

# HOUSE BILL NO. 5006

September 24, 2019, Introduced by Reps. Rabhi, Hood, Pohutsky, LaGrand, Pagan, Haadsma, Brixie, Wittenberg, Kuppa, Lasinski, Sabo, Sowerby, Cynthia Johnson, Love, Warren, Stone, Anthony, Gay-Dagnogo and Peterson and referred to the Committee on Natural Resources and Outdoor Recreation.

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:



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

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

6 (c) "Department" means the department of environment, Great  
7 Lakes, and energy.

8 (d) "Director" means the director of the department, or his or  
9 her designee.

10 (e) "Distribute" means to sell, offer for sale, or, for  
11 compensation, transfer possession of an item, whether as a separate  
12 transaction or as part of the sale, offer for sale, or, for  
13 compensation, transfer of possession of another item.

14 "Distribution" has an equivalent meaning.

15 (f) "Egg carton" means a carton for raw eggs sold to consumers  
16 from a refrigerator case or similar retail appliance.

17 (g) "Food service ware" means a container, bowl, plate, tray,  
18 cup, lid, or other similar item that is designed for 1-time use for  
19 prepared food, including take-out food or leftovers from a  
20 partially consumed meal prepared by a food vendor. Food service  
21 ware does not include an item composed entirely of aluminum or  
22 include a cooler or ice chest.

23 (h) "Food vendor" means a person that sells prepared food at  
24 retail at a restaurant, mobile facility, grocery store, shop,  
25 delicatessen, or other establishment in this state.

26 (i) "Meat and fish tray" means a tray for raw meat, fish, or  
27 poultry sold to a consumer from a refrigerator case or similar  
28 retail appliance.

29 (j) "Packing material" means material used to hold, cushion,



1 or protect an item packed in a container for shipping, transport,  
2 or storage.

3 (k) "Polystyrene foam" means blown polystyrene and expanded  
4 and extruded foam that is a thermoplastic petrochemical material  
5 utilizing a styrene monomer and processed by a technique such as  
6 fusion of polymer spheres, injection molding, foam molding, and  
7 extrusion-blown molding.

8 (l) "Polystyrene food service ware" means food service ware  
9 made, in whole or in part, from polystyrene foam.

10 (m) "Prepared food" means food or a beverage that is packaged,  
11 cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or  
12 otherwise prepared for an individual consumer and is intended to be  
13 consumed without further processing.

14 (n) "State contractor or lessee" means a person that has a  
15 contract with this state for public works or improvements to be  
16 performed, for a franchise, concession, or lease of property, for  
17 grant money, or for goods, services, or supplies to be purchased at  
18 the expense of this state or to be paid out of money deposited in  
19 the state treasury or out of trust money under the control of or  
20 collected by this state.

21 (o) "State facility" means any building, structure, or vehicle  
22 owned or operated by this state.

23 (p) "State facility food provider" means a person that  
24 provides, but does not sell, prepared food in a state facility.

25 Sec. 16303. A person who violates ~~this part~~ **section 16302** is  
26 guilty of a misdemeanor punishable by a fine of \$500.00 for each  
27 day ~~this part~~ **section 16302** is violated.

28 Sec. 16304. A person shall not distribute within this state  
29 any polystyrene food service ware.



1           Sec. 16305. (1) A food vendor shall not distribute prepared  
2 food in polystyrene food service ware.

3           (2) A state facility food provider shall not provide prepared  
4 food to a state facility in polystyrene food service ware.

5           (3) A state department shall not purchase, acquire, or use  
6 polystyrene food service ware for prepared food.

7           (4) A state contractor or lessee shall not use polystyrene  
8 food service ware for prepared food in a state facility while  
9 acting under a state contract or lease.

10           (5) Subsections (1) to (4) do not apply if the prepared food  
11 is packaged outside this state and is sold or otherwise provided to  
12 the consumer in the same food service ware in which it originally  
13 was packaged.

14           Sec. 16306. (1) A person shall not distribute within this  
15 state any of the following if made, in whole or in part, from  
16 polystyrene foam that is not completely encapsulated or encased  
17 within a more durable material:

18           (a) Packing material, including a shipping box or packing  
19 peanuts.

20           (b) A cooler, ice chest, or similar container.

21           (c) A pool or beach toy.

22           (d) A dock float, mooring buoy, or anchor or navigation  
23 marker.

24           (2) A person shall not distribute within this state a meat and  
25 fish tray or egg carton made, in whole or in part, from polystyrene  
26 foam, either as a separate item or as part of the sale to a  
27 consumer of raw eggs, meat, fish, or poultry, from a butcher case,  
28 refrigerator case, or similar retail appliance.

29           (3) For purposes of this section, distribution of packing



1 material includes using packing material to hold, cushion, or  
2 protect an item to be packed in a container for shipping,  
3 transport, or storage if the packing takes place within this state.

4 (4) For purposes of this section, distribution of packing  
5 material does not include any of the following:

6 (a) Receiving a shipment within this state that includes  
7 polystyrene foam used as packing material.

8 (b) Reusing packing material for shipping, transport, or  
9 storage within the same distribution system, if the packing  
10 material is not sent to a consumer or end user.

11 (c) Donating used packing material to another person, if the  
12 donor receives nothing of value for the donated packing material.

13 (d) Using packing material donated under subdivision (c) for  
14 shipping, transport, or storage, if the person using the packing  
15 material receives nothing of value for the donated packing  
16 material.

17 (5) Subsection (1) does not apply to packing material or a  
18 cooler, ice chest, or similar container used for temperature-  
19 controlled shipping for medical, veterinary, or research purposes,  
20 which may include, but is not limited to, the shipping of breast  
21 milk, medicine, an organ, tissue, an embryo, or gametes.

22 Sec. 16307. (1) Pursuant to the administrative procedures act  
23 of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may  
24 promulgate rules to implement this part.

25 (2) The director may waive the requirements of section 16304,  
26 16305(1), or 16306(1) or (2) under either of the following  
27 circumstances:

28 (a) The applicant for the waiver demonstrates to the  
29 director's satisfaction that a reasonably feasible alternative is



1 not available for a specific noncompliant product.

2 (b) The applicant for the waiver demonstrates to the  
3 director's satisfaction both of the following:

4 (i) That the applicant has a gross income of less than  
5 \$500,000.00 on the applicant's annual federal income tax filing for  
6 the most recent tax year.

7 (ii) That a suitable and reasonably affordable alternative is  
8 not available for a specific noncompliant product.

9 (3) The director may waive the requirements of section  
10 16305(2), (3), or (4) upon the request of a state officer,  
11 employee, or department if the applicant for the waiver  
12 demonstrates, to the director's satisfaction, either of the  
13 following:

14 (a) Strict application of the specific requirement would  
15 create an undue hardship or practical difficulty not generally  
16 applicable to other persons in similar circumstances.

17 (b) The waiver is otherwise justified.

18 (4) In addition to individual waivers provided for under  
19 subsections (2) and (3), the director may waive the requirements of  
20 section 16306(1) or (2) with respect to a particular category of  
21 uses of packing materials or of meat and fish trays or egg cartons  
22 made, in whole or in part, from polystyrene foam if the director  
23 determines that a suitable and reasonably affordable alternative to  
24 use of the noncompliant product is not feasible.

25 (5) To apply for a waiver under subsection (2) or (3), a  
26 person shall submit to the department a written application on a  
27 form approved by the director. The director may require the  
28 applicant to submit additional information or documentation to make  
29 a determination regarding the waiver requested. The director shall



1 review applications on a case-by-case basis.

2 (6) The director may grant a waiver under subsection (2), (3),  
3 or (4) in whole or in part, with or without conditions, for not  
4 more than 3 years. A waiver under subsection (2) may be renewed. To  
5 maintain a continuous waiver status, an applicant for renewal of a  
6 waiver under subsection (2) must apply for a new waiver not later  
7 than 60 days before the expiration of the current waiver. The  
8 director shall review each renewal application and base his or her  
9 determination on the most current information available.

10 Sec. 16308. (1) A person who violates section 16304, 16305(1),  
11 (2), or (4), or 16306 is responsible for a civil fine as follows:

12 (a) For a first violation, not more than \$250.00.

13 (b) For a second violation, not more than \$1,000.00.

14 (2) A violation described in subsection (1) may be prosecuted  
15 by the prosecuting attorney of the county where the violation  
16 occurred or by the attorney general. A civil fine under subsection  
17 (1) shall be deposited in the recycling initiative fund created in  
18 section 16309.

19 (3) A person who violates section 16304, 16305(1), (2), or  
20 (4), or 16306 a third or subsequent time is guilty of a misdemeanor  
21 punishable by imprisonment for not more than 6 months or a fine of  
22 not more than \$2,500.00, or both.

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

25 Enacting section 2. This amendatory act does not take effect  
26 unless Senate Bill No. \_\_\_\_ or House Bill No. 5007 (request no.  
27 03254'19) of the 100th Legislature is enacted into law.

