

HOUSE No. 646

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack and Michael O. Moore

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 improving recycling in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>

HOUSE No. 646

By Representative Cusack of Braintree and Senator Moore, a joint petition (accompanied by bill, House, No. 646) of Mark J. Cusack, Michael Moore and others relative to the development of economically sound and environmentally progressive solid waste management strategies to improve recycling. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act improving recycling 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 progressive solid
2 waste management strategy includes components of conservation, source reduction,
3 reuse,
4 recycling and litter control. Businesses, consumers, and governments share responsibility
5 for
6 managing solid waste and all must cooperate in developing and maintaining the best
7 programs to
8 manage solid waste effectively and efficiently. These statutory changes are necessary to
9 ensure

10 effective solid waste management recovery systems in the Commonwealth including
11 expanded
12 access to and participation in comprehensive recycling programs at home, in public
13 places, and
14 in commercial settings; better recycling promotion and education efforts; incentives for
15 households and businesses to recycle more of their solid waste; and development of
16 comprehensive litter prevention and control programs.

17 SECTION 2. Chapter 21H of the General Laws is hereby amended by inserting after
18 section 7 the following section:-

19 Section 7A. The Department shall establish a program to increase recycling opportunities
20 at public facilities visited by at least five thousand individuals annually including, but not
21 limited
22 to, stadiums, arenas, marinas, airports, theaters, and parks. The Department shall work
23 with
24 MassPort, the Massachusetts Cultural Council, the State Racing Commission, the Bureau
25 of
26 State Office Buildings and other entities in order to establish a program. The Department
27 shall
28 file a report on the program annually with the Joint Committee on Environment, Natural

29 Resources and Agriculture, the Joint Committee on Telecommunications, Utilities and
30 Energy,
31 and the House and Senate Committees on Ways and Means on or before December
32 thirty-first of each year. The report shall, at a minimum, describe activities promoting recycling
33 at these public
34 facilities and quantify the impacts of the programs.

35 SECTION 3. Section 33 of chapter 92 of the General Laws, as appearing in the 2012
36 Official Edition, is hereby amended by inserting at the end thereof the following
37 paragraph:-

38 The division shall include the provision of recycling opportunities into all
39 new designs
40 and redesigns of reservations and shall establish a program to increase recycling
41 opportunities in
42 all reservations located within the urban parks district. The division shall file an annual
43 report on
44 activities promoting recycling with the Joint Committee on Environment, Natural
45 Resources and
46 Agriculture, the Joint Committee on Telecommunications, Utilities and Energy, and the
47 House

48 and Senate Committees on Ways and Means on or before December thirty-first of each
49 year.

50 SECTION 4. Effective July 1, 2015, Chapter 94 of the General Laws is hereby amended
51 by inserting after section 323 the following section:-

52 Section 323G. Municipal Recycling Enhancement Fund.

53 (a) There shall be established on the books of the Commonwealth a separate fund
54 to be known as the Municipal Recycling Enhancement Fund (the "Fund"). Amounts
55 deposited in

56 said fund shall be used, subject to appropriation, for programs described in paragraphs (c)
57 and
58 (d) of this section.

59 (b) The Fund shall be governed by the Solid Waste Management Board (the
60 "Board"). The members of the Board shall consist of eleven persons appointed by the
61 Governor

62 including: the Secretary of Energy and Environmental Affairs, five distributor/wholesaler
63 representatives

64 subject to the recycling fee pursuant to Section 323H of Chapter 94, two representatives
65 of the

66 solid waste management and recycling industries, two representatives of statewide

67 environmental organizations, and one representative of organized labor.

68 (c) Not more than eighty percent of amounts deposited in the Fund shall be used
69 to enhance recycling collection programs in the following three areas through a
70 combination of population-based and merit-based grants based on the recommendations of the
71 Board:

72 (i) Achieving parallel access to recycling statewide, whereby residents are
73 able to recycle materials in the same location and with the same ease that they are able to dispose
74 of materials. Program elements to achieve parallel access include recycling collection on the
75 same day as trash collection, use of large capacity covered carts for recyclables collection,
76 collection of a comprehensive list of materials that may be developed by the Board, single stream
77 collection of recyclables, and mandatory participation in recycling programs.

78 (ii) Adopting broad-based economic incentives to promote recycling
79 including the use of unit-based pricing for disposal (often called pay as you throw programs)
80 whereby residents pay a higher per unit price (per weight or per volume) for disposing of greater
81 quantities of material and embedding recycling charges in an overall waste management fee for
82 residents so recycling service is available to residents at no additional cost compared to disposal
83 service.

84 (iii) Developing effective outreach and education programs to promote
85 recycling on a consistent basis.

86 (d) Not more than twenty percent of amounts deposited in the fund shall be used

87 for litter prevention and removal programs including, but not limited to, a state grant
88 program for
89 litter pickup and removal; litter education programs for the public and for schools;
90 increased
91 access to recycling in public spaces; research relating to litter control; and enforcement of
92 litter
93 related laws in state/municipal-owned places and areas that are accessible to the public.
94 Funds
95 shall be distributed through a combination of population-based and merit-based grants
96 based
97 on the recommendations of the Board.

98 (e) The Board shall work with the Department to develop best practices and
99 standards to use as criteria for awarding grants and other funding for recycling and litter
100 control
101 programs and for documenting the impact of investments from the Fund.

102 (f) The Board shall submit to the Secretary of Administration and Finance, the
103 House and Senate Committees on Ways and Means, the Joint Committee on
104 Telecommunications, Utilities and Energy, and the Joint Committee on Environment,
105 Natural

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

109 SECTION 5. Section 323D of said chapter 94, as so appearing, is hereby amended by
110 inserting at the end thereof the following sentence:-

111 Effective July 1, 2015, 50% of amounts collected by the commissioner of revenue
112 pursuant to this section shall be deposited in the Municipal Recycling Enhancement Fund
113 established pursuant to section 323G.

114 SECTION 6. Said chapter 94 is hereby further amended by inserting after section 323F
115 the following section:-

116 323H. Assessment.

117 (a) Beginning July 1, 2016 all beverages in beverage containers sold in the

118 Commonwealth shall be subject to a 1¢ recycling fee. The fee shall be in effect for three
119 years to support the transition to a broader, more effective recycling system in the
120 Commonwealth. The fee shall end on June 30, 2019 and sales of beverages in beverage
121 containers will no longer be subject to the fee after that date.

122 (b) The recycling fee shall be levied on the sale of beverages in beverage
123 containers by a

124 distributor/wholesaler. Beverage containers sold for consumption outside of the
125 Commonwealth are exempt from the fee.

126 (c) The Commissioner of Revenue (“commissioner”) shall develop implementing
127 regulations for the collection and deposit of the recycling fee into the Fund including
128 procedures

129 for identifying and registering distributor/wholesalers subject to the fee and for quarterly
130 payment of the fee by distributor/wholesalers. The commissioner shall also develop an annual
131 payment procedure to reduce the administrative burden on smaller distributor/wholesalers. The
132 commissioner shall prepare an annual report at the conclusion of each fiscal year listing
133 registered distributor/wholesalers and reporting total Fund collections. Payment amounts from
134 individual distributor/wholesalers shall be considered confidential business information and not
135 disclosed by the Commissioner except in conjunction with audits conducted under (d).

136 (d) The Commissioner shall coordinate periodic audits of distributor/wholesalers
137 to ensure that appropriate records exist to document fee payments and that all
138 distributor/wholesalers subject to the fee are paying in to the Fund.

139 SECTION 7. Said chapter 94 is hereby further amended by striking out section 321 and
140 inserting in place thereof the following section:-

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

144 “Beverage,” any ready to drink beverage intended for human consumption
145 whether carbonated or noncarbonated and including both alcoholic and non-alcoholic drinks
146 except milk and dairy derived products, infant formula, or medical food.

147 ”Beverage container,” any sealed bottle, can, jar, or carton, which is primarily
148 composed of glass, metal, plastic, paper, or any combination of those materials, has a
149 capacity of
150 4 liters or less, and is produced for purpose of containing a beverage. Beverage container
151 does not include cups.

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

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

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

162 “Manufacturer,” any person who bottles, cans, or otherwise places beverages in
163 beverage

164 containers for sale to a distributor/wholesaler or dealer.

165 “Medical food,” a food or beverage that is formulated to be consumed, or
166 administered

167 enterally under the supervision of a physician, and that is intended for specific dietary
168 management of diseases or health conditions for which distinctive nutritional
169 requirements,

170 based on recognized scientific principles, are established by medical evaluation. A
171 “medical

172 food” is a specially formulated and processed product, for the partial or exclusive feeding
173 of a

174 patient by means of oral intake or enteral feeding by tube, and is not a naturally occurring
175 foodstuff used in its natural state. “Medical food” includes any product that meets the
176 definition

177 of “medical food” in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.360ee
178 (b)(3)).

179 “Sales within the state,” within the exterior limits of the state of Massachusetts
180 and

181 includes all territory within these limits owned by or ceded to the United States of
182 America.

183 SECTION 8. Section 322, 323 and 323B of said chapter 94 of the General Laws are
184 hereby repealed.

185 SECTION 9. Said chapter 94 is hereby further amended by striking out section
186 323C and

187 inserting in place thereof the following section:-

188 Section 323C. Abandoned deposit amounts; determination.

189 Any amounts that are or should be in a bottler's or distributor's Deposit
190 Transaction Fund

191 and that are in excess of the sum of (a) income earned on amounts in said account and (b)
192 the

193 total amount of refund values received by said bottler or distributor for non-reusable
194 beverage

195 containers shall be deemed to constitute abandoned deposit amounts. Income earned on
196 said fund

197 may be transferred from said fund for use as funds of the bottler or distributor.

198 SECTION 10. Said chapter 94 is hereby further amended by striking out section 323D

199 and inserting in place thereof the following section:-

200 Section 323D. Transfer of abandoned deposit amounts.

201 Each bottler or distributor shall turn over to the commissioner of revenue any
202 deposit
203 amounts deemed to be abandoned, pursuant to section three hundred and twenty-three C.
204 Such
205 amounts may be paid from the Deposit Transaction Fund. Amounts collected by the
206 commissioner of revenue pursuant to this section shall be deposited into the Municipal
207 Recycling
208 Enhancement Fund, established pursuant to section three hundred and twenty-three G.

209 SECTION 11. Section 323E and 325 of said chapter 94 of the General Laws are hereby
210 repealed.

211 SECTION 12. Said chapter 94 is hereby further amended by striking out section
212 326 and
213 inserting in place thereof the following section:-

214 Section 326. Administration; rules and regulations.

215 (a) The Secretary of the Executive Office of Energy and Environmental Affairs
216 shall
217 administer the provisions of sections three hundred and twenty-one, three hundred and
218 twenty-

219 three G (b) through (f), and three hundred and twenty-four. Said Secretary shall
220 promulgate and
221 from time to time revise rules and regulations to effectuate the purposes of said sections.
222 Said
223 Secretary shall determine through rules and regulations which plastic bottles and rigid
224 plastic
225
226 containers may be exempt from the labeling requirements of section three hundred and
227 twenty-
228 three A, including but not limited to the following: (1) readily identifiable plastic bottles
229 and
230 rigid plastic containers; (2) plastic bottles and rigid plastic containers for which there is
231 no
232 technological capability for recycling, reclamation or reuse; and (3) plastic bottles and
233 rigid
234 plastic containers for which recycling, reclamation or reuse is not economically feasible.

235 (b) The Commissioner of the Department of Revenue shall administer the
236 provisions of
237 sections three hundred and twenty-three C, three hundred and twenty-three D, three
238 hundred and

239 twenty-three G (a), and three hundred and twenty-three H. The collection of revenues
240 pursuant to
241 sections three hundred and twenty-three D and three hundred and twenty-three H by said
242 commissioner shall, to the extent consistent with this chapter, be governed by the
243 provisions of
244 chapter sixty-two C. The Commissioner of the Department of Revenue shall promulgate
245 and
246 from time to time revise rules and regulations to effectuate the purposes of said sections.

247 SECTION 13. Said chapter 94 is hereby further amended by striking out section 327 and
248 inserting in place thereof the following section:-

249 Section 327. Enforcement; penalty; interest.

250 The Attorney General and District Attorneys shall enforce the provisions of
251 sections three

252 hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer,
253 wholesaler, distributor, or dealer who knowingly violates any provisions of sections three
254 hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil
255 penalty for each violation of not more than one thousand dollars.

256 Any manufacturer, wholesaler, distributor, or retailer failing to make full and
257 timely

258 payments as required by section three hundred and twenty-three H shall pay interest on
259 any
260 unpaid amounts at the rate of one and one-half percent for each month or part thereof
261 until
262 payment is made in full.

263 SECTION 14. Sections 7 to 13 shall take effect on July 1, 2016.