

118TH CONGRESS
1ST SESSION

H. R. 6654

To prohibit the sale and distribution of expanded polystyrene food service ware, expanded polystyrene loose fill, and expanded polystyrene coolers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 2023

Mr. DOGGETT (for himself, Ms. BARRAGÁN, Mr. BLUMENAUER, Mr. CLEAVER, Mr. MCGOVERN, Mr. NADLER, Ms. NORTON, Mr. PAYNE, Ms. JAYAPAL, Mr. MULLIN, Mr. RASKIN, Ms. CASTOR of Florida, Ms. KAMLAGER-DOVE, Mr. COHEN, Mr. DESAULNIER, Mr. GRIJALVA, Mr. HUFFMAN, Mr. VARGAS, Ms. PINGREE, Mr. TAKANO, Ms. VELÁZQUEZ, Mr. KHANNA, Ms. TOKUDA, Mrs. NAPOLITANO, Ms. CLARKE of New York, Ms. SALINAS, Mrs. TRAHAN, Ms. LOFGREN, Mr. CONNOLLY, Mr. ROBERT GARCIA of California, Ms. PORTER, Mr. SCHIFF, Mr. LIEU, Ms. WILSON of Florida, Ms. BONAMICI, Mr. CASAR, Mr. KEATING, Mr. GOLDMAN of New York, Ms. LEE of California, Ms. SCHAKOWSKY, Mr. MFUME, Ms. SÁNCHEZ, Mrs. WATSON COLEMAN, Ms. BROWNLEY, Mr. QUIGLEY, Mr. THOMPSON of California, Ms. PRESSLEY, Mr. GARAMENDI, Mr. JOHNSON of Georgia, Mr. POCAN, Mr. CARTER of Louisiana, Ms. MCCOLLUM, Mr. ESPAILLAT, Mr. LEVIN, Ms. OCASIO-CORTEZ, Mr. CASTEN, Mr. IVEY, Mr. SARBANES, Mr. TRONE, Ms. JACOBS, Mr. BOWMAN, and Mr. GREEN of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the sale and distribution of expanded polystyrene food service ware, expanded polystyrene loose fill, and expanded polystyrene coolers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Farewell to Foam Act
3 of 2023”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **ADMINISTRATOR.**—The term “Adminis-
7 trator” means the Administrator of the Environ-
8 mental Protection Agency.

9 (2) **BIOLOGICAL PRODUCT.**—The term “biologi-
10 cal product” has the meaning given the term in sec-
11 tion 351(i) of the Public Health Service Act (42
12 U.S.C. 262(i)).

13 (3) **COVERED POLYSTYRENE FOAM WARE.**—The
14 term “covered polystyrene foam ware” means—

15 (A) an expanded polystyrene cooler;

16 (B) an expanded polystyrene food service
17 ware; and

18 (C) expanded polystyrene loose fill.

19 (4) **DISTRIBUTOR.**—The term “distributor”
20 means any person that distributes covered poly-
21 styrene foam ware that is sold or offered for sale in
22 the United States.

23 (5) **DRUG.**—The term “drug” has the meaning
24 given the term in section 201 of the Federal Food,
25 Drug, and Cosmetic Act (21 U.S.C. 321).

1 (6) EXPANDED POLYSTYRENE.—The term “ex-
2 panded polystyrene” means blown polystyrene and
3 expanded or extruded foams that are thermoplastic
4 petrochemical materials utilizing a styrene monomer
5 and processed by any technique or combination of
6 techniques, including fusion of polymer spheres (ex-
7 pandable bead polystyrene), injection molding, foam
8 molding, and extrusion-blow molding (extruded foam
9 polystyrene).

10 (7) EXPANDED POLYSTYRENE COOLER.—

11 (A) IN GENERAL.—The term “expanded
12 polystyrene cooler” means a portable container
13 made entirely or partially of expanded poly-
14 styrene that is designed or intended to be used
15 for cold storage.

16 (B) EXCLUSION.—The term “expanded
17 polystyrene cooler” excludes portable containers
18 intended to be used for drugs, medical devices,
19 or biological products.

20 (8) EXPANDED POLYSTYRENE FOOD SERVICE
21 WARE.—

22 (A) IN GENERAL.—The term “expanded
23 polystyrene food service ware” means a product
24 made of expanded polystyrene that is—

1 (i) used for selling or providing food
2 or beverages; and

3 (ii)(I) intended by the manufacturer
4 to be used once for eating or drinking; or
5 (II) generally recognized by the public
6 as an item to be discarded after 1 use.

7 (B) INCLUSIONS.—The term “expanded
8 polystyrene food service ware” includes any
9 product described in subparagraph (A) con-
10 sisting of a bowl, plate, hot or cold beverage
11 cup, lid, clamshell, tray, carton for eggs or
12 other food, or any other item used for serving
13 or containing prepared food, including takeout
14 food and leftovers from partially consumed
15 meals prepared by food vendors.

16 (9) EXPANDED POLYSTYRENE LOOSE FILL.—
17 The term “expanded polystyrene loose fill” means a
18 void-filling packaging product made of expanded pol-
19 ystyrene foam that is used as a packaging fill (com-
20 monly referred to as “packing peanuts”).

21 (10) FOOD SERVICE PROVIDER.—The term
22 “food service provider” means a person engaged in
23 the business of selling or distributing prepared food
24 or beverages for on-premise or off-premise consump-
25 tion, including any—

1 (A) food service establishment, caterer,
2 temporary food service establishment, mobile
3 food service establishment, and pushcart;

4 (B) retail food store;

5 (C) delicatessen;

6 (D) grocery store;

7 (E) restaurant;

8 (F) cafeteria;

9 (G) coffee shop;

10 (H) hospital, adult care facility, and nurs-
11 ing home; and

12 (I) elementary or secondary school, college,
13 and university.

14 (11) MANUFACTURER.—The term “manufac-
15 turer” means any person that manufactures or im-
16 ports covered polystyrene foam ware that is sold, of-
17 fered for sale, or distributed in the United States.

18 (12) MEDICAL DEVICE.—The term “medical de-
19 vice” has the meaning given the term “device” in
20 section 201 of the Federal Food, Drug, and Cos-
21 metic Act (21 U.S.C. 321).

22 (13) PREPARED FOOD.—

23 (A) IN GENERAL.—The term “prepared
24 food” means food or beverages that—

1 (i) are cooked, chopped, sliced, mixed,
 2 brewed, frozen, heated, squeezed, com-
 3 bined, or otherwise prepared on the prem-
 4 ises of a food service provider for imme-
 5 diate consumption; and

6 (ii) require no further preparation to
 7 be consumed.

8 (B) INCLUSION.—The term “prepared
 9 food” includes ready-to-eat takeout foods and
 10 beverages described in subparagraph (A).

11 (14) RETAILER.—The term “retailer” means
 12 any person that sells, supplies, or offers to con-
 13 sumers covered polystyrene foam ware.

14 **SEC. 3. BAN ON EXPANDED POLYSTYRENE FOOD SERVICE**
 15 **WARE, LOOSE FILL, AND COOLERS.**

16 (a) EXPANDED POLYSTYRENE FOOD SERVICE
 17 WARE.—Beginning on January 1, 2026, no food service
 18 provider, manufacturer, distributor, or retailer shall sell,
 19 offer for sale, or distribute expanded polystyrene food
 20 service ware.

21 (b) EXPANDED POLYSTYRENE LOOSE FILL AND EX-
 22 PANDED POLYSTYRENE COOLERS.—Beginning on Janu-
 23 ary 1, 2026, no manufacturer, distributor, or retailer shall
 24 sell, offer for sale, or distribute expanded polystyrene loose
 25 fill or expanded polystyrene coolers.

1 **SEC. 4. ENFORCEMENT.**

2 (a) WRITTEN NOTIFICATION FOR FIRST VIOLA-
3 TION.—If a food service provider, manufacturer, dis-
4 tributor, or retailer violates section 3, the Administrator
5 shall provide that food service provider, manufacturer, dis-
6 tributor, or retailer with written notification regarding the
7 violation.

8 (b) SUBSEQUENT VIOLATIONS.—

9 (1) IN GENERAL.—If a food service provider,
10 manufacturer, distributor, or retailer, subsequent to
11 receiving a written notification under subsection (a),
12 violates section 3 again, the Administrator shall im-
13 pose a civil penalty on the food service provider,
14 manufacturer, distributor, or retailer in accordance
15 with this subsection.

16 (2) AMOUNT OF PENALTY.—For each violation
17 described in paragraph (1), the amount of the civil
18 penalty under that paragraph shall be—

19 (A) in the case of the second violation,
20 \$250;

21 (B) in the case of the third violation, \$500;
22 and

23 (C) in the case of the fourth, and any sub-
24 sequent, violation, \$1,000.

25 (3) LIMITATIONS.—

1 (A) FOOD SERVICE PROVIDERS; RETAIL-
2 ERS.—In the case of a food service provider or
3 retailer the annual revenue of which is less than
4 \$1,000,000, a penalty shall not be imposed
5 under this subsection more than once during
6 any 7-day period.

7 (B) MANUFACTURER; DISTRIBUTORS.—In
8 the case of a manufacturer or distributor the
9 annual revenue of which is less than
10 \$5,000,000, a penalty shall not be imposed
11 under this subsection more than once during
12 any 7-day period.

13 (c) STATE ENFORCEMENT.—The Administrator may
14 permit a State to carry out enforcement under this section
15 if the Administrator determines that the State meets such
16 requirements as the Administrator may establish.

17 **SEC. 5. REGULATIONS.**

18 The Administrator may promulgate such regulations
19 as the Administrator determines necessary to carry out
20 this Act.

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