

HOUSE BILL No. 6609

December 19, 2018, Introduced by Reps. Rabhi, Wittenberg and Sowerby and referred to the Committee on Commerce and Trade.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending the heading of part 163 and sections 16301 and 16303 (MCL 324.16301 and 324.16303) and by adding sections 16304, 16305, 16306, 16307, and 16308.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 163. ~~PLASTIC DEGRADABLE CONTAINERS~~ **PLASTICS**

2 Sec. 16301. As used in this part:

3 (a) "Containers" means glass, metal, or plastic bottles, cans,
4 jars, or other receptacles that contain any substance.

5 (b) "Degradable" means capable of being broken down by
6 biodegradation, photodegradation, or chemical degradation into
7 component parts within 360 days under exposure to the elements.

8 (c) **"DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL**

1 QUALITY.

2 (D) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT, OR HIS OR
3 HER DESIGNEE.

4 (E) "DISTRIBUTE" MEANS TO SELL, OFFER FOR SALE, OR OTHERWISE
5 TRANSFER POSSESSION OF AN ITEM FOR COMPENSATION, EITHER AS A
6 SEPARATE TRANSACTION OR AS PART OF THE SALE, OFFER FOR SALE, OR
7 OTHER TRANSFER OF POSSESSION OF ANOTHER ITEM FOR COMPENSATION.

8 (F) "EGG CARTON" MEANS A CARTON FOR RAW EGGS SOLD TO CONSUMERS
9 FROM A REFRIGERATOR CASE OR SIMILAR RETAIL APPLIANCE.

10 (G) "FOOD SERVICE WARE" MEANS CONTAINERS, BOWLS, PLATES,
11 TRAYS, CUPS, LIDS, AND OTHER LIKE ITEMS THAT ARE DESIGNED FOR 1-
12 TIME USE FOR PREPARED FOODS, INCLUDING TAKEOUT FOODS OR LEFTOVERS
13 FROM PARTIALLY CONSUMED MEALS PREPARED BY FOOD VENDORS. FOOD
14 SERVICE WARE DOES NOT INCLUDE ITEMS COMPOSED ENTIRELY OF ALUMINUM
15 OR INCLUDE COOLERS OR ICE CHESTS.

16 (H) "FOOD VENDOR" MEANS A RESTAURANT OR RETAIL FOOD VENDOR
17 LOCATED OR OPERATING WITHIN THIS STATE.

18 (I) "MEAT AND FISH TRAY" MEANS A TRAY FOR RAW MEAT, FISH, OR
19 POULTRY SOLD TO CONSUMERS FROM A REFRIGERATOR CASE OR SIMILAR
20 RETAIL APPLIANCE.

21 (J) "PACKING MATERIAL" MEANS MATERIAL USED TO HOLD, CUSHION,
22 OR PROTECT ITEMS PACKED IN A CONTAINER FOR SHIPPING, TRANSPORT, OR
23 STORAGE.

24 (K) "POLYSTYRENE FOAM" MEANS BLOWN POLYSTYRENE AND EXPANDED
25 AND EXTRUDED FOAMS THAT ARE THERMOPLASTIC PETROCHEMICAL MATERIALS
26 UTILIZING A STYRENE MONOMER AND PROCESSED BY TECHNIQUES, INCLUDING,
27 BUT NOT LIMITED TO, FUSION OF POLYMER SPHERES (EXPANDABLE BEAD

1 POLYSTYRENE), INJECTION MOLDING, FOAM MOLDING, AND EXTRUSION-BLOWN
2 MOLDING (EXTRUDED FOAM POLYSTYRENE).

3 (I) "PREPARED FOOD" MEANS FOOD OR BEVERAGES THAT ARE SERVICED,
4 PACKAGED, COOKED, CHOPPED, SLICED, MIXED, BREWED, FROZEN, SQUEEZED,
5 OR OTHERWISE PREPARED FOR INDIVIDUAL CUSTOMERS OR CONSUMERS.
6 PREPARED FOOD DOES NOT INCLUDE RAW EGGS OR RAW, BUTCHERED MEATS,
7 FISH, OR POULTRY SOLD FROM A BUTCHER CASE, A REFRIGERATOR CASE, OR
8 SIMILAR RETAIL APPLIANCE.

9 (M) "RESTAURANT" MEANS AN ESTABLISHMENT THAT SELLS PREPARED
10 FOOD FOR CONSUMPTION ON, NEAR, OR OFF ITS PREMISES. A RESTAURANT
11 MAY BE A PERMANENT OR TEMPORARY FACILITY, CART, VEHICLE, OR MOBILE
12 UNIT.

13 (N) "RETAIL FOOD VENDOR" MEANS A STORE, SHOP, SALES OUTLET, OR
14 OTHER ESTABLISHMENT, INCLUDING A GROCERY STORE OR A DELICATESSEN,
15 THAT SELLS PREPARED FOOD AND THAT IS NOT A RESTAURANT.

16 (O) "STATE CONTRACTOR OR LESSEE" MEANS A PERSON OR ENTITY THAT
17 HAS A CONTRACT WITH THIS STATE FOR PUBLIC WORKS OR IMPROVEMENTS TO
18 BE PERFORMED, FOR A FRANCHISE, CONCESSION, OR LEASE OF PROPERTY,
19 FOR GRANT MONEY OR FOR GOODS, SERVICES, OR SUPPLIES TO BE PURCHASED
20 AT THE EXPENSE OF THIS STATE OR TO BE PAID OUT OF MONEY DEPOSITED
21 IN THE STATE TREASURY OR OUT OF TRUST MONEY UNDER THE CONTROL OF OR
22 COLLECTED BY THIS STATE.

23 (P) "STATE FACILITY" MEANS ANY BUILDING, STRUCTURE, OR VEHICLE
24 OWNED OR OPERATED BY THIS STATE.

25 (Q) "STATE FACILITY FOOD PROVIDER" MEANS AN ENTITY THAT
26 PROVIDES, BUT DOES NOT SELL, PREPARED FOOD IN A STATE FACILITY.

27 Sec. 16303. A person who violates ~~this part~~ SECTION 16302 is

1 guilty of a misdemeanor punishable by a fine of \$500.00 for each
2 day ~~this part~~ SECTION 16302 is violated.

3 SEC. 16304. A PERSON SHALL NOT DISTRIBUTE WITHIN THIS STATE
4 ANY FOOD SERVICE WARE MADE, IN WHOLE OR IN PART, FROM POLYSTYRENE
5 FOAM.

6 SEC. 16305. (1) A FOOD VENDOR SHALL NOT DISTRIBUTE PREPARED
7 FOOD IN FOOD SERVICE WARE MADE, IN WHOLE OR IN PART, FROM
8 POLYSTYRENE FOAM.

9 (2) A STATE FACILITY FOOD PROVIDER SHALL NOT PROVIDE PREPARED
10 FOOD TO A STATE FACILITY IN FOOD SERVICE WARE MADE, IN WHOLE OR IN
11 PART, FROM POLYSTYRENE FOAM.

12 (3) A STATE DEPARTMENT SHALL NOT PURCHASE, ACQUIRE, OR USE
13 FOOD SERVICE WARE FOR PREPARED FOOD IF THE FOOD SERVICE WARE IS
14 MADE, IN WHOLE OR IN PART, FROM POLYSTYRENE FOAM.

15 (4) A STATE CONTRACTOR OR LESSEE SHALL NOT USE FOOD SERVICE
16 WARE FOR PREPARED FOOD IN A STATE FACILITY WHILE ACTING UNDER A
17 STATE CONTRACT OR LEASE IF THE FOOD SERVICE WARE IS MADE, IN WHOLE
18 OR IN PART, FROM POLYSTYRENE FOAM.

19 (5) IT IS NOT A VIOLATION OF THIS SECTION TO DISTRIBUTE,
20 PROVIDE, PURCHASE, ACQUIRE, OR USE PREPARED FOOD PACKAGED IN FOOD
21 SERVICE WARE OTHERWISE PROHIBITED BY SUBSECTIONS (1) TO (3), OR TO
22 USE FOOD SERVICE WARE OTHERWISE PROHIBITED BY SUBSECTION (4), IF
23 THE PREPARED FOOD IS PACKAGED OUTSIDE THIS STATE AND IS SOLD OR
24 OTHERWISE PROVIDED TO THE CONSUMER IN THE SAME FOOD SERVICE WARE IN
25 WHICH IT ORIGINALLY WAS PACKAGED.

26 SEC. 16306. (1) A PERSON SHALL NOT DISTRIBUTE FOR COMPENSATION
27 WITHIN THIS STATE ANY OF THE FOLLOWING IF MADE, IN WHOLE OR IN

1 PART, FROM POLYSTYRENE FOAM THAT IS NOT WHOLLY ENCAPSULATED OR
2 ENCASED WITHIN A MORE DURABLE MATERIAL:

3 (A) PACKING MATERIAL, INCLUDING A SHIPPING BOX OR PACKING
4 PEANUTS.

5 (B) A COOLER, ICE CHEST, OR SIMILAR CONTAINER.

6 (C) A POOL OR BEACH TOY.

7 (D) A DOCK FLOAT, MOORING BUOY, OR ANCHOR OR NAVIGATION
8 MARKER.

9 (2) A PERSON SHALL NOT DISTRIBUTE FOR COMPENSATION WITHIN THIS
10 STATE A MEAT AND FISH TRAY OR EGG CARTON MADE, IN WHOLE OR IN PART,
11 FROM POLYSTYRENE FOAM, EITHER AS A SEPARATE ITEM OR AS PART OF THE
12 SALE OF RAW MEAT, FISH, POULTRY, OR EGGS SOLD TO A CONSUMER FROM A
13 REFRIGERATOR CASE OR SIMILAR RETAIL APPLIANCE.

14 (3) FOR PURPOSES OF THIS SECTION, DISTRIBUTION OF PACKING
15 MATERIAL INCLUDES USING PACKING MATERIAL TO HOLD, CUSHION, OR
16 PROTECT ITEMS TO BE PACKED IN A CONTAINER FOR SHIPPING, TRANSPORT,
17 OR STORAGE, FOR COMPENSATION, IF THE PACKING TAKES PLACE WITHIN
18 THIS STATE.

19 (4) FOR PURPOSES OF THIS SECTION, DISTRIBUTION OF PACKING
20 MATERIAL DOES NOT INCLUDE ANY OF THE FOLLOWING:

21 (A) RECEIVING A SHIPMENT WITHIN THIS STATE THAT INCLUDES
22 POLYSTYRENE FOAM USED AS PACKING MATERIAL.

23 (B) REUSING PACKING MATERIAL FOR SHIPPING, TRANSPORT, OR
24 STORAGE WITHIN THE SAME DISTRIBUTION SYSTEM, IF THE PACKING
25 MATERIAL IS NOT SENT TO A CONSUMER OR END USER.

26 (C) DONATING USED PACKING MATERIAL TO ANOTHER PERSON, IF THE
27 DONOR RECEIVES NOTHING OF VALUE FOR THE DONATED PACKING MATERIAL.

1 (D) USING PACKING MATERIAL DONATED UNDER SUBDIVISION (C) FOR
2 SHIPPING, TRANSPORT, OR STORAGE, IF THE PERSON USING THE PACKING
3 MATERIAL RECEIVES NOTHING OF VALUE FOR THE DONATED PACKING
4 MATERIAL.

5 (5) SUBSECTION (1) DOES NOT APPLY TO PACKING MATERIAL OR A
6 COOLER, ICE CHEST, OR SIMILAR CONTAINER USED FOR TEMPERATURE-
7 CONTROLLED SHIPPING FOR MEDICAL, VETERINARY, OR RESEARCH PURPOSES,
8 INCLUDING, BUT NOT LIMITED TO, THE SHIPPING OF BREAST MILK,
9 MEDICINE, AN ORGAN, TISSUE, AN EMBRYO, OR GAMETES FOR SUCH
10 PURPOSES.

11 SEC. 16307. (1) PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT
12 OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, THE DIRECTOR MAY
13 PROMULGATE RULES TO IMPLEMENT THIS PART.

14 (2) THE DIRECTOR MAY WAIVE THE REQUIREMENTS OF SECTION 16304,
15 16305(1), OR 16306(1) OR (2) UNDER EITHER OF THE FOLLOWING
16 CIRCUMSTANCES:

17 (A) THE APPLICANT FOR THE WAIVER DEMONSTRATES TO THE
18 DIRECTOR'S SATISFACTION THAT THERE IS NO REASONABLY FEASIBLE
19 ALTERNATIVE AVAILABLE FOR A SPECIFIC NONCOMPLIANT PRODUCT.

20 (B) THE APPLICANT FOR THE WAIVER DEMONSTRATES TO THE
21 DIRECTOR'S SATISFACTION BOTH OF THE FOLLOWING:

22 (i) THAT THE APPLICANT HAS A GROSS INCOME OF LESS THAN
23 \$500,000.00 ON THE APPLICANT'S ANNUAL FEDERAL INCOME TAX FILING FOR
24 THE MOST RECENT TAX YEAR.

25 (ii) THAT THERE IS NO SUITABLE AND REASONABLY AFFORDABLE
26 ALTERNATIVE AVAILABLE FOR A SPECIFIC NONCOMPLIANT PRODUCT.

27 (3) THE DIRECTOR MAY WAIVE THE REQUIREMENTS OF SECTION

1 16305(2), (3), OR (4) UPON THE REQUEST OF A STATE OFFICER,
2 EMPLOYEE, OR DEPARTMENT IF THE APPLICANT FOR THE WAIVER
3 DEMONSTRATES, TO THE DIRECTOR'S SATISFACTION, EITHER OF THE
4 FOLLOWING:

5 (A) STRICT APPLICATION OF THE SPECIFIC REQUIREMENT WOULD
6 CREATE AN UNDUE HARDSHIP OR PRACTICAL DIFFICULTY NOT GENERALLY
7 APPLICABLE TO OTHER PERSONS IN SIMILAR CIRCUMSTANCES.

8 (B) THE WAIVER IS OTHERWISE JUSTIFIED.

9 (4) IN ADDITION TO INDIVIDUAL WAIVERS PROVIDED FOR UNDER
10 SUBSECTIONS (2) AND (3), THE DIRECTOR MAY WAIVE THE REQUIREMENTS OF
11 SECTION 16306 WITH RESPECT TO A PARTICULAR CATEGORY OF USES OF
12 PACKING MATERIALS OR OF EGG CARTONS OR MEAT AND FISH TRAYS MADE, IN
13 WHOLE OR IN PART, FROM POLYSTYRENE FOAM IF THE DIRECTOR DETERMINES
14 THAT NO SUITABLE AND REASONABLY AFFORDABLE ALTERNATIVE TO USE OF
15 THE NONCOMPLIANT PRODUCT IS FEASIBLE. THE DIRECTOR'S DETERMINATION
16 IS FINAL AND NOT SUBJECT TO APPEAL.

17 (5) TO APPLY FOR A WAIVER UNDER SUBSECTION (2) OR (3), A
18 PERSON SHALL SUBMIT TO THE DEPARTMENT A WRITTEN APPLICATION ON A
19 FORM APPROVED BY THE DIRECTOR. THE DIRECTOR MAY REQUIRE THE
20 APPLICANT TO SUBMIT ADDITIONAL INFORMATION OR DOCUMENTATION TO MAKE
21 A DETERMINATION REGARDING THE WAIVER REQUESTED. THE DIRECTOR SHALL
22 REVIEW APPLICATIONS ON A CASE-BY-CASE BASIS.

23 (6) THE DIRECTOR MAY GRANT A WAIVER UNDER SUBSECTION (2), (3),
24 OR (4) IN WHOLE OR IN PART, WITH OR WITHOUT CONDITIONS, FOR UP TO 3
25 YEARS. A WAIVER UNDER SUBSECTION (2) MAY BE RENEWED. TO MAINTAIN A
26 CONTINUOUS WAIVER STATUS, AN APPLICANT FOR RENEWAL OF A WAIVER
27 UNDER SUBSECTION (2) MUST APPLY FOR A NEW WAIVER NOT LATER THAN 60

1 DAYS BEFORE THE EXPIRATION OF THE THEN-CURRENT WAIVER. THE DIRECTOR
 2 SHALL REVIEW EACH RENEWAL APPLICATION AND BASE HIS OR HER
 3 DETERMINATION ON THE MOST CURRENT INFORMATION AVAILABLE.

4 SEC. 16308. (1) A PERSON WHO VIOLATES SECTION 16303, 16305(1),
 5 (2), OR (4), OR 16306 IS RESPONSIBLE FOR A CIVIL FINE AS FOLLOWS:

6 (A) FOR A FIRST VIOLATION, NOT MORE THAN \$250.00.

7 (B) FOR A SECOND VIOLATION, NOT MORE THAN \$1,000.00.

8 (2) A VIOLATION DESCRIBED IN SUBSECTION (1) MAY BE PROSECUTED
 9 BY THE PROSECUTOR OF THE COUNTY WHERE THE VIOLATION OCCURRED OR BY
 10 THE ATTORNEY GENERAL. A CIVIL FINE UNDER SUBSECTION (1) SHALL BE
 11 DEPOSITED IN THE RECYCLING INITIATIVE FUND CREATED IN SECTION
 12 17711.

13 (3) A PERSON WHO VIOLATES SECTION 16303, 16305(1), (2), OR
 14 (4), OR 16306 A THIRD OR SUBSEQUENT TIME IS GUILTY OF A MISDEMEANOR
 15 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR A FINE OF
 16 NOT MORE THAN \$2,500.00, OR BOTH.

17 Enacting section 1. This amendatory act takes effect 90 days
 18 after the date it is enacted into law.

19 Enacting section 2. This amendatory act does not take effect
 20 unless all of the following bills of the 99th Legislature are
 21 enacted into law:

22 (a) Senate Bill No.____ or House Bill No.____ (request no.
 23 06918'18).

24 (b) Senate Bill No.____ or House Bill No.____ (request no.
 25 06918'18 a).

26 (c) Senate Bill No.____ or House Bill No.____ (request no.
 27 06918'18 b).