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


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.

The bill would allow a food vendor to dispense prepared food to a customer in a polystyrene foam food container in a city or county if that food vendor demonstrates to the satisfaction of the city or county that compliance with the requirements of the bill would impose an undue economic hardship, as defined. The bill would authorize a city or county to exempt the food vendor until January 1, 2017, or for a period of not more than one year from the date of the demonstration, and would allow a food vendor to reapply for additional one-year exemptions from the bill’s requirements.


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

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

Chapter 6.6. Polystyrene Foam Food Containers

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

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

(b) (1) “Polystyrene foam food container” means a container made of blown polystyrene and expanded and extruded foam that are thermoplastic petrochemical materials utilizing the styrene monomer and the container meets all of the following conditions:
(A) Polystyrene is the sole resin used to produce the rigid plastic packaging container.
(B) The container is required to be labeled with a “6” pursuant to subdivision (a) of Section 18015.
(C) The container is used, or is intended to be used, to hold prepared food.
(2) A polystyrene foam food container may be processed by a number of techniques, including, but not limited to, fusion of polymer spheres or expandable bead polystyrene.
(3) Polystyrene foam may also be referred to as Styrofoam\textsuperscript{TM}, a Dow Chemical Company trademarked form of polystyrene foam insulation.
(4) A polystyrene foam food container includes, but is not limited to, a cup, bowl, plate, tray, or clamshell container that is intended for single use.
(c) (1) “Food vendor” means a food facility, as defined in Section 113789 of the Health and Safety Code, including, but not limited to, a restaurant or retail food and beverage vendor located or operating within the state.
(2) A food vendor also includes, but is not limited to, an itinerant restaurant, pushcart, vehicular food vendors, a caterer, a cafeteria, a store, a shop, a sales outlet, or other establishment, including a grocery store or a delicatessen.
(3) A food vendor does not include a correctional facility, including, but not limited to, a state prison, county jail, facility of the Division of Juvenile Justice, county- or city-operated juvenile facility, including juvenile halls, camps, or schools, or other state or local correctional institution.
(d) “Prepared food” means food, as defined in Section 109935 of the Health and Safety Code, including a beverage, that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption. Prepared food includes “ready-to-eat food,” as defined in Section 113881 of the Health and Safety Code.
(1) “Prepared food” does not include raw, butchered meats, fish, or poultry that is sold from a butcher case or a similar retail appliance.
(2) “Prepared food” may be eaten either on or off the premises, and includes takeout food.
(e) “Recycled” means the product or material is reused in the production of another product and is diverted from disposal in a landfill.

(f) “Undue economic hardship” means a situation unique to a food vendor in which there are no reasonable alternatives to polystyrene foam food containers in use by that food vendor and compliance with Section 42392 would cause significant economic hardship to that food vendor.

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

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

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

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

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

(1) The city elects to adopt an ordinance establishing a recycling program for polystyrene foam food containers for which the city makes a finding, by a majority vote of the city council at a public hearing, that, based on empirical data, at least 60 percent of the polystyrene foam food containers generated annually in the city will be recycled by that program.
(2) The county elects to adopt an ordinance establishing a recycling program for polystyrene foam food containers for which the county makes a finding, by a majority vote of the board of supervisors at a public hearing, that, based on empirical data, at least 60 percent of the polystyrene foam food containers generated annually in the county will be recycled by that program.

(b) If a city or county elects to adopt an ordinance pursuant to this section, the ordinance shall be operative for no more than five years, and the city or county may elect to readopt the ordinance continuously for an operative period not to exceed five years if, at the time of adoption, the city or county demonstrates with empirical data that the ordinance is achieving the goal of recycling at least 60 percent of the polystyrene foam food containers generated annually in its jurisdiction.

42394.5. (a) A food vendor may dispense prepared food to a customer in a polystyrene foam food container in a city or county if that food vendor demonstrates to the satisfaction of the city or county that compliance with Section 42392 will impose an undue economic hardship. A city or county may exempt the food vendor pursuant to this subdivision from the requirements of Section 42392 until January 1, 2017, or not more than one year from the date of the demonstration, whichever date is later.

(b) A food vendor granted an exemption pursuant to subdivision (a) may reapply to the city or county prior to the expiration of the exemption.

(c) The city or county may grant additional exemptions, each exemption not to exceed one year, from the requirements of Section 42392, if the food vendor demonstrates, at the time of application, to the satisfaction of the city or county, continued undue economic hardship.

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

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