

HOUSE BILL NO. 165

INTRODUCED BY M. MARLER

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A BILL FOR AN ACT ENTITLED: "AN ACT PHASING OUT THE USE OF STYROFOAM IN FOOD-RELATED BUSINESSES; PROVIDING EXEMPTIONS; REQUIRING FEES FOR EXEMPTION APPLICATIONS; AND PROVIDING RULEMAKING AUTHORITY."

WHEREAS, expanded polystyrene foam, commonly known as styrofoam, is a material that causes environmental harm and poses a threat to fish and wildlife; and

WHEREAS, styrofoam takes up space in landfills and contributes to the need for costly expansions born by taxpayers; and

WHEREAS, styrofoam threatens the right of each Montanan to a clean and healthful environment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4] the following definitions apply:

- (1) "Department" means the department of environmental quality.
- (2) "Expanded polystyrene foam" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials using styrene.
- (3) "Food packager" means any person located in Montana who places meat, eggs, bakery products, or other food in packaging materials, for the purpose of retail sale of those products.
- (4) "Polystyrene foam container" means a container that is made of expanded polystyrene foam.
- (5) "Prepared food" means food or beverages that are prepared to be consumed on or off the premises of the establishment in which it was prepared.
- (6) "Undue hardship" includes but is not limited to situations in which:
 - (a) there are no acceptable alternatives to packaging with polystyrene foam containers for reasons that are unique to the applicant; or
 - (b) compliance with the prohibition would deprive a person of a legally protected right.

1 **NEW SECTION. Section 2. Prohibition on use of expanded polystyrene foam.** Except as provided
2 in [section 3]:

3 (1) beginning January 1, 2022, a restaurant or food establishment in the state may not serve food or
4 beverages to be consumed in the restaurant or food establishment using polystyrene foam containers;

5 (2) beginning January 1, 2023, a restaurant, food establishment, resort, or hotel in the state may not:

6 (a) serve or package prepared food or beverages in polystyrene foam containers; or

7 (b) provide polystyrene foam containers for use with food or beverages;

8 (3) beginning January 1, 2024, a food packager in the state may not package meat, eggs, bakery
9 products, or other food in a polystyrene foam container.

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11 **NEW SECTION. Section 3. Exemptions.** The department may grant an application for an exemption
12 from the requirements of [section 2] if the department finds there are no acceptable alternatives to the use of
13 expanded polystyrene foam and:

14 (1) the requirements would cause undue hardship; or

15 (2) the applicant intends to use expanded polystyrene foam for applications relating to:

16 (a) transportation;

17 (b) construction;

18 (c) health; or

19 (d) safety.

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21 **NEW SECTION. Section 4. Rulemaking authority -- fee.** (1) The department may adopt rules to
22 implement and enforce the provisions of [sections 1 through 4].

23 (2) The department shall adopt through rule a reasonable fee that reflects the actual processing costs
24 for an application for an exemption. Revenue from the fee must be deposited in the environmental rehabilitation
25 and response account established in 75-1-110.

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27 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified
28 as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through
29 4].

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