

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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/20/2011</i>

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.

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

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

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

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

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

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

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

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

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

Section 323F. Clean Environment Fund.

(a) There shall be established on the books of the Commonwealth a separate fund to be 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

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

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

323G. Assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 323C. Abandoned deposit amounts; determination.

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

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

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

Section 323D. Transfer of abandoned deposit amounts.

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

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

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

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

Section 326. Administration; rules and regulations.

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

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

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

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

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

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

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.