

HOUSE No. 1763

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

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

PETITION OF:

NAME:

Colleen M. Garry

DISTRICT/ADDRESS:

36th Middlesex

HOUSE No. 1763

By Ms. Garry of Dracut, a petition (accompanied by bill, House, No. 1763) of Colleen M. Garry relative to the deposit system and recycling of containers under the "bottle law", so-called. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3079 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
17 Environment, Natural Resources and Agriculture, the Joint Committee on Telecommunications,
18 Utilities and Energy, and the House and Senate Committees on Ways and Means on or before
19 December thirty-first of each year. The report shall contain, but not be limited to, information
20 concerning statewide use of recycled material in 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 and other entities in order to establish a program. The
28 Department shall file a report on the program annually with the Joint Committee on
29 Environment, Natural Resources and Agriculture, the Joint Committee on Telecommunications,
30 Utilities and Energy, and the House and Senate Committees on Ways and Means on or before
31 December thirty-first of each year. The report shall contain, but not be limited to, activities
32 promoting recycling at public 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 Environment, Natural Resources
44 and Agriculture, the Joint Committee on Telecommunications, Utilities and Energy, and the
45 House and Senate Committees on Ways and Means on or before December thirty-first of each
46 year. The report shall contain, but not be limited to, activities promoting recycling in all public
47 reservations within the metropolitan parks district.

48 SECTION 6. Effective July 1, 2011, Chapter 94 of the General Laws is hereby amended
49 by inserting a new section 323F:—

50 Section 323F. Clean Environment Fund.

51 (a) There shall be established on the books of the Commonwealth a separate fund to be
52 known as the Clean Environment Fund (the “Fund”). Amounts deposited in said fund shall be

53 used, subject to appropriation, for programs described in paragraphs (c) through (f) of this
54 section.

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

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

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

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

75 pickup and removal; litter education programs for the public and for schools; research relating to
76 litter control; and enforcement of litter related laws in state/municipal-owned places and areas
77 that are accessible to the public.

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

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

93 (g) The Board shall submit to the Secretary of Administration and Finance, the House
94 and Senate Committees on Ways and Means, the Joint Committee on Telecommunications,
95 Utilities and Energy, and the Joint Committee on Environment, Natural Resources and

96 Agriculture an annual report of its activities and an evaluation of any and all programs entered
97 into during the course of the fiscal year.

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

100 323G. Assessment.

101 Between January 1, 2014 and December 31, 2014 an amount not to exceed five million
102 six hundred thousand dollars (\$5,600,000) shall be deposited into said Fund based on
103 assessments levied by the Commissioner of Revenue (“Commissioner”) as follows:

104 (a) Distributors/wholesalers shall contribute the sum of five million two hundred sixty-
105 four thousand dollars (\$5,264,000). The Commissioner shall compute the assessment for each
106 distributor/wholesaler of these beverages based on the distributor/wholesaler’s pro-rated share of
107 the total number of beverage container s sold within the state between January 1, 2012 and
108 December 31, 2012. The Commissioner shall undertake the necessary steps to obtain beverage
109 container sales information for this period, shall treat the information as confidential, and, by
110 June 30, 2013, shall compute each distributor/wholesaler’s assessment and notify each
111 distributor/wholesaler of his assessment.

112 (b) Beverage container manufacturers shall contribute the sum of two hundred eighty
113 thousand dollars (\$280,000). After consultation with the Can Manufacturers Institute, Glass
114 Packaging Institute, American Chemistry Council, and the Steel Recycling Institute, the Board
115 shall file a report with the Commissioner, no later than June 30, 2011, detailing the assessment
116 on beverage container manufacturers.

117 (c) Dealers shall contribute the sum of fifty-six thousand dollars (\$56,000). This
118 assessment shall be in addition to any liability of dealers who may also be subject to assessments
119 as distributor/wholesalers under paragraph (a). After consultation with the Massachusetts Chain
120 Pharmacy Council, the Massachusetts Food Association, the Massachusetts Package Store
121 Association, the Massachusetts Restaurant Association, the National Federation of Independent
122 Business, the New England Convenience Store Association and the Retailers Association of
123 Massachusetts, the Board shall file a report with the Commissioner, no later than June 30, 2013,
124 detailing the assessment on dealers.

125 SECTION 8. The effective date of Sections 10 through 19 is January 1, 2014.

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

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

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

134 “Beverage container,” any sealable bottle, can, jar, or carton, which is primarily
135 composed of glass, metal, plastic or any combination of those materials and is produced for
136 purpose of containing a beverage. This definition shall not include containers made of
137 biodegradable material.

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

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

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

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

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

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

150 “Medical food,” a food or beverage that is formulated to be consumed, or administered
151 enterally under the supervision of a physician, and that is intended for specific dietary
152 management of diseases or health conditions for which distinctive nutritional requirements,
153 based on recognized scientific principles, are established by medical evaluation. A “medical
154 food” is a specially formulated and processed product, for the partial or exclusive feeding of a
155 patient by means of oral intake or enteral feeding by tube, and is not a naturally occurring
156 foodstuff used in its natural state. “Medical food” includes any product that meets the definition
157 of “medical food” in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.360ee (b)(3)).

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

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

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

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

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

170 SECTION 12. 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 B.

172 SECTION 13. 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 C and replacing it with the
174 following new section:—

175 Section 323C. Abandoned deposit amounts; determination.

176 Any amounts that are or should be in a bottler’s or distributor’s Deposit Transaction Fund
177 and that are in excess of the sum of (a) income earned on amounts in said account and (b) the
178 total amount of refund values received by said bottler or distributor for non-reusable beverage

179 containers shall be deemed to constitute abandoned deposit amounts. Income earned on said fund
180 may be transferred from said fund for use as funds of the bottler or distributor.

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

184 Section 323D. Transfer of abandoned deposit amounts.

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

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

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

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

197 Section 326. Administration; rules and regulations.

198 The Secretary of the Executive Office of Energy and Environmental affairs shall
199 administer the provisions of sections three hundred and twenty-one, three hundred and twenty-

200 three F, and three hundred and twenty-four. Said Secretary shall promulgate and from time to
201 time revise rules and regulations to effectuate the purposes of said sections.

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

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

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

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

221 Section 327. Enforcement; penalty; interest.

222 The Attorney General and District Attorneys shall enforce the provisions of sections three
223 hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer,
224 wholesaler, distributor, or retailer who knowingly violates any provisions of sections three
225 hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil
226 penalty for each violation of not more than one thousand dollars.

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

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

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