

1 H.373

2 Introduced by Representative Sheldon of Middlebury

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water quality; expanded polystyrene
6 foam

7 Statement of purpose of bill as introduced: This bill proposes to require that
8 when a person installs a buoy, dock, or floating structure on the waters of the
9 State, expanded polystyrene foam used for flotation shall be encapsulated by a
10 protective covering or shall be designed to prevent the expanded polystyrene
11 foam from disintegrating into the water. The bill also would prohibit a person
12 from selling, distributing, or using certain expanded polystyrene foam products
13 in or on the waters of the State.

14 An act relating to use of expanded polystyrene foam in waters of the State

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. FINDINGS

17 The General Assembly finds that:

18 (1) Expanded polystyrene foam, commonly known as Styrofoam, is a
19 petroleum-based product used in flotation devices because of its buoyancy.

1 (2) Expanded polystyrene foam is lightweight, floats, and can break
2 down into smaller pieces in water.

3 (3) The lifetime of expanded polystyrene foam in water is unknown, and
4 it is not readily recyclable. Experts argue that it is not biodegradable, and it
5 may never fully disappear from a water.

6 (4) Expanded polystyrene foam is manufactured using the chemical
7 styrene, which the U.S. Department of Health and Human Services' National
8 Toxicology Program lists as reasonably anticipated to be a human carcinogen.

9 (5) When exposed to the elements, polystyrene foam fragments into
10 small, nonbiodegradable pieces that are commonly ingested by wildlife
11 causing irreparable harm to the digestive system and death through starvation.

12 (6) The deterioration of polystyrene from larger floats such as docks,
13 buoys, or floating structures is known to break into beads and smaller pieces,
14 creating pollution along shorelines and requiring human removal at the
15 expense of public and private citizens.

16 (7) Measures such as encapsulating expanded polystyrene foam flotation
17 and prohibiting the use of open-cell (beaded) polystyrene can limit the
18 introduction of expanded polystyrene foam into the waters of the State.

19 (8) Numerous jurisdictions limit the use of expanded polystyrene foam
20 in or near public waters.

1 (9) To prevent the further pollution of waters of the State while also
2 reducing potential harmful effects to human health, wildlife, and the
3 environment, the General Assembly should limit the use of expanded
4 polystyrene foam in the waters of the State.

5 Sec. 2. 10 V.S.A. chapter 47, subchapter 2B is added to read:

6 Subchapter 2B. Expanded Polystyrene Foam

7 § 1321. DEFINITIONS

8 As used in this subchapter:

9 (1) “Buoy” means any float or marker that is attached to a mooring
10 anchor and either is suitable for attachment to a boat through the use of a
11 pennant or other device or facilitates the attachment of the boat to the mooring
12 anchor.

13 (2) “Dock” means an unenclosed structure secured to land, land under
14 waters, or a mooring or a floating structure that is used for mooring boats or
15 for recreational activities, such as a swimming, fishing, or sunbathing platform.

16 A dock includes a structure that is partially enclosed or has two or more levels.

17 (3) “Encapsulated” means a protective covering or physical barrier
18 between the polystyrene device and the water.

19 (4) “Expanded polystyrene foam” means a thermoplastic petrochemical
20 material utilizing the styrene monomer that is processed according to multiple

1 techniques, including fusion of polymer spheres, injection molding, form
2 molding, and extrusion-blow molding.

3 (5) "Floating structure" means a structure constructed on or in a water of
4 the State that is supported by flotation and is secured in place by a piling or
5 mooring anchor, including boathouses, fueling structures, floating homes,
6 marinas, walkways, or boarding platforms.

7 (6) "Mooring anchor" means any anchor or weight that is designed to:

8 (A) rest on the land under water or be buried in the land under water;

9 (B) be attached to a buoy or floating structure by a chain, rope, or
10 other mechanism; and

11 (C) be left in position permanently or on a seasonal basis.

12 § 1322. INSTALLATION, REPAIR, REMOVAL, AND SALE OF BUOYS,

13 DOCKS, OR FLOATING STRUCTURES

14 (a) Encapsulation required. When a person installs a buoy, dock, or
15 floating structure on the waters of the State, any expanded polystyrene foam
16 used for flotation shall be encapsulated by a protective covering or shall be
17 designed to prevent the expanded polystyrene foam from disintegrating into
18 the water.

19 (b) Prohibition; open-cell (beaded) polystyrene. No person shall use open-
20 cell (beaded) polystyrene for a buoy, dock, or floating structure on the waters
21 of the State.

1 (c) Methods of encapsulation.

2 (1) Encapsulation of a buoy, dock, or floating structure required under
3 subsection (a) of this section shall completely cover or be a physical barrier
4 between the expanded polystyrene foam and the water. Small gaps up to 0.75-
5 inch diameter ballast holes are permitted in the physical barrier or covering
6 provided they are 0.1 percent or less of the square footage of the buoy, dock, or
7 floating structure.

8 (2) All materials and methods of encapsulation shall provide an
9 effective physical barrier between the expanded polystyrene foam and the
10 water for a period not less than 10 years. Any fasteners used to hold
11 encapsulation materials together shall be effectively treated or be of a form
12 resistant to corrosion and decay.

13 (d) Repair. A person may repair and maintain the flotation of a dock, buoy,
14 or float only with an expanded submersible encapsulated polystyrene device
15 that meets the requirements of subsection (c) of this section.

16 (e) Removal from water. Unused or replaced polystyrene foam shall be
17 removed from the waters of the State and shall be recycled or disposed of in an
18 approved manner.

19 (f) Sale or distribution. No person may sell, offer for sale, or otherwise
20 distribute for compensation within the State dock floats, mooring buoys, or

1 anchor or navigation markers made, in whole or in part, from expanded
2 polystyrene foam that is:

3 (1) not wholly encapsulated or encased within a more durable material;

4 or

5 (2) open-cell (beaded) polystyrene, including materials that are
6 encapsulated and unencapsulated.

7 (g) Use or unencapsulated flotation devices. The use of all existing
8 unencapsulated expanded polystyrene foam flotation devices shall be deemed
9 nonconforming and prohibited on April 1, 2026 and shall thereafter be subject
10 to enforcement and removal.

11 § 1323. NUISANCE

12 In addition to the prohibitions set forth in section 1322 of this title, the use
13 of unencapsulated polystyrene as a flotation device in waters of the State,
14 including in any dock system, float, mooring system, or buoy, is declared a
15 nuisance and public health hazard, and may be prosecuted as provided in the
16 Vermont Revised Statutes.

17 § 1324. RULEMAKING

18 The Secretary may adopt rules to implement the requirements of this
19 subchapter, including:

20 (1) methods or materials for encapsulation of expanded polystyrene
21 foam; or

1 (2) exemptions from the requirements under this chapter to encapsulate
2 expanded polystyrene foam.

3 Sec. 3. APPROPRIATIONS

4 The amount of \$50,000.00 shall be appropriated from the General Fund to
5 the Department of Environmental Conservation for use by the Lakes and Ponds
6 Program for staffing requirements and distribution, if necessary, as grants to
7 lake and pond associations and similar groups to assist lakeshore residents,
8 businesses, and organizations with the replacement of existing unencapsulated
9 devices.

10 Sec. 4. EFFECTIVE DATES

11 (a) This section and Sec. 1 (findings) shall take effect on passage.

12 (b) Sec. 2 (expanded polystyrene foam requirements) and Sec. 3
13 (appropriations) shall take effect on April 1, 2024, except that 10 V.S.A.
14 § 1324 (ANR rulemaking) shall take effect on passage.