

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE MAY 23, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 568

Introduced by Senator Lowenthal

(Coauthors: Assembly Members Brownley, *Chesbro*, *Skinner*, and
Wieckowski)

February 17, 2011

An act to add Chapter 6.6 (commencing with Section 42391) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Lowenthal. Recycling: polystyrene food containers.

Existing law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state to generally meet one of specified criteria.

This bill would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container and would define related terms. The bill would provide that a food vendor that is a school district is not required to comply with the bill's requirements until July 1, 2017, and would allow a food vendor that is a school district to dispense prepared food to a customer in a

polystyrene foam food container after that date if the governing board of the school district elects to adopt a policy to implement a verifiable recycling program for polystyrene foam food containers, *which would be renewable, as specified*. The bill would also allow a food vendor to dispense prepared food to a customer in a polystyrene foam food container after January 1, 2016, in a city or county if the city or county elects to adopt an ordinance establishing a specified recycling program for polystyrene foam food containers, *which would be operative, as specified*.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.6 (commencing with Section 42391)
 2 is added to Part 3 of Division 30 of the Public Resources Code, to
 3 read:

4
 5 CHAPTER 6.6. POLYSTYRENE FOAM FOOD CONTAINERS

6
 7 42391. For the purposes of this chapter, the following terms
 8 have the following meanings:

9 (a) “Customer” means a person obtaining prepared food from
 10 a food vendor.

11 (b) (1) “Polystyrene foam food container” means a container
 12 made of *blown polystyrene and expanded and extruded foam that*
 13 *are thermoplastic petrochemical-material materials* utilizing the
 14 styrene monomer; ~~that~~ *and the container* meets all of the following
 15 conditions:

16 (A) Polystyrene is the sole resin used to produce the rigid plastic
 17 packaging container.

18 (B) The container is required to be labeled with a “6” pursuant
 19 to subdivision (a) of Section 18015.

20 (C) The container is used, or is intended to be used, to hold
 21 prepared food.

22 (2) A polystyrene foam food container may be processed by a
 23 number of techniques, including, but not limited to, fusion of
 24 polymer spheres or expandable bead polystyrene.

1 (3) Polystyrene foam may also be referred to as Styrofoam™,
2 a Dow Chemical Company trademarked form of polystyrene foam
3 insulation.

4 (4) A polystyrene foam food container includes, but is not
5 limited to, a cup, bowl, plate, tray, or clamshell container that is
6 intended for single use.

7 (c) (1) “Food vendor” means a food facility, as defined in
8 Section 113789 of the Health and Safety Code, including, but not
9 limited to, a restaurant or retail food and beverage vendor located
10 or operating within the state.

11 (2) A food vendor also includes, but is not limited to, an itinerant
12 restaurant, pushcart, vehicular food vendors, a caterer, a cafeteria,
13 a store, a shop, a sales outlet, or other establishment, including a
14 grocery store or a delicatessen.

15 (3) A food vendor does not include a correctional facility,
16 including, but not limited to, a state prison, county jail, facility of
17 the Division of Juvenile Justice, county- or city-operated juvenile
18 facility, including juvenile halls, camps, or schools, or other state
19 or local correctional institution.

20 (d) “Prepared food” means food, as defined in Section 109935
21 of the Health and Safety Code, including a beverage, that is served,
22 packaged, cooked, chopped, sliced, mixed, brewed, frozen,
23 squeezed, or otherwise prepared for consumption. Prepared food
24 includes “ready-to-eat food,” as defined in Section 113881 of the
25 Health and Safety Code.

26 (1) “Prepared food” does not include raw, butchered meats, fish,
27 or poultry that is sold from a butcher case or a similar retail
28 appliance.

29 (2) “Prepared food” may be eaten either on or off the premises,
30 and includes takeout food.

31 (e) “Recycled” means the product or material is reused in the
32 production of another product and is diverted from disposal in a
33 landfill.

34 42392. Except as provided in Sections 42393 and 42394, on
35 and after January 1, 2016, a food vendor shall not dispense prepared
36 food to a customer in a polystyrene foam food container.

37 42393. (a) A food vendor that is a school district, as defined
38 in Section 80 of the Education Code, is not required to comply
39 with Section 42392 until July 1, 2017.

1 (b) On and after July 1, 2017, a food vendor that is a school
2 district may dispense prepared food to a customer in a polystyrene
3 foam food container if the governing board of the school district
4 elects to adopt a policy to implement a verifiable recycling program
5 for polystyrene foam food containers ~~where there is a reasonable~~
6 ~~likelihood that~~ *under which* at least 60 percent of the polystyrene
7 foam food containers purchased annually by that school district
8 will be recycled.

9 (c) *If the governing board of a school district elects to adopt a*
10 *policy to implement a recycling program pursuant to subdivision*
11 *(b), the recycling program shall be effective for not more than five*
12 *years, and the school district may elect to renew the policy*
13 *implementing the program continuously for a period not to exceed*
14 *five years if, at the time of renewal, the school district demonstrates*
15 *with empirical data that the recycling program is achieving the*
16 *goal of recycling at least 60 percent of the polystyrene foam food*
17 *containers generated annually by the school district.*

18 42394. (a) On and after January 1, 2016, a food vendor may
19 dispense prepared food to a customer in a polystyrene foam food
20 container in a city or county if either of the following apply:

21 (a)

22 (1) The city elects to adopt an ordinance establishing a recycling
23 program for polystyrene foam food containers for which the city
24 makes a finding, by a majority vote of the city council at a public
25 hearing, that, based on empirical data, ~~there is a reasonable~~
26 ~~likelihood that~~ at least 60 percent of the polystyrene foam food
27 containers generated annually in the city will be recycled by that
28 program.

29 (b)

30 (2) The county elects to adopt an ordinance establishing a
31 recycling program for polystyrene foam food containers for which
32 the county makes a finding, by a majority vote of the board of
33 supervisors at a public hearing, that, based on empirical data, ~~there~~
34 ~~is a reasonable likelihood that~~ at least 60 percent of the polystyrene
35 foam food containers generated annually in the county will be
36 recycled by that program.

37 (b) *If a city or county elects to adopt an ordinance pursuant to*
38 *this section, the ordinance shall be operative for no more than five*
39 *years, and the city or county may elect to readopt the ordinance*
40 *continuously for an operative period not to exceed five years if, at*

1 *the time of adoption, the city or county demonstrates with empirical*
2 *data that the ordinance is achieving the goal of recycling at least*
3 *60 percent of the polystyrene foam food containers generated*
4 *annually in its jurisdiction.*

5 42395. This chapter does not preempt the authority of a county,
6 city, or city and county to adopt and enforce additional single-use
7 takeout food packaging ordinances, regulations, or policies that
8 are more restrictive than the applicable standards required by this
9 chapter.

10 42396. The provisions of this chapter are severable. If any
11 provision of this chapter or its application is held invalid, that
12 invalidity shall not affect other provisions or applications that can
13 be given effect without the invalid provision or application.

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