

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 23-253

BY SENATOR(S) Cutter, Buckner, Danielson, Fields, Gonzales, Hansen, Jaquez Lewis, Marchman, Moreno, Priola, Sullivan, Winter F., Fenberg; also REPRESENTATIVE(S) Froelich and McCormick, Amabile, Bird, Boesenecker, Brown, deGruy Kennedy, Dickson, Hamrick, Jodeh, Joseph, Kipp, Lindsay, Michaelson Jenet, Ortiz, Parenti, Sirota, Snyder, Story, Titone, Valdez, Velasco, Vigil, Willford, Young, McCluskie.

CONCERNING STANDARDS FOR PRODUCTS REPRESENTED AS COMPOSTABLE IN THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 8 to article 17 of title 25 as follows:

PART 8
STANDARDS FOR PRODUCTS
REPRESENTED AS COMPOSTABLE

25-17-801. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) COMPOSTING AND RECYCLING ARE TWO OF THE MOST COST-EFFECTIVE CLIMATE CHANGE SOLUTIONS THAT CAN BE IMPLEMENTED;

(b) LANDFILLING FOOD SCRAPS AND YARD TRIMMINGS CAUSES THESE ORGANIC MATERIALS TO DECOMPOSE WITHOUT OXYGEN, CREATING VAST AMOUNTS OF METHANE, A GREENHOUSE GAS THAT IS EIGHTY-FOUR TIMES MORE POTENT THAN CARBON DIOXIDE IN THE SHORT TERM;

(c) DIVERTING THESE ORGANIC MATERIALS INTO LOCAL CIRCULAR SYSTEMS CREATES JOBS AND SUPPORTS THE GROWING NUMBER OF COMPOSTING HAULING AND PROCESSING BUSINESSES IN THE STATE;

(d) FINISHED COMPOST IS A VALUABLE SOIL AMENDMENT THAT BUILDS HEALTHIER SOILS THAT ARE MORE RESILIENT TO DROUGHT AND FLOODING AND CREATES MORE PRODUCTIVE AGRICULTURAL LANDS;

(e) TO LEVERAGE THE POTENTIAL BENEFITS OF CERTIFIED COMPOSTABLE BAGS AND PRODUCTS, IT IS VITAL TO CLEARLY LABEL THESE PRODUCTS IN A WAY THAT MAKES THEM IMMEDIATELY AND EASILY IDENTIFIABLE AS CERTIFIED COMPOSTABLE UPON QUICK INSPECTION AT POINT OF SALE AND POINT OF USE AND IN A PUBLIC SORTING AREA AND PROCESSING FACILITY;

(f) SALES OF FALSELY MARKETED OR "GREENWASHED" FOOD SERVICE WARE AND PACKAGING PRODUCTS THAT LOOK LIKE CERTIFIED COMPOSTABLE PRODUCTS YET DO NOT COMPOST ACCORDING TO THE STANDARDS SET BY ASTM INTERNATIONAL ARE HARMFUL TO OUR STATE'S ECONOMY BY:

(I) CREATING CONFUSION AND CAUSING UNDUE COST BURDEN TO INDIVIDUAL AND BUSINESS CONSUMERS;

(II) INCREASING COST AND OPERATIONAL CHALLENGES FOR COMPOST MANUFACTURERS;

(III) CONTAMINATING COMPOSTABLE MATERIAL STREAMS; AND

(IV) REDUCING THE VALUE OF THE FINISHED COMPOST AND SOMETIMES MAKING IT UNMARKETABLE;

(g) ENVIRONMENTAL MARKETING CLAIMS FOR PRODUCTS MARKETED AS COMPOSTABLE, WHETHER IMPLICIT OR IMPLIED, SHOULD ADHERE TO UNIFORM AND RECOGNIZED STANDARDS FOR COMPOSTABILITY;

(h) PRODUCTS MARKETED AS COMPOSTABLE SHOULD BE READILY AND EASILY IDENTIFIABLE AS COMPLYING WITH UNIFORM AND RECOGNIZED STANDARDS; AND

(i) IMPLEMENTING A STANDARDIZED SYSTEM AND VERIFICATION METHODS MAY CREATE THE ABILITY FOR COMPOST FACILITIES TO ACCEPT THESE PRODUCTS IN THE FUTURE.

(2) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT IT IS IN THE PUBLIC INTEREST OF THE STATE TO ESTABLISH STANDARDS FOR PRODUCTS REPRESENTED, MARKETED, OR ADVERTISED AS COMPOSTABLE.

25-17-802. Definitions. AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ASTM 5988" MEANS THE ASTM INTERNATIONAL STANDARD 5988 ENTITLED "STANDARD TEST METHOD FOR DETERMINING AEROBIC BIODEGRADATION OF PLASTIC MATERIALS IN SOIL", AS THAT STANDARD EXISTED AS OF JANUARY 1, 2019.

(2) "ASTM D6400" MEANS THE ASTM INTERNATIONAL STANDARD D6400 ENTITLED "STANDARD SPECIFICATION FOR LABELING OF PLASTICS DESIGNED TO BE AEROBICALLY COMPOSTED IN MUNICIPAL OR INDUSTRIAL FACILITIES", AS THAT STANDARD EXISTED AS OF JANUARY 1, 2019.

(3) "ASTM D6868" MEANS THE ASTM INTERNATIONAL STANDARD D6868 ENTITLED "STANDARD SPECIFICATION FOR LABELING OF END ITEMS THAT INCORPORATE PLASTICS AND POLYMERS AS COATINGS OR ADDITIVES WITH PAPER AND OTHER SUBSTRATES DESIGNED TO BE AEROBICALLY COMPOSTED IN MUNICIPAL OR INDUSTRIAL FACILITIES", AS THAT STANDARD EXISTED AS OF JANUARY 1, 2019.

(4) "ASTM INTERNATIONAL" MEANS ASTM INTERNATIONAL OR ANY SUCCESSOR ENTITY.

(5) "BIODEGRADABLE MULCH FILM" MEANS ANY FILM PRODUCT USED

AS A TECHNICAL TOOL IN COMMERCIAL FARMING APPLICATIONS THAT:

(a) FULFILLS THE PLANT GROWTH AND REGULATED METALS REQUIREMENTS OF ASTM D6400; AND

(b) SHOWS AT LEAST A NINETY PERCENT BIODEGRADATION ABSOLUTE OR RELATIVE TO MICROCRYSTALLINE CELLULOSE OVER A PERIOD OF LESS THAN TWO YEARS ACCORDING TO ISO 17556 OR ASTM 5988.

(6) "CERTIFIED COMPOSTABLE" MEANS THAT A PRODUCT HAS RECEIVED CERTIFICATION BY A RECOGNIZED, INDEPENDENT, THIRD-PARTY VERIFICATION BODY THAT THE PRODUCT IS COMPOSTABLE.

(7) "COMMERCIAL COMPOSTING FACILITY" MEANS ANY SOLID WASTE COMPOSTING FACILITY REGULATED BY THE DEPARTMENT THAT:

(a) ACCEPTS A FEE FOR SOLID WASTE COMPOSTING; OR

(b) COMPOSTS SOLID WASTE TO CREATE A COMPOST OR SOIL AMENDMENT AND DISTRIBUTES THE FINISHED COMPOST OR SOIL AMENDMENT OFFSITE FOR A FEE.

(8) "COMPOSTABLE" MEANS THAT A PRODUCT IS CAPABLE OF UNDERGOING AEROBIC BIOLOGICAL DECOMPOSITION IN A CONTROLLED COMPOSTING SYSTEM AS DEMONSTRATED IN ACCORDANCE WITH ASTM D6400 OR ASTM D6868, AS APPLICABLE.

(9) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CREATED IN SECTION 24-1-119.

(10) "FEDERAL TRADE COMMISSION GUIDELINES" MEANS THE FEDERAL TRADE COMMISSION GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS, CODIFIED IN 16 CFR 260 ET SEQ., AS AMENDED.

(11) "FILM PRODUCT" MEANS A BAG, SACK, WRAP, OR OTHER SHEET FILM PRODUCT THAT IS A SINGLE-USE PRODUCT MADE PREDOMINANTLY OF PLASTIC DERIVED FROM NATURAL GAS, PETROLEUM, OR A BIOLOGICALLY BASED SOURCE, INCLUDING CORN AND OTHER PLANT SOURCES.

(12)(a) "FOODSERVICE PRODUCT" MEANS A PRODUCT INTENDED FOR

ONE-TIME USE AND THAT IS USED FOR FOOD OR DRINK THAT IS OFFERED FOR SALE OR USE.

(b) "FOOD SERVICE PRODUCT" INCLUDES CONTAINERS, PLATES, BOWLS, CUPS, LIDS, BEVERAGE CONTAINERS, MEAT TRAYS, DELI ROUNDS, UTENSILS, SACHETS, STRAWS, CONDIMENT PACKAGING, CLAMSHELLS AND OTHER HINGED OR LIDDED CONTAINERS, WRAPS, AND PORTION CUPS.

(13) "ISO 17556" MEANS THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION DOCUMENT ENTITLED "PLASTICS - DETERMINATION OF THE ULTIMATE AEROBIC BIODEGRADABILITY OF PLASTIC MATERIALS IN SOIL BY MEASURING THE OXYGEN DEMAND IN A RESPIROMETER OR THE AMOUNT OF CARBON DIOXIDE EVOLVED", AS THAT DOCUMENT EXISTED AS OF JANUARY 1, 2019.

(14) "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

(15) "PACKAGING" MEANS ANY MATERIAL THAT IS INTENDED FOR SINGLE OR SHORT-TERM USE AND IS DESIGNED FOR THE CONTAINMENT, PROTECTION, HANDLING, OR DELIVERY OF A PRODUCT.

(16) (a) "PLASTIC PRODUCT" MEANS A PRODUCT MADE OF PLASTIC, WHETHER ALONE OR IN COMBINATION WITH ANOTHER MATERIAL, INCLUDING PAPERBOARD.

(b) "PLASTIC PRODUCT" INCLUDES:

(I) A PRODUCT MADE OF PETROCHEMICAL OR PLANT-BASED PLASTICS;

(II) A PACKAGE OR PACKAGING COMPONENT;

(III) A FILM PRODUCT; AND

(IV) A FOOD SERVICE PRODUCT THAT IS A PLASTIC PRODUCT.

(17) (a) "PRODUCER" HAS THE MEANING SET FORTH IN SECTION 25-17-703 (30).

(b) "PRODUCER" DOES NOT INCLUDE ANY PERSON DESCRIBED IN SECTION 25-17-713 (1)(e) AND (1)(f).

(18)(a) "PRODUCT ACCESSORY" MEANS ANY STANDARD OR COMMON COMPONENTS, APPURTENANCES, OR ACCESSORIES THAT ARE SOLD, OFFERED FOR SALE, OR DISTRIBUTED WITH A PARTICULAR PRODUCT.

(b) "PRODUCT ACCESSORY" INCLUDES LIDS, STRAWS, AND LABELS.

(19) "PROPRIETARY INFORMATION" HAS THE MEANING SET FORTH IN SECTION 25-17-703 (34).

(20) (a) "SMALL PRODUCT" MEANS A PRODUCT WITH A WIDTH OF ONE-HALF INCH OR LESS OF PRINTABLE SURFACE SPACE.

(b) "SMALL PRODUCT" INCLUDES STRAWS AND UTENSILS.

(21) "UNTREATED WOOD" MEANS WOOD, INCLUDING RAW OR KILN-DRIED WOOD, THAT IS UNPAINTED AND NOT TREATED WITH ANY CHEMICALS INTENDED TO RESIST DECOMPOSITION.

(22) (a) "UTENSIL" MEANS A PRODUCT DESIGNED TO BE USED BY A CONSUMER TO FACILITATE THE CONSUMPTION OF FOOD OR BEVERAGES.

(b) "UTENSIL" INCLUDES KNIVES, FORKS, SPOONS, SPORKS, COCKTAIL PICKS, CHOPSTICKS, SPLASH STICKS, AND STIRRERS.

(23) "WOOD" MEANS RENEWABLE WOOD OR FIBER-BASED SUBSTRATE.

25-17-803. Requirements for products represented as compostable. (1) A PRODUCER OF A PRODUCT THAT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE SHALL NOT REPRESENT THE PRODUCT AS COMPOSTABLE IN THE STATE UNLESS:

(a) THE PRODUCT IS CERTIFIED COMPOSTABLE IN ACCORDANCE WITH ASTM D6400 OR ASTM D6868, AS APPLICABLE; AND

(b) TO THE EXTENT CONSISTENT WITH FEDERAL TRADE COMMISSION GUIDELINES AND IN A MANNER THAT ENSURES THAT THE PRODUCT IS EASILY

AND IMMEDIATELY DISTINGUISHABLE AS CERTIFIED COMPOSTABLE, AS DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, UPON QUICK INSPECTION AT POINT OF SALE AND POINT OF USE AND IN A PUBLIC SORTING AREA AND PROCESSING FACILITY, THE PRODUCT AND ITS PACKAGING:

(I) DISPLAY A CERTIFICATION LOGO THAT INDICATES THAT THE PRODUCT IS CERTIFIED COMPOSTABLE;

(II) DISPLAY THE WORD "COMPOSTABLE" WHERE POSSIBLE; AND

(III) USE GREEN-COLORED LABELING OR STRIPING OR OTHER EASILY RECOGNIZABLE GREEN SYMBOLS, COLORS, TINTING, MARKS, OR DESIGN PATTERNS THAT DIFFERENTIATE THE PRODUCT FROM PRODUCTS THAT ARE NOT CERTIFIED COMPOSTABLE.

(2) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A PRODUCER OF ANY PRODUCT DESCRIBED IN SUBSECTION (1) OF THIS SECTION THAT IS A SMALL PRODUCT IS REQUIRED TO COMPLY ONLY WITH THE REQUIREMENTS OF SUBSECTION (1)(b)(I), (1)(b)(II), OR (1)(b)(III) OF THIS SECTION.

(3) (a) ANY PRODUCT ACCESSORY THAT IS NOT A SMALL PRODUCT AND THAT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED WITH ANY PRODUCT DESCRIBED IN SUBSECTION (1) OF THIS SECTION MUST:

(I) COMPLY WITH SUBSECTION (1) OF THIS SECTION IF THE PRODUCT IS CERTIFIED COMPOSTABLE;

(II) DISPLAY A LABEL ON THE PRODUCT ACCESSORY AND ITS PACKAGING THAT CLEARLY DESCRIBES THE RECYCLABILITY OF THE PRODUCT ACCESSORY; OR

(III) DISPLAY A LABEL ON THE PRODUCT ACCESSORY AND ITS PACKAGING THAT INCLUDES THE PHRASE "LANDFILL ONLY".

(b) ANY PRODUCT ACCESSORY THAT IS A SMALL PRODUCT MAY COMPLY WITH THE REQUIREMENTS OF SUBSECTIONS (2) AND (3)(a) OF THIS SECTION, AS APPLICABLE, IN A MANNER THAT IS IN PROPORTION TO THE SIZE OF THE PRODUCT ACCESSORY.

(4) NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO A PRODUCER OF A PRODUCT THAT IS COMPRISED ENTIRELY OF UNTREATED WOOD.

(5) THIS SECTION IS EFFECTIVE JULY 1, 2024.

25-17-804. Marketing and advertising prohibitions for products that are not certified compostable - misleading labels, images, and words - plastic products. (1) A PRODUCER OF A PRODUCT THAT IS NOT CERTIFIED COMPOSTABLE SHALL NOT MARKET OR ADVERTISE THE PRODUCT IN THE STATE USING:

(a) TINTING, COLOR SCHEMES, LABELING, OR WORDS THAT ARE REQUIRED FOR PRODUCTS REPRESENTED AS COMPOSTABLE PURSUANT TO SECTION 25-17-803; OR

(b) LABELING, IMAGES, OR WORDS THAT COULD BE REASONABLY ANTICIPATED TO MISLEAD CONSUMERS INTO BELIEVING THAT THE PRODUCT IS COMPOSTABLE.

(2) (a) A PRODUCER OF A PLASTIC PRODUCT SHALL NOT MARKET OR ADVERTISE THE PRODUCT IN THE STATE USING:

(I) THE WORDS "NATURAL", "BIODEGRADABLE", "DEGRADABLE", "DECOMPOSABLE", "OXO-DEGRADABLE", "BIOASSIMILABLE", "OMNIDEGRADABLE", OR ANY OTHER SIMILAR FORM OF THESE WORDS; OR

(II) ANY LABELING, IMAGES, OR WORDS THAT IMPLY THAT THE PLASTIC PRODUCT WILL EVENTUALLY BREAK DOWN, FRAGMENT, BIODEGRADE, OR DECOMPOSE IN A LANDFILL OR OTHER ENVIRONMENT IN THE SAME MANNER AS A PRODUCT THAT IS CERTIFIED COMPOSTABLE.

(b) THE PROHIBITIONS IN SUBSECTION (2)(a) OF THIS SECTION DO NOT APPLY TO BIODEGRADABLE MULCH FILM.

(3) A PRODUCER OF A PRODUCT THAT IS COMPOSTABLE SHALL NOT MARKET OR ADVERTISE THE PRODUCT USING A CHASING ARROW RESIN IDENTIFICATION CODE OR RECYCLING SYMBOL OF ANY FORM.

(4) EACH PRODUCER THAT SELLS, OFFERS FOR SALE, OR DISTRIBUTES A PRODUCT IN THE STATE IS ENCOURAGED TO USE LABELING, IMAGES, AND WORDS THAT ASSIST CONSUMERS IN IDENTIFYING PRODUCTS THAT ARE SUITABLE FOR RECYCLING OR LANDFILL ONLY, AS APPLICABLE, AND THAT ARE NOT COMPOSTABLE.

(5) THE REQUIREMENTS OF THIS SECTION APPLY ONLY TO THE EXTENT CONSISTENT WITH ANY APPLICABLE FEDERAL LAW.

(6) THE PROHIBITION IN SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY TO BRAND COLORS OR COLORS USED IN A MANNER THAT IS NOT CLEARLY INTENDED TO INDICATE COMPOSTABILITY.

(7) THIS SECTION IS EFFECTIVE JANUARY 1, 2024.

25-17-805. Proof of compliance - information on commercial composting environment. (1) ON AND AFTER JANUARY 1, 2024, AT THE REQUEST OF ANY PERSON, INCLUDING THE ATTORNEY GENERAL, A PRODUCER SHALL PROVIDE INFORMATION AND DOCUMENTATION DEMONSTRATING THE PRODUCER'S COMPLIANCE WITH THIS PART 8 IN A FORMAT THAT IS EASILY UNDERSTANDABLE AND SCIENTIFICALLY ACCURATE, WHICH MAY INCLUDE PROVIDING A CERTIFICATION DEMONSTRATING THAT A PRODUCT IS CERTIFIED COMPOSTABLE.

(2) AT THE REQUEST OF A COMMERCIAL COMPOSTING FACILITY, A PRODUCER IS ENCOURAGED TO PROVIDE THE COMMERCIAL COMPOSTING FACILITY INFORMATION REGARDING THE CHARACTERISTICS, SUCH AS HEAT OR MOISTURE LEVELS, OF THE COMMERCIAL COMPOSTING ENVIRONMENT IN WHICH THE PRODUCER'S PRODUCT HAS BEEN TESTED AND FOUND TO BE COMPOSTABLE.

(3) NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, NOTHING IN THIS SECTION REQUIRES A PRODUCER TO DISCLOSE PROPRIETARY INFORMATION TO ANY PERSON.

25-17-806. Education and outreach - complaint forum. (1) THE DEPARTMENT SHALL, IN COLLABORATION WITH LOCAL GOVERNMENTS, CONDUCT EDUCATION AND OUTREACH ACTIVITIES TO INFORM RETAIL ESTABLISHMENTS, CONSUMERS, PRODUCERS, AND RETAILERS ABOUT THE REQUIREMENTS AND PROHIBITIONS OF THIS PART 8.

(2) (a) ON OR BEFORE JANUARY 1, 2024, THE DEPARTMENT SHALL ESTABLISH A FORUM THAT ALLOWS ANY PERSON TO FILE A COMPLAINT AGAINST A PRODUCER FOR A VIOLATION OF THIS PART 8. THE FORUM ESTABLISHED BY THE DEPARTMENT MAY INCLUDE ANY OF THE FOLLOWING MECHANISMS TO RECEIVE COMPLAINTS:

(I) A COMPLAINT FORM ON THE DEPARTMENT'S WEBSITE;

(II) A TELEPHONE HOTLINE; OR

(III) A PUBLIC OUTREACH STRATEGY BASED ON SOCIAL MEDIA.

(b) THE DEPARTMENT SHALL PROVIDE ANY NONFRIVOLOUS AND NONTRIVIAL COMPLAINTS RECEIVED THROUGH THE FORUM TO THE ATTORNEY GENERAL'S OFFICE.

SECTION 2. Appropriation. For the 2023-24 state fiscal year, \$26,250 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.4 FTE. To implement this act, the division may use this appropriation for the solid waste control program.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO