

1 HOUSE BILL NO. 638

2 INTRODUCED BY M. MARLER

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

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

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

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

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

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16 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], unless the context clearly
17 indicates otherwise, the following definitions apply:

18 (1) "Department" means the department of environmental quality provided for in 2-15-3501.

19 (2) "Expanded polystyrene foam" means blown polystyrene and expanded and extruded foams
20 that are thermoplastic petrochemical materials using styrene.

21 (3) "Food packager" means any person located in the state who places ~~meat, eggs, bakery~~
22 ~~products,~~ or other food in packaging materials for the purpose of retail sale of those products.

23 (4) "Polystyrene foam container" means a container that is made of expanded polystyrene foam.

24 (5) "Prepared food" means a food or a beverage that is prepared for immediate consumption on or
25 off the premises of the establishment. Prepared food does not include raw uncooked meat, fish, or eggs.

26 (6) "Undue hardship" includes but is not limited to situations in which:

27 (a) there are no acceptable alternatives to packaging prepared food with polystyrene foam
28 containers for reasons that are unique to an applicant; or

1 (b) complying with the prohibition in [section 2] would deprive a person of a legally protected right.

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3 **NEW SECTION. Section 2. Prohibition on use of expanded polystyrene foam.** Except as

4 provided in [section 3]:

5 (1) beginning January 1, 2026, a restaurant or food establishment in the state may not serve food
6 or beverages to be consumed in the restaurant or food establishment using polystyrene foam containers;

7 (2) beginning January 1, 2027, a restaurant, food establishment, resort, or hotel in the state may
8 not:

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

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

11 (3) beginning January 1, 2028, a food packager in the state may not package ~~meat, eggs,~~ bakery
12 products, or other prepared food in a polystyrene foam container.

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

17 (1) the requirements of [section 2] would cause undue hardship; or

18 (2) the applicant intends to use expanded polystyrene foam for purposes relating to:

19 (a) transportation;

20 (b) construction;

21 (c) health; or

22 (d) safety.

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

26 (2) The department shall adopt in rule a reasonable fee that reflects the actual costs of processing
27 applications for exemptions. Revenue from the fee must be deposited in the environmental rehabilitation and
28 response account established in 75-1-110.

Amendment - 1st Reading-white - Requested by: Marilyn Marler - (H) Natural Resources

- 2023

68th Legislature 2023

Drafter: Sara Hess, (406) 444-4838

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

- END -

AMEND