
HOUSE BILL 1085

State of Washington

68th Legislature

2023 Regular Session

By Representative Mena

Prefiled 12/27/22.

1 AN ACT Relating to reducing plastic pollution; amending RCW
2 70A.245.010, 43.21B.110, and 43.21B.300; adding a new section to
3 chapter 19.27 RCW; adding new sections to chapter 70A.245 RCW;
4 creating a new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
7 public interest to reduce unnecessary plastic waste and sources of
8 plastic pollution in the environment, especially where less-polluting
9 and more sustainable alternatives to plastic products and packaging
10 are available. In this act, the legislature intends to reduce three
11 such sources of plastic and associated pollution:

12 (1) Single-use plastic water bottles, which frequently end up as
13 litter;

14 (2) The small plastic containers, wrappers, and packaging for
15 personal health and beauty products, which are still often provided
16 in lodging establishments but easily substituted by bulk dispensers
17 and which are difficult to recycle in current systems; and

18 (3) Floating extruded or expanded plastic foam structures, which
19 frequently degrade in the environment and contribute to small and
20 microplastic pollution of marine and shoreline environments.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27
2 RCW to read as follows:

3 (1) In any construction subject to the requirements of this
4 chapter in which a drinking fountain is required under a building
5 code, the rules adopted by the building code council must also
6 require the provision of a bottle filling station, or a combined
7 bottle filling station and drinking fountain for each drinking
8 fountain that is required.

9 (2) The rules required under this section must take effect and be
10 implemented by July 1, 2026, and may be periodically updated
11 thereafter.

12 (3) For the purposes of this section, "bottle filling station"
13 means a plumbing fixture connected to the potable water distribution
14 system and sanitary drainage system that is designed and intended for
15 filling personal use drinking water bottles or containers not less
16 than 10 inches (254 millimeters) in height. A bottle filling station
17 may be separate from or integral to a drinking fountain and may
18 incorporate a water filter and a cooling system for chilling the
19 drinking water.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 70A.245
21 RCW to read as follows:

22 (1) Beginning June 1, 2024, it is prohibited to sell, distribute,
23 install, or arrange for the installation of in or into Washington
24 state:

25 (a) Overwater structures containing expanded or extruded plastic
26 foam; and

27 (b) Blocks or floats containing or comprised of expanded or
28 extruded plastic foam and that are intended for use in or in
29 conjunction with overwater structures.

30 (2)(a) The department may adopt rules to implement, administer,
31 and enforce this section.

32 (b) A person in violation of this section is subject to a civil
33 penalty for each violation in an amount not to exceed \$10,000.

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

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

1 (3) For the purposes of this section, overwater structures do not
2 include floating homes or floating on-water residences, as those
3 terms are defined in RCW 90.58.270, but do include docks, floats,
4 walkways, or other accessory overwater structures associated with
5 floating homes or floating on-water residences.

6 (4) Nothing in this section applies to any dock sold,
7 distributed, or installed prior to June 1, 2024.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 70A.245
9 RCW to read as follows:

10 (1)(a) A lodging establishment may not provide a personal health
11 or beauty product in a small plastic personal health or beauty
12 product container, a plastic wrapper, or any other single-use plastic
13 packaging to a person staying in a lodging unit or within bathrooms
14 shared by the public or guests. To accommodate persons who may have
15 mobility or other accessibility challenges, a lodging establishment
16 may have products restricted under this subsection available to be
17 provided upon request.

18 (b) The requirements of (a) of this subsection apply beginning
19 January 1, 2025, for lodging establishments with 50 or more lodging
20 units, and beginning January 1, 2026, for lodging establishments with
21 less than 50 lodging units.

22 (c) Nothing in this subsection restricts the use of plastic
23 refillable bulk health or beauty product dispensers.

24 (2)(a) The department must issue at least one notice of violation
25 by certified mail to the owner or operator of a lodging establishment
26 prior to assessing a penalty under (b) of this subsection.

27 (b)(i) For the first penalized violation by the owner or operator
28 of a lodging establishment, the department may issue a civil penalty
29 of up to \$500 for each day the lodging establishment provides
30 personal health or beauty products in violation of this section.

31 (ii) For the second penalized violation and subsequent violations
32 by the owner or operator of a lodging establishment, the department
33 may issue a civil penalty of up to \$2,000 for each day the lodging
34 establishment provides personal health or beauty products in
35 violation of 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.

1 (d) A lodging establishment may appeal penalties assessed under
2 this subsection to the pollution control hearings board created in
3 chapter 43.21B RCW within 30 days of assessment.

4 (3)(a) The department may adopt rules to implement, administer,
5 and enforce this section.

6 (b) The enforcement of this section must be primarily based on
7 complaints filed with the department. The department must establish a
8 forum for the filing of complaints, and any person may file
9 complaints with the department using the forum. The forum established
10 by the department may include a complaint form on the department's
11 website, a telephone hotline, or a public outreach strategy relying
12 upon electronic social media to receive complaints that allege
13 violations. The department must provide a website with education and
14 outreach resources that provides information about the requirements
15 of this section to lodging establishments, consumers, and other
16 interested individuals.

17 **Sec. 5.** RCW 70A.245.010 and 2021 c 313 s 2 are each amended to
18 read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

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

25 (a) Water and flavored water;

26 (b) Beer or other malt beverages;

27 (c) Wine;

28 (d) Distilled spirits;

29 (e) Mineral water, soda water, and similar carbonated soft
30 drinks; and

31 (f) Any beverage other than those specified in (a) through (e) of
32 this subsection, except infant formula as defined in 21 U.S.C. Sec.
33 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or
34 fortified oral nutritional supplements used for persons who require
35 supplemental or sole source nutritional needs due to special dietary
36 needs directly related to cancer, chronic kidney disease, diabetes,
37 or other medical conditions as determined by the department.

38 (2) "Beverage manufacturing industry" means an association that
39 represents beverage producers.

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

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

9 (i) Plastic trash bags;

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

12 (iii) Beverages that use plastic beverage containers.

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

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

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

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

26 (8) "Food service business" means a business selling or providing
27 food for consumption on or off the premises, and includes full-
28 service restaurants, fast food restaurants, cafes, delicatessens,
29 coffee shops, grocery stores, vending trucks or carts, home delivery
30 services, delivery services provided through an online application,
31 and business or institutional cafeterias.

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

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

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

- 1 (b) Household cleaning products;
2 (c) Liquid soap;
3 (d) Shampoo, conditioner, styling sprays and gels, and other hair
4 care products; or
5 (e) Lotion, moisturizer, facial toner, and other skin care
6 products.

7 (11) "Household cleaning and personal care product manufacturing
8 industry" means an association that represents companies that
9 manufacture household cleaning and personal care products.

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

12 (13) "Oral nutritional supplement" means a manufactured liquid,
13 powder capable of being reconstituted, or solid product that contains
14 a combination of carbohydrates, proteins, fats, fiber, vitamins, and
15 minerals intended to supplement a portion of a patient's nutrition
16 intake.

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

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

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

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

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

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

35 (i) A minimum capacity of eight fluid ounces or its equivalent
36 volume;

37 (ii) A maximum capacity of five fluid gallons or its equivalent
38 volume;

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

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

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

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

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

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

12 (16) "Plastic trash bag" means a bag that is made of
13 noncompostable plastic, is at least 0.70 mils thick, and is designed
14 and manufactured for use as a container to hold, store, or transport
15 materials to be discarded or recycled, and includes, but is not
16 limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner
17 bag, kitchen bag, or compactor bag. "Plastic trash bag" does not
18 include any compostable bags meeting the requirements of chapter
19 70A.455 RCW.

20 (17) "Plastic trash bag manufacturing industry" means an
21 association that represents companies that manufacture plastic trash
22 bags.

23 (18) "Postconsumer recycled content" means the content of a
24 covered product made of recycled materials derived specifically from
25 recycled material generated by households or by commercial,
26 industrial, and institutional facilities in their role as end users
27 of a product that can no longer be used for its intended purpose.
28 "Postconsumer recycled content" includes returns of material from the
29 distribution chain.

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

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

37 (ii) If the covered product is manufactured by a person other
38 than the brand owner, the producer is the person who is the licensee
39 of a brand or trademark under which a covered product is sold,
40 offered for sale, or distributed in or into this state, whether or

1 not the trademark is registered in this state, unless the
2 manufacturer or brand owner of the covered product has agreed to
3 accept responsibility under this chapter; or

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

8 (b) "Producer" does not include:

9 (i) Government agencies, municipalities, or other political
10 subdivisions of the state;

11 (ii) Registered 501(c)(3) charitable organizations and 501(c)(4)
12 social welfare organizations; or

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

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

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

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

24 (b) "Retail establishment" includes, but is not limited to, food
25 service businesses, grocery stores, department stores, hardware
26 stores, home delivery services, pharmacies, liquor stores,
27 restaurants, catering trucks, convenience stores, or other retail
28 stores or vendors, including temporary stores or vendors at farmers
29 markets, street fairs, and festivals.

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

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

36 (22)(a) "Lodging establishment" means an establishment that
37 contains one or more sleeping room accommodations that are rented or
38 otherwise provided to the public including, but not limited to, a
39 hotel, motel, resort, bed and breakfast, inn, timeshare property,
40 short-term rental, or vacation rental.

1 (b) "Lodging establishment" does not include a hospital, nursing
2 home, residential retirement community, prison, jail, homeless
3 shelter, boarding school, worker housing, or long-term rental.

4 (23) "Lodging unit" means one self-contained unit of a lodging
5 establishment designated by number, letter, or some other method of
6 identification.

7 (24) "Personal health or beauty product" means shampoo, hair
8 conditioner, soap, gel, body wash, lotion, hand sanitizer, shower
9 caps, and cotton swabs.

10 (25) "Short-term rental" has the same meaning as defined in RCW
11 64.37.010.

12 (26) "Small plastic personal health or beauty product container"
13 means a plastic bottle, tube, sachet, or other plastic container with
14 less than a six-ounce capacity that is not intended to be reusable by
15 the end user.

16 **Sec. 6.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to
17 read as follows:

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

25 (a) Civil penalties imposed pursuant to RCW 18.104.155,
26 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
27 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
28 sections 3 and 4 of this act, 70A.65.200, 70A.455.090, 76.09.170,
29 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
30 90.56.310, 90.56.330, and 90.64.102.

31 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
32 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
33 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
34 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license
37 by the department or any air authority in the exercise of its
38 jurisdiction, including the issuance or termination of a waste
39 disposal permit, the denial of an application for a waste disposal

1 permit, the modification of the conditions or the terms of a waste
2 disposal permit, or a decision to approve or deny an application for
3 a solid waste permit exemption under RCW 70A.205.260.

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

6 (e) Decisions of local health departments regarding the issuance
7 and enforcement of permits to use or dispose of biosolids under RCW
8 70A.226.090.

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

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

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

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

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

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

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

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

1 (n) Decisions of the department of ecology that are appealable
2 under RCW 70A.245.020 to set recycled minimum postconsumer content
3 for covered products or to temporarily exclude types of covered
4 products in plastic containers from minimum postconsumer recycled
5 content requirements.

6 (o) Orders by the department of ecology under RCW 70A.455.080.

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. 7.** RCW 43.21B.300 and 2022 c 180 s 813 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, 70A.245.040, 70A.245.050,
25 70A.245.070, 70A.245.080, sections 3 and 4 of this act, 70A.65.200,
26 70A.455.090, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
27 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by
28 a notice in writing, either by certified mail with return receipt
29 requested or by personal service, to the person incurring the penalty
30 from the department or the local air authority, describing the
31 violation with reasonable particularity. For penalties issued by
32 local air authorities, within 30 days after the notice is received,
33 the person incurring the penalty may apply in writing to the
34 authority for the remission or mitigation of the penalty. Upon
35 receipt of the application, the authority may remit or mitigate the
36 penalty upon whatever terms the authority in its discretion deems
37 proper. The authority may ascertain the facts regarding all such
38 applications in such reasonable manner and under such rules as it may
39 deem proper and shall remit or mitigate the penalty only upon a

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

4 (2) Any penalty imposed under this section may be appealed to the
5 pollution control hearings board in accordance with this chapter if
6 the appeal is filed with the hearings board and served on the
7 department or authority 30 days after the date of receipt by the
8 person penalized of the notice imposing the penalty or 30 days after
9 the date of receipt of the notice of disposition by a local air
10 authority of the application for relief from penalty.

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

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

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

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

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

30 (5) All penalties recovered shall be paid into the state treasury
31 and credited to the general fund except those penalties imposed
32 pursuant to RCW 18.104.155, which shall be credited to the
33 reclamation account as provided in RCW 18.104.155(7), RCW
34 70A.15.3160, the disposition of which shall be governed by that
35 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited
36 to the recycling enhancement account created in RCW 70A.245.100, RCW
37 70A.300.090, which shall be credited to the model toxics control
38 operating account created in RCW 70A.305.180, RCW 70A.65.200, which
39 shall be credited to the climate investment account created in RCW
40 70A.65.250, RCW 90.56.330, which shall be credited to the coastal

1 protection fund created by RCW 90.48.390, and RCW 70A.355.070, which
2 shall be credited to the underground storage tank account created by
3 RCW 70A.355.090.

--- **END** ---