

118TH CONGRESS
1ST SESSION

S. 3440

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 SENATE OF THE UNITED STATES

DECEMBER 7, 2023

Mr. VAN HOLLEN (for himself, Mr. KING, Mr. WELCH, Mr. WYDEN, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. SANDERS, Ms. WARREN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Farewell to Foam Act
5 of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) BIOLOGICAL PRODUCT.—The term “biologi-
5 cal product” has the meaning given the term in sec-
6 tion 351(i) of the Public Health Service Act (42
7 U.S.C. 262(i)).

8 (3) COVERED POLYSTYRENE FOAM WARE.—The
9 term “covered polystyrene foam ware” means—

10 (A) an expanded polystyrene cooler;

11 (B) an expanded polystyrene food service
12 ware; and

13 (C) expanded polystyrene loose fill.

14 (4) DISTRIBUTOR.—The term “distributor”
15 means any person that distributes covered poly-
16 styrene foam ware that is sold or offered for sale in
17 the United States.

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

21 (6) EXPANDED POLYSTYRENE.—The term “ex-
22 panded polystyrene” means blown polystyrene and
23 expanded or extruded foams that are thermoplastic
24 petrochemical materials utilizing a styrene monomer
25 and processed by any technique or combination of

1 techniques, including fusion of polymer spheres (ex-
2 pandable bead polystyrene), injection molding, foam
3 molding, and extrusion-blow molding (extruded foam
4 polystyrene).

5 (7) EXPANDED POLYSTYRENE COOLER.—

6 (A) IN GENERAL.—The term “expanded
7 polystyrene cooler” means a portable container
8 made entirely or partially of expanded poly-
9 styrene that is designed or intended to be used
10 for cold storage.

11 (B) EXCLUSION.—The term “expanded
12 polystyrene cooler” excludes portable containers
13 intended to be used for drugs, medical devices,
14 or biological products.

15 (8) EXPANDED POLYSTYRENE FOOD SERVICE
16 WARE.—

17 (A) IN GENERAL.—The term “expanded
18 polystyrene food service ware” means a product
19 made of expanded polystyrene that is—

20 (i) used for selling or providing food
21 or beverages; and

22 (ii)(I) intended by the manufacturer
23 to be used once for eating or drinking; or

24 (II) generally recognized by the public
25 as an item to be discarded after 1 use.

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

10 (9) EXPANDED POLYSTYRENE LOOSE FILL.—
11 The term “expanded polystyrene loose fill” means a
12 void-filling packaging product made of expanded pol-
13 ystyrene foam that is used as a packaging fill (com-
14 monly referred to as “packing peanuts”).

15 (10) FOOD SERVICE PROVIDER.—The term
16 “food service provider” means a person engaged in
17 the business of selling or distributing prepared food
18 or beverages for on-premise or off-premise consump-
19 tion, including any—

20 (A) food service establishment, caterer,
21 temporary food service establishment, mobile
22 food service establishment, and pushcart;

23 (B) retail food store;

24 (C) delicatessen;

25 (D) grocery store;

1 (E) restaurant;

2 (F) cafeteria;

3 (G) coffee shop;

4 (H) hospital, adult care facility, and nurs-
5 ing home; and

6 (I) elementary or secondary school, college,
7 and university.

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

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

16 (13) PREPARED FOOD.—

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

19 (i) are cooked, chopped, sliced, mixed,
20 brewed, frozen, heated, squeezed, com-
21 bined, or otherwise prepared on the prem-
22 ises of a food service provider for imme-
23 diate consumption; and

24 (ii) require no further preparation to
25 be consumed.

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

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

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

9 (a) EXPANDED POLYSTYRENE FOOD SERVICE
10 WARE.—Beginning on January 1, 2026, no food service
11 provider, manufacturer, distributor, or retailer shall sell,
12 offer for sale, or distribute expanded polystyrene food
13 service ware.

14 (b) EXPANDED POLYSTYRENE LOOSE FILL AND EX-
15 PANDED POLYSTYRENE COOLERS.—Beginning on Janu-
16 ary 1, 2026, no manufacturer, distributor, or retailer shall
17 sell, offer for sale, or distribute expanded polystyrene loose
18 fill or expanded polystyrene coolers.

19 **SEC. 4. ENFORCEMENT.**

20 (a) WRITTEN NOTIFICATION FOR FIRST VIOLA-
21 TION.—If a food service provider, manufacturer, dis-
22 tributor, or retailer violates section 3, the Administrator
23 shall provide that food service provider, manufacturer, dis-
24 tributor, or retailer with written notification regarding the
25 violation.

1 (b) SUBSEQUENT VIOLATIONS.—

2 (1) IN GENERAL.—If a food service provider,
3 manufacturer, distributor, or retailer, subsequent to
4 receiving a written notification under subsection (a),
5 violates section 3 again, the Administrator shall im-
6 pose a civil penalty on the food service provider,
7 manufacturer, distributor, or retailer in accordance
8 with this subsection.

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

12 (A) in the case of the second violation,
13 \$250;

14 (B) in the case of the third violation, \$500;
15 and

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

18 (3) LIMITATIONS.—

19 (A) FOOD SERVICE PROVIDERS; RETAIL-
20 ERS.—In the case of a food service provider or
21 retailer the annual revenue of which is less than
22 \$1,000,000, a penalty shall not be imposed
23 under this subsection more than once during
24 any 7-day period.

1 (B) MANUFACTURER; DISTRIBUTORS.—In
2 the case of a manufacturer or distributor the
3 annual revenue of which is less than
4 \$5,000,000, a penalty shall not be imposed
5 under this subsection more than once during
6 any 7-day period.

7 (c) STATE ENFORCEMENT.—The Administrator may
8 permit a State to carry out enforcement under this section
9 if the Administrator determines that the State meets such
10 requirements as the Administrator may establish.

11 **SEC. 5. REGULATIONS.**

12 The Administrator may promulgate such regulations
13 as the Administrator determines necessary to carry out
14 this Act.

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