

HOUSE No. 3079

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to update the bottle deposit system and lower the cost of recycling beverage containers in the Commonwealth..

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

1 SECTION 1. PURPOSE: An economically sound and environmentally safe solid waste
2 management strategy includes components of conservation, source reduction, reuse, recycling
3 and litter control. In order to stimulate the construction of an appropriate infrastructure in an
4 integrated system of solid waste management, business and government must engage in
5 cooperative participation to accomplish these goals. The following statutory changes are
6 necessary in order to stimulate the creation of an appropriate solid waste management
7 infrastructure: expanded access and participation to comprehensive recycling programs,
8 development of comprehensive litter abatement programs, analysis and expansion of markets for
9 recyclable materials, and facilitation of expanded residential and commercial recycling
10 throughout the Commonwealth.

11 SECTION 2. Chapter 21A of the General Laws, as appearing in the 2006 Official
12 Edition, is hereby amended by inserting after Section 18A the following new section:—

13 Section 18B. The Secretary shall establish a program to determine the use of recyclable
14 materials in the Commonwealth. Such program shall include, but not be limited to, a method for
15 determining the percentage of recyclable material that is actually reused rather than discarded.
16 The Secretary shall file a report on the program annually with the Joint Committee on Natural
17 Resources and Agriculture, the Joint Committee on Energy, and the House and Senate
18 Committees on Ways and Means on or before December thirty-first of each year. The report
19 shall contain, but not be limited to, information concerning statewide use of recycled material in
20 the Commonwealth.

21 SECTION 3. Chapter 21H of the General Laws, as appearing in the 2006 Official
22 Edition, is hereby amended by inserting after Section 7 the following new section:—

23 Section 7A. The Department shall establish a program to increase recycling opportunities
24 at public facilities visited by at least five thousand individuals annually, including but not limited
25 to, stadiums, arenas, marinas, airports, theatres, and pedestrian walkways. The Department shall
26 work with MassPort, the Massachusetts Cultural Council, the State Racing Commission, the
27 Bureau of State Office Buildings, WasteCap of Massachusetts, and other entities in order to
28 establish a program. The Department shall file a report on the program annually with the Joint
29 Committee on Natural Resources and Agriculture, the Joint Committee on Energy, and the
30 House and Senate Committees on Ways and Means on or before December thirty-first of each
31 year. The report shall contain, but not be limited to, activities promoting recycling at public
32 facilities visited by at least five thousand individuals annually.

33 SECTION 4. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006
34 Official Edition is hereby amended by inserting after the first paragraph the following new
35 paragraph:—

36 The Commission shall include the development of recycling opportunities in all new
37 designs and redesigns of reservations.

38 SECTION 5. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006
39 Official Edition, is hereby amended by inserting after the second paragraph the following new
40 paragraph:—

41 The Commission shall establish a program to increase recycling opportunities in all
42 public reservations located within the metropolitan parks district. The Commission shall file a
43 report on the program annually with the Joint Committee on Natural Resources and Agriculture,
44 the Joint Committee on Energy, and the House and Senate Committees on Ways and Means on
45 or before December thirty-first of each year. The report shall contain, but not be limited to,
46 activities promoting recycling in all public reservations within the metropolitan parks district.

47 SECTION 6. Effective July 1, 2009, Chapter 94 of the General Laws is hereby amended
48 by inserting a new section 323F:—

49 Section 323F. Clean Environment Fund.

50 (a) There shall be established on the books of the Commonwealth a separate fund to be
51 known as the Clean Environment Fund (the “Fund”). Amounts deposited in said fund shall be
52 used, subject to appropriation, for programs described in paragraphs (c) through (f) of this
53 section.

54 (b) The Fund shall be governed by the Solid Waste Management Board (the “Board”).
55 The members of the Board shall consist of eleven persons appointed by the Governor, each of
56 whom shall be represented by the following: the Secretary of Environmental Affairs, five
57 representatives from the various segments of business and industry being assessed pursuant to
58 Section 323G of Chapter 94 (beverage container manufacturer, wholesaler/distributor, and
59 dealer), two representatives of the solid waste management and recycling industries, two
60 representatives of statewide environmental organizations, and one representative of organized
61 labor.

62 (c) Not more than sixty-five percent of amounts deposited in the Fund shall be used for
63 recycling collection programs including, but not limited to, municipal performance-based
64 incentive grants; unit-based pricing programs; municipal grants for recycling equipment and
65 technical assistance; private sector grants to qualified redemption centers in order to develop
66 innovative materials collection operations; and recycling media and education campaigns.

67 (d) Not more than fifteen percent of amounts deposited in the Fund shall be used for
68 recycling market development programs including, but not limited to, the recycling loan fund for
69 small recycling businesses; demonstration projects to process and manufacture recycled
70 products; recycled product purchasing by state agencies; municipal buy recycled programs; and
71 expanded source reduction initiatives.

72 (e) Not more than twenty percent of amounts deposited in the fund shall be used for litter
73 prevention and removal programs including, but not limited to, a state grant program for litter
74 pickup and removal; litter education programs for the public and for schools; research relating to

75 litter control; and enforcement of litter related laws in state/municipal-owned places and areas
76 that are accessible to the public.

77 (f) The amounts deposited in the Fund shall be used to promote and expand waste
78 diversion programs in the Commonwealth. This shall include, but not be limited to, enhancing
79 capabilities to recycle beverage containers in residential and commercial programs, improving
80 access to comprehensive recycling and composting programs, providing technical assistance to
81 residential and commercial recycling and composting programs, promoting reduction efforts,
82 improving markets for diverted material, and other such programs as determined by the Board.
83 The Fund shall also support comprehensive litter prevention and control measures including, at a
84 minimum, a statewide litter education and prevention campaign, promotion of voluntary and
85 public/private partnerships for litter control, and coordination of existing litter programs in the
86 state.

87 Subject to the approval of the Board, the Department of Environmental Protection shall
88 develop model municipal litter prevention and control programs. Monies distributed from the
89 Fund, to eligible municipalities, shall be used solely to supplement litter pickup and removal
90 activities. To be eligible for a grant under this section, a municipality must certify to the
91 department the adoption of at least one of the model programs.

92 A sum of not less than \$250,000 shall be allocated to WasteCap of Massachusetts on an
93 annual basis for developing programs that shall include, but are not limited to, enhancing the
94 ability of existing Massachusetts' manufacturers to utilize and process recovered materials;
95 assisting businesses and technologies in the Commonwealth; identifying support needs (i.e.,
96 research and technical assistance); and addressing waste reduction and recycling issues

97 confronted by businesses (i.e., Awareness Campaigns, Business Recycling Cooperatives, Buy
98 Recycled Programs).

99 (g) The Board shall submit to the Secretary of Administration and Finance, the House
100 and Senate Committees on Ways and Means, the Joint Committee on Energy, and the Joint
101 Committee on Natural Resources and Agriculture an annual report of its activities and an
102 evaluation of any and all programs entered into during the course of the fiscal year.

103 SECTION 7. Section 323F of Chapter 94 is hereby amended by adding the following
104 new section:—

105 323G. Assessment.

106 Between January 1, 2012 and December 31, 2012 an amount not to exceed five million
107 six hundred thousand dollars (\$5,600,000) shall be deposited into said Fund based on
108 assessments levied by the Commissioner of Revenue (“Commissioner”) as follows:

109 (a) Distributors/wholesalers shall contribute the sum of five million two hundred sixty-
110 four thousand dollars (\$5,264,000). The Commissioner shall compute the assessment for each
111 distributor/wholesaler of these beverages based on the distributor/wholesaler’s pro-rated share of
112 the total number of beverage containers sold within the state between January 1, 2010 and
113 December 31, 2010. The Commissioner shall undertake the necessary steps to obtain beverage
114 container sales information for this period, shall treat the information as confidential, and, by
115 June 30, 2011, shall compute each distributor/wholesaler’s assessment and notify each
116 distributor/wholesaler of his assessment.

117 (b) Beverage container manufacturers shall contribute the sum of two hundred eighty
118 thousand dollars (\$280,000). After consultation with the Can Manufacturers Institute, Glass
119 Packaging Institute, American Plastics Council, and the Steel Recycling Institute, the Board shall
120 file a report with the Commissioner, no later than June 30, 2009, detailing the assessment on
121 beverage container manufacturers.

122 (c) Dealers shall contribute the sum of fifty-six thousand dollars (\$56,000). This
123 assessment shall be in addition to any liability of dealers who may also be subject to assessments
124 as distributor/wholesalers under paragraph (a). After consultation with the Massachusetts Food
125 Association and the Massachusetts Package Store Association, the Board shall file a report with
126 the Commissioner, no later than June 30, 2011, detailing the assessment on dealers.

127 SECTION 8. The effective date of Sections 10 through 19 is January 1, 2012.

128 SECTION 9. Chapter 94 of the General Laws as appearing in the 2006 Official Edition,
129 is hereby amended by striking section three hundred and twenty-one and replacing it with the
130 following new section:—

131 Section 321. DEFINITIONS. The following definitions shall, unless the context clearly
132 requires otherwise, have the following meaning:

133 “Beverage,” carbonated, noncarbonated-alcoholic and noncarbonated-nonalcoholic
134 drinks intended for human consumption except milk and dairy derived products, infant formula,
135 or medical food.

136 “Beverage container,” any sealable bottle, can, jar, or carton, which is primarily
137 composed of glass, metal, plastic or any combination of those materials and is produced for

138 purpose of containing a beverage. This definition shall not include containers made of
139 biodegradable material.

140 “Beverage container manufacturer,” any person who engages in the manufacture or
141 fabrication of beverage containers.

142 “Carbonated beverage,” soda water or similar carbonated soft drinks, mineral water, and
143 beer and other malt beverages intended for human consumption.

144 “Dealer,” any person including any operator of a vending machine who sells, offers to
145 sell or engages in the sale of beverages in beverage containers to consumers in the state.

146 “Distributor/wholesaler,” any person who engages in the sale of beverages in beverage
147 containers directly to dealers in the state, including any manufacturer who engages in such sales.

148 “Infant formula,” any liquid food described or sold as an alternative for human milk for
149 the feeding of infants.

150 “Manufacturer,” any person who bottles, cans, or otherwise places beverages in beverage
151 containers for sale to a distributor/wholesaler or dealer.

152 “Medical food,” a food or beverage that is formulated to be consumed, or administered
153 enterally under the supervision of a physician, and that is intended for specific dietary
154 management of diseases or health conditions for which distinctive nutritional requirements,
155 based on recognized scientific principles, are established by medical evaluation. A “medical
156 food” is a specially formulated and processed product, for the partial or exclusive feeding of a
157 patient by means of oral intake or enteral feeding by tube, and is not a naturally occurring

158 foodstuff used in its natural state. “Medical food” includes any product that meets the definition
159 of “medical food” in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.360ee (b)(3)).

160 “Noncarbonated-alcoholic beverage,” any liquid intended for human consumption and
161 containing one-half of one percent or more of alcohol by volume at sixty degrees Fahrenheit,
162 including wine and wine-based drinks, spirits and spirit-based drinks and hard cider.

163 “Noncarbonated-nonalcoholic beverage,” fruit and vegetable juice, still water, iced tea,
164 sports drinks and other noncarbonated drinks intended for human consumption, except for milk
165 and dairy derived products, infant formula, or medical food.

166 “Sales within the state,” within the exterior limits of the state of Massachusetts and
167 includes all territory within these limits owned by or ceded to the United States of America.

168 SECTION 10. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
169 is hereby amended by striking section three hundred and twenty-two.

170 SECTION 11. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
171 is hereby amended by striking section three hundred and twenty-three.

172 SECTION 12. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
173 is hereby amended by striking section three hundred and twenty-three B.

174 SECTION 13. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
175 is hereby amended by striking section three hundred and twenty-three C and replacing it with the
176 following new section:—

177 Section 323C. Abandoned deposit amounts; determination.

178 Any amounts that are or should be in a bottler's or distributor's Deposit Transaction Fund
179 and that are in excess of the sum of (a) income earned on amounts in said account and (b) the
180 total amount of refund values received by said bottler or distributor for non-reusable beverage
181 containers shall be deemed to constitute abandoned deposit amounts. Income earned on said fund
182 may be transferred from said fund for use as funds of the bottler or distributor.

183 SECTION 14. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
184 is hereby amended by striking section three hundred and twenty-three D and replacing it with the
185 following new section:—

186 Section 323D. Transfer of abandoned deposit amounts.

187 Each bottler or distributor shall turn over to the commissioner of revenue any deposit
188 amounts deemed to be abandoned, pursuant to section three hundred and twenty-three C. Such
189 amounts may be paid from the Deposit Transaction Fund. Amounts collected by the
190 commissioner of revenue pursuant to this section shall be deposited into the Clean Environment
191 Fund, established pursuant to section three hundred and twenty-three F.

192 SECTION 15. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition
193 is amended by striking section three hundred and twenty-three E.

194 SECTION 16. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
195 is hereby amended by striking section three hundred and twenty-five.

196 SECTION 17. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
197 is hereby amended by striking section three hundred and twenty-six and replacing it with the
198 following section:—

199 Section 326. Administration; rules and regulations.

200 The secretary of environmental affairs shall administer the provisions of sections three
201 hundred and twenty-one, three hundred and twenty-three F, and three hundred and twenty-four.
202 Said secretary shall promulgate and from time to time revise rules and regulations to effectuate
203 the purposes of said sections.

204 The commissioner of revenue shall administer the provisions of sections three hundred
205 and twenty-three C, three hundred and twenty-three D, and three hundred and twenty-three G.
206 The collection of revenues pursuant to sections three hundred and twenty-three D and three
207 hundred and twenty-three G by said commissioner shall, to the extent consistent with this
208 chapter, be governed by the provisions of chapter sixty-two C.

209 The commissioner of revenue shall promulgate and from time to time revise rules and
210 regulations to effectuate the purposes of said sections. Said rules and regulations shall include a
211 provision to permit manufacturers, wholesalers, distributors and retailers to borrow, without any
212 interest charge, against their deposit transaction funds subject to such terms and conditions as the
213 commissioner deems appropriate.

214 Said secretary shall determine through rules and regulations which plastic bottles and
215 rigid plastic containers may be exempt from the labeling requirements of section three hundred
216 and twenty-three A, including but not limited to the following: (1) readily identifiable plastic
217 bottles and rigid plastic containers; (2) plastic bottles and rigid plastic containers for which there
218 is no technological capability for recycling, reclamation or reuse; and (3) plastic bottles and rigid
219 plastic containers for which recycling, reclamation or reuse is not economically feasible.

220 SECTION 18. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition,
221 is hereby amended by striking section three hundred and twenty-seven and replacing it with the
222 following section:—

223 Section 327. Enforcement; penalty; interest.

224 The attorney general and district attorneys shall enforce the provisions of sections three
225 hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer,
226 wholesaler, distributor, or retailer who knowingly violates any provisions of sections three
227 hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil
228 penalty for each violation of not more than one thousand dollars.

229 Any manufacturer, wholesaler, distributor or retailer failing to make full and timely
230 payments as required by section three hundred and twenty-three G shall pay interest on any
231 unpaid amounts at the rate of one and one-half percent for each month or part thereof until
232 payment is made in full.

233 SECTION 19. The Department of Environmental Protection shall conduct a study
234 pertaining to existing so-called single stream recycling programs within the commonwealth. The
235 study shall evaluate actual costs of these several programs, and actual saving experiences by
236 these communities in which they operate when compared to multi-stream systems utilized by
237 other local governments.

238 The Department of Environmental Protection shall report its findings to the Legislature's
239 Joint Committee on Utilities, Telecommunications and Energy, including recommendations for
240 encouraging and expanding so called single stream recycling programs throughout the
241 commonwealth.