SENATE DOCKET, NO. 2373 FILED ON: 1/17/2025

SENATE . . . . . No. 629

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to reduce polystyrene in the environment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Jason M. Lewis	*Fifth Middlesex*	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*1/23/2025*

SENATE DOCKET, NO. 2373 FILED ON: 1/17/2025

SENATE . . . . . No. 629

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 629) of Jason M. Lewis and Joanne M. Comerford for legislation to reduce the use of polystyrene, opting for reusable alternatives to protect the environment. Environment and Natural Resources.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act to reduce polystyrene in the environment.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after chapter 21O the following chapter:-

Chapter 21P.

Section 1. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Disposable Food Service Ware" shall mean single-use or disposable products for heating, storing, packaging, serving, consuming, or transporting prepared or ready-to-consume food or beverages including, but not limited to, bowls, plates, trays, cartons, cups, lids, hinged or lidded containers, spoons, forks and knives. This includes any containers used by food establishments to heat, cook, or store food or beverages prior to serving, regardless of whether

such containers are used to serve such food or beverages. Disposable Food Service Ware also includes any such implements sold by Retail Establishments to consumers for personal use.

"Foam Polystyrene" shall mean polystyrene in the form of a foam or expanded material, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

"Food Establishment" shall mean any operation that serves, vends or otherwise provides food or other products to third-parties for consumption and/or use on or off the premises, whether or not a fee is charged, but not including the service of food within a home or other private setting. Any facility requiring a food permit in accordance with the Massachusetts State Food Code, 105 CMR 590.000, et seq. and/or regulations of the Board of Health shall be considered a "food establishment" for purposes of this chapter.

"Health Agent" shall mean the Health Agent for the city or town of the facility, or his/her designee.

"Packing Material" shall mean material used to hold, cushion, or protect items packed in a container for shipping transport or storage.

"Prepared Food" shall mean food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared (collectively "prepared") for individual customers or consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, seafood, and/or poultry.

“Polystyrene” shall mean a synthetic polymer produced by polymerization of styrene monomer. Polystyrene includes both “Foam Polystyrene” and “Solid Polystyrene” as defined in this chapter. The International Resin Identification Code assigned to polystyrene materials is “6”. Polystyrene items may be identified by a "6" or "PS," either alone or in combination with other letters. The regulations and prohibitions relating to polystyrene in this law are intended to apply regardless of the presence or absence of an International Resin Identification Code or other identifying marks on the item.

“Retail Establishment” shall mean a store or premises engaged in the retail business of selling or providing merchandise, goods, groceries, prepared take-out food and beverages for consumption off-premises or the serving of an item directly to customers at such store or premises, including, but not limited to, grocery stores, department stores, pharmacies, convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including farmers markets and public markets; provided, however, that a “retail establishment” shall also include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable roadside stand used by a person from which to engage in such business directly with customers and business establishments without a storefront, including, but not limited to, a business delivering prepared foods or other food items, web-based or catalog business or delivery services used by a retail establishment; provided further, that a “retail establishment” shall include a non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type commercial retail businesses, whether or not for profit when engaging in such activity.

“Solid Polystyrene” shall mean polystyrene, including clear (oriented) polystyrene, produced in a rigid form with minimal incorporation of air or other gas. Solid polystyrene is also referred to as ‘rigid polystyrene’.

Section 2. Regulated Conduct

(a) One year after passage of this Act, no Food Establishment in the Commonwealth of Massachusetts may use, sell, offer for sale, or otherwise distribute disposable food service ware made from foam polystyrene or solid polystyrene.

(b) One year after passage of this Act, no Retail Establishment in the Commonwealth of Massachusetts may sell, offer for sale, or otherwise distribute: 1. disposable food service ware made from foam polystyrene or solid polystyrene 2. meat trays, fish trays, seafood trays, vegetable trays, or egg cartons made in whole or in any part with foam polystyrene or solid polystyrene 3. distributing packing materials, including packing peanuts, other loose fill packaging and shipping boxes made in whole or in any part with foam polystyrene. 4. coolers, ice chests, or similar containers; pool or beach toys; and dock floats, mooring buoys, or anchor or navigation markers, which are made in whole or in any part with foam polystyrene that is not wholly encapsulated within a more durable material.

(c) For the purposes of Section 2(b)(3), ‘distributing packing material’ does not include: 1. Re-using packing materials for shipping, transport, or storage within the same distribution system, where the packing materials are not sent to a customer or end user. 2. Receiving shipments within the Commonwealth that include polystyrene foam used as a packing material, provided that the goods were not packaged or repackaged within the Commonwealth of Massachusetts.

Section 3. Exemption

(a) Nothing in this chapter shall prohibit individuals from using disposable food service ware or other items made of polystyrene purchased outside the Commonwealth of Massachusetts for personal use.

(b) Prepared food packaged outside the Commonwealth of Massachusetts is exempt from the provisions of this chapter, provided that it is sold or otherwise provided to the consumer in the same disposable food service ware in which it was originally packaged, and that the prepared food has not been altered or repackaged.

(c) The Commonwealth of Massachusetts Department of Environmental Protection or the Board of Health of the city or town in which the food or retail establishment is located may exempt a food establishment or retail establishment from any provision of this chapter for a period of up to six months upon written application by the owner or operator of that establishment. No exemption will be granted unless the Department of Environmental Protection or the Board of Health finds that (1) strict enforcement of the provision for which the exemption is sought would cause undue hardship; or (2) the food establishment or retail establishment requires additional time in order to draw down an existing inventory of a specific item regulated by this chapter. For purposes of this chapter, “undue hardship” shall mean a situation unique to a food establishment or retail establishment in which there are no reasonable alternatives to the use of materials prohibited by this chapter, and that compliance with this chapter would create significant economic hardship for the Establishment

Section 4. Enforcement

Health Agents of the cities and towns of the Commonwealth of Massachusetts shall also have the authority to enforce this chapter. This chapter may be enforced through any lawful means in law or in equity, including but not limited to, noncriminal disposition pursuant to G.L. c. 40 § 21D. The town or city may enforce this chapter or enjoin violations thereof through any lawful process or combination of processes, and the election of one remedy by the town or city shall not preclude enforcement through any other lawful means.

Violations of this chapter are punishable by a fine of up to $500 per violation. Each successive day of noncompliance will count as a separate violation.

If non-criminal disposition is elected, then any Food or Retail Establishment that violates any provision of this chapter shall be subject to the following penalties: (i) first offense: written warning;(ii) second offense: $250 penalty, and (iii) third and each subsequent offense: $500 penalty.

Section 5. Regulations

The Board of Health may adopt and amend rules and regulations to effectuate the purposes of this chapter.

Section 6. Interaction with Other Laws

In the case of a conflict between the requirements of this chapter and any other federal, state or local law concerning the materials regulated herein, the more stringent requirements shall apply.