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471, 49 C.F.R. Sec.
15 178.33b, or 40 C.F.R. Sec. 152.10; and

16 (vi) The progress made by household cleaning and personal care
17 product producers in achieving the goals of this section.

18 (b) The household cleaning and personal care product
19 manufacturing industry or a household cleaning and personal care
20 product producer may appeal the department's decision under (a) of
21 this subsection to the pollution control hearings board within 30
22 days of the department's determination.

23 (5) A household cleaning and personal care product producer that
24 does not achieve the postconsumer recycled content requirements
25 established under this section is subject to a penalty established in
26 section 8 of this act.

27 (6) A city, town, county, or municipal corporation may establish
28 local purchasing requirements that include recycled content standards
29 that exceed the minimum recycled content requirements established by
30 this chapter for plastic household cleaning and personal care product
31 containers purchased by a city, town, or municipal corporation, or
32 its contractor. A city, town, county, or municipal corporation may
33 not implement local recycled content requirements for the sale,
34 distribution, or use of plastic household cleaning and personal care
35 product containers that are subject to minimum postconsumer recycled
36 content as required under this section within its jurisdiction.

37 NEW SECTION. **Sec. 7.** HOUSEHOLD CLEANING AND PERSONAL CARE
38 PRODUCT PRODUCER REPORTING REQUIREMENTS. (1)(a) Beginning April 1,
39 2026, household cleaning and personal care product producers,

1 individually or through a third party representing a group of
2 producers, must provide an annual report submitted to the department
3 in a format and manner prescribed by the department that includes the
4 amount, by weight, of virgin plastic and the amount, by weight, of
5 postconsumer recycled content, by resin type, used by the household
6 cleaning and personal care product producer for plastic household
7 cleaning and personal care product containers sold, offered for sale,
8 or distributed into Washington state, including the total amount of
9 postconsumer recycled content resins as a percentage of total weight.
10 A producer may submit national data allocated on a per capita basis
11 for Washington to approximate the information required in this
12 subsection if the producer declares that state level data are not
13 available or feasible to generate.

14 (b) The department must post the information reported under this
15 subsection on its website.

16 (2) A household cleaning and personal care product producer that
17 submits information or records to the department under this chapter
18 may request that the information or records be made available only
19 for the confidential use of the department, the director, or the
20 appropriate division of the department. The director of the
21 department must give consideration to the request, and if this action
22 is not detrimental to the public interest and is otherwise in
23 accordance with the policies and purposes of chapter 43.21A RCW, the
24 director must grant the request for the information to remain
25 confidential as authorized in RCW 43.21A.160.

26 NEW SECTION. **Sec. 8.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
27 HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS—PENALTIES.

28 (1)(a) Beginning January 1, 2025, a household cleaning and personal
29 care product producer that does not meet the minimum postconsumer
30 recycled content requirements pursuant to section 6 of this act is
31 subject to a penalty pursuant to this section. Beginning May 1, 2026,
32 the penalty must be collected annually, if a penalty reduction has
33 not been approved pursuant to subsection (3) of this section and
34 calculated in accordance with subsection (2) of this section.

35 (b) A household cleaning and personal care product producer that
36 is assessed a penalty pursuant to this section may pay the penalty to
37 the department in quarterly installments or arrange an alternative
38 payment schedule subject to the approval of the department, not to
39 exceed a 12-month payment plan unless an extension is needed due to

1 unforeseen circumstances, such as a public health emergency, state of
2 emergency, or natural disaster.

3 (2) Beginning June 1, 2026, and annually thereafter, the
4 department shall invoice any assessed penalty for the previous
5 calendar year based on the postconsumer recycled content requirement
6 of the previous calendar year. The department shall calculate the
7 amount of the penalty based upon the amounts in pounds in the
8 aggregate of virgin plastic, postconsumer recycled content plastic,
9 and any other plastic used by the household cleaning and personal
10 care product producer to produce plastic household cleaning and
11 personal care product containers sold or offered for sale in the
12 state, in accordance with the following:

13 (a) (i) The annual penalty amount assessed to a household cleaning
14 and personal care product producer must equal the product of both of
15 the following: The total pounds of plastic used multiplied by the
16 relevant minimum postconsumer recycled plastic target percentage,
17 less the pounds of total plastic multiplied by the percent of
18 postconsumer recycled plastic used; multiplied by 20 cents.

19 (ii) Example: [(Total pounds of plastic used x minimum
20 postconsumer recycled plastic target percentage) - (Total pounds of
21 plastic used x postconsumer recycled plastic percentage used)] x 20
22 cents.

23 (b) For the purposes of (a) of this subsection, both of the
24 following apply:

25 (i) The total pounds of plastic used must equal the sum of the
26 amount of virgin plastic, postconsumer recycled content plastic, and
27 any other plastic used by the household cleaning and personal care
28 product producer, as reported pursuant to section 7 of this act.

29 (ii) If the product calculated pursuant to (a) of this subsection
30 is equal to or less than zero, a penalty may not be assessed.

31 (3) (a) (i) The department shall consider granting a reduction of
32 penalties assessed pursuant to this section for the purpose of
33 meeting the minimum postconsumer recycled content requirements
34 required pursuant to section 6 of this act.

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

38 (A) Anomalous market conditions;

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

1 (C) Other factors that have prevented a household cleaning and
2 personal care product producer from meeting the requirements.

3 (b) In lieu of or in addition to assessing a penalty under this
4 section, the department may require a household cleaning and personal
5 care product producer to submit a corrective action plan detailing
6 how the household cleaning and personal care product producer plans
7 to come into compliance with section 6 of this act.

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

13 NEW SECTION. **Sec. 9.** POSTCONSUMER RECYCLED CONTENT IN PLASTIC
14 HOUSEHOLD CLEANING AND PERSONAL CARE PRODUCT CONTAINERS—DEPARTMENT
15 DUTIES. (1) The department may conduct audits and investigations for
16 the purpose of ensuring compliance with section 6 of this act based
17 on the information reported under section 7 of this act.

18 (2) The department shall annually publish a list of registered
19 producers and associated brand names, their compliance status, and
20 other information the department deems appropriate on the
21 department's website.

22 NEW SECTION. **Sec. 10.** POSTCONSUMER RECYCLED CONTENT IN TRASH
23 BAGS. (1)(a) Beginning January 1, 2023, plastic trash bag producers
24 that offer for sale, sell, or distribute in Washington plastic trash
25 bags must meet minimum postconsumer recycled content as required
26 under subsection (3) of this section.

27 (b) Beginning January 1, 2023, plastic trash bag producers shall
28 label each container of plastic trash bags sold, offered for sale, or
29 distributed in Washington with:

30 (i) The name of the producer and the city, state, and country
31 where the producer is located, which may be designated as the
32 location of the producer's corporate headquarters; or

33 (ii) A uniform resource locator or quick response code to an
34 internet website that contains the information required pursuant to
35 (b)(i) of this subsection.

36 (c) The provisions of (a) of this subsection shall not apply to a
37 bag that is designed and manufactured to hold, store, or transport
38 dangerous waste or biomedical waste. For the purposes of this

1 subsection, "dangerous waste" means any waste defined as dangerous
2 waste under RCW 70A.300.010; and "biomedical waste" means any waste
3 defined as that term under RCW 70A.228.010.

4 (2)(a) On or before April 1, 2022, and annually thereafter,
5 plastic trash bag producers that offer for sale, sell, or distribute
6 in Washington plastic trash bags must register with the department
7 individually or through a third-party representative registering on
8 behalf of a group of plastic trash bag producers.

9 (b) After January 1, 2023, a plastic trash bag producer that
10 offers for sale, sells, or distributes in Washington plastic trash
11 bags not registered with the department either individually or
12 through a third party may not sell or supply plastic trash bags in or
13 into Washington state.

14 (c) Registration information must include a list of the plastic
15 trash bag producers and the brand names of the plastic trash bags
16 represented in the registration submittal. Beginning April 1, 2024,
17 registration information may accompany the annual reporting required
18 under section 11 of this act.

19 (d)(i) By January 31, 2022, and every January 31st thereafter,
20 the department must identify the annual costs it will incur to
21 implement this section and sections 11 and 12 of this act in the next
22 fiscal year, including rule making, and invoices of costs for plastic
23 trash bag producers or their third-party representatives. The
24 department must determine an annual payment by plastic trash bag
25 producers or their third-party representatives that is adequate to
26 cover, but not exceed, the department's full costs to implement,
27 administer, and enforce this chapter in the next fiscal year,
28 including rule making. The department must equitably determine
29 payment amounts for an individual plastic trash bag producer and
30 third-party representatives.

31 (ii) The department must:

32 (A) Apply any remaining annual payment funds from the current
33 year to the annual payment for the coming year, if the collected
34 annual payment exceeds the department's costs for a given year; and

35 (B) Increase annual payments for the coming year to cover the
36 department's costs, if the collected annual payment was less than the
37 department's costs for a given year.

38 (e) By April 1, 2022, and every April 1st thereafter, plastic
39 trash bag producers or their third-party representatives must submit

1 a payment as determined by the department under (d) of this
2 subsection.

3 (3) A plastic trash bag producer that sells, offers for sale, or
4 distributes plastic trash bags in or into Washington must meet the
5 following annual minimum postconsumer recycled content percentage on
6 average for the total quantity, by weight, of plastic trash bags that
7 are sold, offered for sale, or distributed in Washington:

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

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

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

14 (4)(a) Beginning January 1, 2024, the department may, on an
15 annual basis, review and determine whether to adjust the minimum
16 postconsumer recycled content percentage required pursuant to
17 subsection (3) of this section. The department's review may be
18 initiated by the department or at the petition of the plastic trash
19 bag manufacturing industry not more than once annually. The
20 department may not adjust the minimum postconsumer recycled content
21 requirements above the minimum postconsumer recycled content
22 percentages required pursuant to subsection (3) of this section or
23 below the minimum percentage required in subsection (3)(a) of this
24 section. In making a determination pursuant to this subsection, the
25 department must consider, at a minimum, all of the following factors:

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

29 (ii) Recycling rates;

30 (iii) The availability of recycled plastic suitable to meet the
31 minimum postconsumer recycled content requirements pursuant to
32 subsection (3) of this section, including the availability of high
33 quality recycled plastic from flexible plastic recycling programs;

34 (iv) The capacity of recycling or processing infrastructure; and

35 (v) The progress made by plastic trash bag producers in achieving
36 the goals of this section.

37 (b) The plastic trash bag manufacturing industry or a plastic
38 trash bag producer may appeal the department's decision under (a) of
39 this subsection to the pollution control hearings board within 30
40 days of the department's determination.

1 (5) A plastic trash bag producer that does not achieve the
2 postconsumer recycled content requirements established under this
3 section is subject to a penalty established in section 12 of this
4 act.

5 (6) A city, town, county, or municipal corporation may establish
6 local purchasing requirements that include recycled content standards
7 that exceed the minimum recycled content requirements established by
8 this chapter for plastic trash bags purchased by a city, town, or
9 municipal corporation, or its contractor. A city, town, county, or
10 municipal corporation may not implement local recycled content
11 requirements for the sale, distribution, or use of plastic trash bags
12 that are subject to minimum postconsumer recycled content as required
13 under this section within its jurisdiction.

14 (7) The department may enter into a contract for the services
15 required to implement this chapter and related duties of the
16 department.

17 NEW SECTION. **Sec. 11.** PLASTIC TRASH BAG PRODUCER REPORTING
18 REQUIREMENTS. (1)(a) Beginning April 1, 2024, plastic trash bag
19 producers, individually or through a third party representing a group
20 of producers, must provide an annual report submitted to the
21 department in a format and manner prescribed by the department, that
22 includes:

23 (i) The amount of virgin plastic and the amount of postconsumer
24 recycled content by resin type used for plastic trash bags
25 manufactured by the plastic trash bag producer that are sold, offered
26 for sale, or distributed into Washington state, including the total
27 postconsumer recycled content resins as a percentage of total weight.
28 A producer may submit national data allocated on a per capita basis
29 for Washington to approximate the information required in this
30 subsection if the producer declares that state level data is not
31 available or feasible to generate.

32 (ii) Proof of certification conducted by a third-party
33 certification entity of the recycled content for each type of plastic
34 trash bag containing postconsumer recycled content offered for sale,
35 sold, or distributed in Washington.

36 (b) The department must post the information reported under this
37 subsection on its website.

38 (2) A plastic trash bag producer that submits information or
39 records to the department under this chapter may request that the

1 information or records be made available only for the confidential
2 use of the department, the director, or the appropriate division of
3 the department. The director of the department must give
4 consideration to the request, and if this action is not detrimental
5 to the public interest and is otherwise in accordance with the
6 policies and purposes of chapter 43.21A RCW, the director must grant
7 the request for the information to remain confidential as authorized
8 in RCW 43.21A.160.

9 NEW SECTION. **Sec. 12.** POSTCONSUMER RECYCLED CONTENT IN TRASH
10 BAGS—PENALTIES. (1)(a) Beginning January 1, 2023, a plastic trash bag
11 producer that does not meet the minimum postconsumer recycled content
12 requirements pursuant to section 10 of this act is subject to a
13 penalty pursuant to this section. Beginning March 1, 2024, the
14 penalty must be collected annually, if a penalty reduction has not
15 been approved pursuant to subsection (3) of this section and
16 calculated in accordance with subsection (2) of this section.

17 (b) A plastic trash bag producer that is assessed a penalty
18 pursuant to this section may pay the penalty to the department in
19 quarterly installments or arrange an alternative payment schedule
20 subject to the approval of the department, not to exceed a 12-month
21 payment plan unless an extension is needed due to unforeseen
22 circumstances, such as a public health emergency, state of emergency,
23 or natural disaster.

24 (2) Beginning June 1, 2024, and annually thereafter, the
25 department shall invoice any assessed penalty for the previous
26 calendar year based on the postconsumer recycled content requirement
27 of the previous calendar year. The department shall calculate the
28 amount of the penalty based upon the amounts in pounds in the
29 aggregate of virgin plastic, postconsumer recycled content plastic,
30 and any other plastic used by the plastic trash bag producer to
31 produce plastic trash bags sold or offered for sale in the state, in
32 accordance with the following:

33 (a)(i) The annual penalty amount assessed to a plastic trash bag
34 producer must equal the product of both of the following: The total
35 pounds of plastic used multiplied by the relevant minimum
36 postconsumer recycled plastic target percentage, less the pounds of
37 total plastic multiplied by the percent of postconsumer recycled
38 plastic used; multiplied by 20 cents.

1 (ii) Example: [(Total pounds of plastic used x minimum
2 postconsumer recycled plastic target percentage) - (Total pounds of
3 plastic used x postconsumer recycled plastic percentage used)] x 20
4 cents.

5 (b) For the purposes of (a) of this subsection, both of the
6 following apply:

7 (i) The total pounds of plastic used must equal the sum of the
8 amount of virgin plastic, postconsumer recycled content plastic, and
9 any other plastic used by the plastic trash bag producer, as reported
10 pursuant to section 11 of this act.

11 (ii) If the product calculated pursuant to (a) of this subsection
12 is equal to or less than zero, a penalty may not be assessed.

13 (3) (a) (i) The department shall consider granting a reduction of
14 penalties assessed pursuant to this section for the purpose of
15 meeting the minimum postconsumer recycled content requirements
16 required pursuant to section 10 of this act.

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

20 (A) Anomalous market conditions;

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

22 (C) Other factors that have prevented a plastic trash bag
23 producer from meeting the requirements.

24 (b) In lieu of or in addition to assessing a penalty under this
25 section, the department may require a plastic trash bag producer to
26 submit a corrective action plan detailing how the plastic trash bag
27 producer plans to come into compliance with section 10 of this act.

28 (4) A plastic trash bag producer shall pay the penalty assessed
29 pursuant to this section, as applicable, based on the information
30 reported to the department as required under section 11 of this act
31 in the form and manner prescribed by the department.

32 NEW SECTION. **Sec. 13.** POSTCONSUMER RECYCLED CONTENT IN TRASH
33 BAGS—DEPARTMENT DUTIES. (1) The department may conduct audits and
34 investigations for the purpose of ensuring compliance with section 10
35 of this act based on the information reported under section 11 of
36 this act.

37 (2) The department shall annually publish a list of registered
38 producers and associated brand names, their compliance status, and

1 other information the department deems appropriate on the
2 department's website.

3 NEW SECTION. **Sec. 14.** A new section is added to chapter 39.26
4 RCW to read as follows:

5 POSTCONSUMER RECYCLED CONTENT IN PLASTIC TRASH BAGS—PURCHASING
6 PRIORITY. (1) Beginning January 1, 2023, all state agencies shall
7 purchase plastic trash bags manufactured by plastic trash bag
8 producers that comply with the minimum recycled content requirements
9 pursuant to section 10 of this act.

10 (2) By June 1, 2022, the department of ecology shall provide to
11 the department a list of the plastic trash bag producer brands that
12 comply with the minimum recycled content requirements pursuant to
13 section 10 of this act, in order for state agencies to purchase
14 compliant products, updated annually.

15 NEW SECTION. **Sec. 15.** (1) By May 1, 2021, the department of
16 commerce shall convene a stakeholder advisory committee to make
17 recommendations on the development of mandatory postconsumer recycled
18 content requirements for plastic packaging. By November 15, 2021, the
19 department of commerce shall submit a report to the legislature
20 containing the recommendations of the stakeholder advisory committee.
21 The report must include recommendations where general stakeholder
22 consensus has been achieved and note dissenting opinions where
23 stakeholder consensus has not been achieved. The stakeholder advisory
24 committee shall make recommendations using consensus-based decision
25 making on the following:

- 26 (a) Definitions;
- 27 (b) Methods for determining responsible parties;
- 28 (c) Methods for determining, reporting, and certifying recycled
29 content compliance;
- 30 (d) The rates of mandatory postconsumer recycled content required
31 by material type and target implementation dates;
- 32 (e) Methods for verifying claims on recycled content;
- 33 (f) Registration of producers;
- 34 (g) Administration of the program created in this act;
- 35 (h) Enforcement; and
- 36 (i) Exemptions and exceptions.

1 (2) The stakeholder advisory committee shall consider information
2 and findings by a variety of authoritative bodies related to recycled
3 content, including mechanical and advanced recycling technologies.

4 (3) The president of the senate and the speaker of the house of
5 representatives shall jointly appoint at least one member to the
6 stakeholder advisory committee from each of the following:

7 (a) The department of commerce;

8 (b) The department of ecology;

9 (c) The utilities and transportation commission;

10 (d) Cities, including both small and large cities and cities
11 located in urban and rural counties;

12 (e) Counties, including both small and large counties and urban
13 and rural counties;

14 (f) Municipal collectors;

15 (g) A representative from the private sector waste and recycling
16 industry that owns or operates a curbside recycling program and a
17 material recovery facility;

18 (h) A solid waste collection company regulated under chapter
19 81.77 RCW that provides curbside recycling services;

20 (i) A material recovery facility operator that processes
21 municipal solid waste from curbside recycling programs;

22 (j) A company that provides curbside recycling service pursuant
23 to a municipal contract under RCW 81.77.020;

24 (k) A trade association that represents the private sector solid
25 waste industry;

26 (l) Recycled plastic feedstock users;

27 (m) A trade association representing the plastics recycling
28 industry;

29 (n) A recycled content certification organization;

30 (o) An environmental justice organization;

31 (p) An environmental nonprofit organization;

32 (q) An environmental nonprofit organization that specializes in
33 waste and recycling issues;

34 (r) Plastic converters/manufacturers of resins;

35 (s) A manufacturer of plastic packaging;

36 (t) A statewide general business trade association;

37 (u) Associations that represent consumer brand companies;

38 (v) Representatives of consumer brands;

39 (w) A consumer-oriented organization;

40 (x) Representatives of the state's most marginalized communities;

1 (y) A retailer or representative of the retail association;
2 (z) A representative of an advanced recycling technology provider
3 that processes plastic material;
4 (aa) An association that represents cities;
5 (bb) An association that represents county solid waste managers;
6 (cc) A representative from a retail grocery association; and
7 (dd) A representative from a Washington headquartered online
8 retailer.

9 (4) The definitions in section 2 of this act apply throughout
10 this section unless the context clearly requires otherwise.

11 (5) This section expires January 1, 2023.

12 NEW SECTION. **Sec. 16.** EXPANDED POLYSTYRENE PROHIBITIONS. (1)
13 Beginning June 1, 2023, the sale and distribution of the following
14 expanded polystyrene products in or into the state is prohibited:

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

21 (b) Food service products that include food containers, plates,
22 clam shell-style containers, and hot and cold beverage cups. For the
23 purposes of this subsection (1)(b), food service products do not
24 include: Packaging for raw, uncooked, or butchered meat, fish,
25 poultry, or seafood, vegetables, fruit, or egg cartons; and

26 (c) Void filling packaging products, which means loose fill
27 packaging material, also referred to as packing peanuts.

28 (2)(a) The department must provide technical assistance and
29 guidance to manufacturers of prohibited expanded polystyrene
30 products, as requested. For manufacturers out of compliance with the
31 requirements of this section, the department shall provide written
32 notification and offer information to manufacturers that sell
33 prohibited expanded polystyrene products who are in violation of this
34 section. For the purposes of this section, written notification
35 serves as notice of the violation. The department must issue at least
36 two notices of violation by certified mail prior to assessing a
37 penalty.

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

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

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

7 (c) Penalties collected under this section must be deposited in
8 the model toxics control operating account created in RCW
9 70A.305.180.

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

12 (3) A city, town, county, or municipal corporation may not
13 implement a local ordinance restricting products prohibited under
14 subsection (1) of this section unless the ordinance was filed by
15 April 1, 2021, and enacted by June 1, 2021. An ordinance restricting
16 products specified under subsection (1) of this section that was not
17 enacted as of June 1, 2021, is preempted by this section.

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

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

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

26 NEW SECTION. **Sec. 17.** OPTIONAL SERVICEWARE. (1) Beginning
27 January 1, 2022:

28 (a) Except as provided in (c) of this subsection, a food service
29 business at which the opportunity is provided for the on-site
30 consumption of food or beverages may provide the following types of
31 single-use food service products only upon request:

32 (i) Utensils;

33 (ii) Straws;

34 (iii) Condiment packaging; and

35 (iv) Beverage cup lids.

36 (b) Except as provided in (c) of this subsection, the following
37 food service businesses may provide types of single-use food service
38 products identified in (a) of this subsection only after affirming
39 that the customer wants the single-use food service products:

1 (i) A food service business at which no opportunity is provided
2 for the on-site consumption of food or beverages; or

3 (ii) A food service business serving food or beverages to
4 customers via a drive-through.

5 (c) A food service business may provide beverage cup lids without
6 request for:

7 (i) Hot beverages;

8 (ii) Beverages provided through delivery service or curbside
9 pickup; and

10 (iii) Beverages served to customers via a drive-through.

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

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

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

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

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

33 (4) Beginning July 1, 2021, a city, town, county, or municipal
34 corporation may not enact an ordinance to reduce pollution from
35 single-use food service products by requiring a request of single-use
36 food service products by the customer of the food service business or
37 other retail establishment.

38 NEW SECTION. **Sec. 18.** DEPARTMENT DUTIES. (1) The department may
39 conduct audits and investigations for the purpose of ensuring

1 compliance with sections 3, 6, and 10 of this act based on the
2 information reported under sections 4, 7, and 11 of this act.

3 (2) To assist with the requirements specified under sections 16
4 and 17 of this act, the department:

5 (a) Must prepare and post on its website information regarding
6 the prohibitions on the sale and distribution of expanded polystyrene
7 products as specified under section 16 of this act and optional
8 serviceware under section 17 of this act;

9 (b) For education and outreach to help implement sections 16 and
10 17 of this act, may develop culturally appropriate and translated
11 educational materials and resources for the state's diverse ethnic
12 populations from existing materials used by local jurisdictions and
13 other states.

14 (3) The department may adopt rules as necessary to administer,
15 implement, and enforce this chapter.

16 NEW SECTION. **Sec. 19.** RECYCLING ENHANCEMENT ACCOUNT. The
17 recycling enhancement account is created in the custody of the state
18 treasurer. All penalties collected by the department pursuant to
19 sections 5, 8, and 12 of this act must be deposited in the account.
20 Only the director of the department or the director's designee may
21 authorize expenditures from the account. The account is subject to
22 the allotment procedures under chapter 43.88 RCW, but an
23 appropriation is not required for expenditures. Expenditures from the
24 account may be used by the department only for providing grants to
25 local governments for the purpose of supporting local solid waste and
26 financial assistance programs.

27 NEW SECTION. **Sec. 20.** RECYCLED CONTENT ACCOUNT. The recycled
28 content account is created in the custody of the state treasurer. All
29 receipts received by the department under sections 3, 6, and 10 of
30 this act must be deposited in the account. Only the director of the
31 department or the director's designee may authorize expenditures from
32 the account. The account is subject to the allotment procedures under
33 chapter 43.88 RCW, but an appropriation is not required for
34 expenditures. Expenditures from the account may be used by the
35 department only for implementing, administering, and enforcing the
36 requirements of sections 3 through 13 of this act.

1 NEW SECTION. **Sec. 21.** MARKET STUDY. (1) Subject to the
2 availability of amounts appropriated for this specific purpose prior
3 to January 1, 2028, the department shall contract with a research
4 university or an independent third-party consultant to study the
5 polyethylene terephthalate and high-density polyethylene markets for
6 all of the following:

7 (a) Analyzing market conditions and opportunities in the state's
8 recycling industry for meeting the minimum postconsumer recycled
9 content requirements for plastic beverage containers pursuant to
10 sections 3 and 4 of this act;

11 (b) Determining the data needs and tracking opportunities to
12 increase the transparency and support of a more effective, fact-based
13 public understanding of the recycling industry; and

14 (c) Recommending further policy modifications and measures to
15 achieve the state's recycling targets with the least cost and optimal
16 efficiency.

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

20 **Sec. 22.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035
21 are each reenacted and amended to read as follows:

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

29 (a) Civil penalties imposed pursuant to RCW 18.104.155,
30 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
31 70A.515.060, sections 16 and 17 of this act, 76.09.170, 77.55.440,
32 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
33 90.56.330, and 90.64.102.

34 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
35 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
36 sections 3, 6, and 10 of this act, 86.16.020, 88.46.070, 90.14.130,
37 90.46.250, 90.48.120, and 90.56.330.

38 (c) Except as provided in RCW 90.03.210(2), the issuance,
39 modification, or termination of any permit, certificate, or license

1 by the department or any air authority in the exercise of its
2 jurisdiction, including the issuance or termination of a waste
3 disposal permit, the denial of an application for a waste disposal
4 permit, the modification of the conditions or the terms of a waste
5 disposal permit, or a decision to approve or deny an application for
6 a solid waste permit exemption under RCW 70A.205.260.

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

9 (e) Decisions of local health departments regarding the issuance
10 and enforcement of permits to use or dispose of biosolids under RCW
11 70A.226.090.

12 (f) Decisions of the department regarding waste-derived
13 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
14 decisions of the department regarding waste-derived soil amendments
15 under RCW 70A.205.145.

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

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

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

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

32 (k) Decisions of the department of fish and wildlife to issue,
33 deny, condition, or modify a hydraulic project approval permit under
34 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
35 comply, to issue a civil penalty, or to issue a notice of intent to
36 disapprove applications.

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 (n) Decisions of the department of ecology that are appealable
4 under sections 3, 5, 6, 8, 10, and 12 of this act, to assess
5 penalties and to set recycled minimum postconsumer content for
6 plastic beverage containers.

7 (2) The following hearings shall not be conducted by the hearings
8 board:

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

11 (b) Hearings conducted by the department pursuant to RCW
12 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
13 70A.15.3110, and 90.44.180.

14 (c) Appeals of decisions by the department under RCW 90.03.110
15 and 90.44.220.

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

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

21 **Sec. 23.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to
22 read as follows:

23 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
24 70A.205.280, 70A.300.090, 70A.20.050, sections 16 and 17 of this act,
25 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
26 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in
27 writing, either by certified mail with return receipt requested or by
28 personal service, to the person incurring the penalty from the
29 department or the local air authority, describing the violation with
30 reasonable particularity. For penalties issued by local air
31 authorities, within thirty days after the notice is received, the
32 person incurring the penalty may apply in writing to the authority
33 for the remission or mitigation of the penalty. Upon receipt of the
34 application, the authority may remit or mitigate the penalty upon
35 whatever terms the authority in its discretion deems proper. The
36 authority may ascertain the facts regarding all such applications in
37 such reasonable manner and under such rules as it may deem proper and
38 shall remit or mitigate the penalty only upon a demonstration of

1 extraordinary circumstances such as the presence of information or
2 factors not considered in setting the original penalty.

3 (2) Any penalty imposed under this section may be appealed to the
4 pollution control hearings board in accordance with this chapter if
5 the appeal is filed with the hearings board and served on the
6 department or authority thirty days after the date of receipt by the
7 person penalized of the notice imposing the penalty or thirty days
8 after the date of receipt of the notice of disposition by a local air
9 authority of the application for relief from penalty.

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

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

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

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

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

29 (5) All penalties recovered shall be paid into the state treasury
30 and credited to the general fund except those penalties imposed
31 pursuant to RCW 18.104.155, which shall be credited to the
32 reclamation account as provided in RCW 18.104.155(7), RCW
33 70A.15.3160, the disposition of which shall be governed by that
34 provision, RCW 70A.300.090, which shall be credited to the model
35 toxics control operating account created in RCW 70A.305.180, RCW
36 90.56.330, which shall be credited to the coastal protection fund
37 created by RCW 90.48.390, and RCW 70A.355.070, which shall be
38 credited to the underground storage tank account created by RCW
39 70A.355.090.

1 **Sec. 24.** RCW 70A.220.020 and 2020 c 20 s 1228 are each amended
2 to read as follows:

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

6 (2)) Except as provided in RCW 70A.220.030(2), after January 1,
7 1992, no person may distribute, sell, or offer for sale in this state
8 a plastic bottle or rigid plastic container unless the container is
9 labeled with a code identifying the appropriate resin type used to
10 produce the structure of the container. ~~((The code shall consist of a
11 number placed within three triangulated arrows and letters placed
12 below the triangle of arrows. The triangulated arrows shall be
13 equilateral, formed by three arrows with the apex of each point of
14 the triangle at the midpoint of each arrow, rounded with a short
15 radius. The pointer (arrowhead) of each arrow shall be at the
16 midpoint of each side of the triangle with a short gap separating the
17 pointer from the base of the adjacent arrow. The triangle, formed by
18 the three arrows curved at their midpoints shall depict a clockwise
19 path around the code number.))~~ The numbers and letters used shall be
20 as follows:

- 21 (a) 1.= PETE (polyethylene terephthalate)
- 22 (b) 2.= HDPE (high density polyethylene)
- 23 (c) 3.= V (vinyl) or PVC (polyvinyl chloride)
- 24 (d) 4.= LDPE (low density polyethylene)
- 25 (e) 5.= PP (polypropylene)
- 26 (f) 6.= PS (polystyrene)
- 27 (g) 7.= OTHER

28 NEW SECTION. **Sec. 25.** Sections 2 through 13 and 16 through 21
29 of this act constitute a new chapter in Title 70A RCW.

30 NEW SECTION. **Sec. 26.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

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