

**HOUSE . . . . . No. 1744**

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**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 improving recycling in the Commonwealth.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/17/2017</i>

**HOUSE . . . . . No. 1744**

By Miss Garry of Dracut, a petition (accompanied by bill, House, No. 1744) of Colleen M. Garry for legislation to impose a recycling fee on beverages sold in beverage containers in the Commonwealth. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2880 OF 2015-2016.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

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, reuse,  
3 recycling and litter control. Businesses, consumers, and governments share responsibility for  
4 managing solid waste and all must cooperate in developing and maintaining the best programs to  
5 manage solid waste effectively and efficiently. These statutory changes are necessary to ensure  
6 effective solid waste management recovery systems in the Commonwealth including expanded  
7 access to and participation in comprehensive recycling programs at home, in public places, and  
8 in commercial settings; better recycling promotion and education efforts; incentives for  
9 households and businesses to recycle more of their solid waste; and development of  
10 comprehensive litter prevention and control programs.

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

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

23 SECTION 3. Section 33 of chapter 92 of the General Laws, as appearing in the 2010  
24 Official Edition, is hereby amended by inserting at the end thereof the following paragraph:-

25 The division shall include the provision of recycling opportunities into all new designs  
26 and redesigns of reservations and shall establish a program to increase recycling opportunities in  
27 all reservations located within the urban parks district. The division shall file an annual report on  
28 activities promoting recycling with the Joint Committee on Environment, Natural Resources and  
29 Agriculture, the Joint Committee on Telecommunications, Utilities and Energy, and the House  
30 and Senate Committees on Ways and Means on or before December thirty-first of each year.

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

33 Section 323G. Municipal Recycling Enhancement Fund.

34 (a) There shall be established on the books of the Commonwealth a separate fund to be  
35 known as the Municipal Recycling Enhancement Fund (the “Fund”). Amounts deposited in said  
36 fund shall be used, subject to appropriation, for programs described in paragraphs (c) and (d) of  
37 this section.

38 (b) The Fund shall be governed by the Solid Waste Management Board (the “Board”).  
39 The members of the Board shall consist of eleven persons appointed by the Governor including:  
40 the Secretary of Environmental Affairs, five distributor/wholesaler representatives subject to the  
41 recycling fee pursuant to Section 323H of Chapter 94, two representatives of the solid waste  
42 management and recycling industries, two representatives of statewide environmental  
43 organizations, and one representative of organized labor.

44 (c) Not more than eighty percent of amounts deposited in the Fund shall be used for  
45 recycling collection programs including, but not limited to, municipal performance-based  
46 incentive grants;

47 unit-based pricing programs; implementation of single-stream collection programs;  
48 municipal grants for recycling equipment and technical assistance; private sector grants to  
49 qualified redemption centers in order to develop innovative materials collection operations; and  
50 recycling media and education campaigns. Funds shall be distributed through a combination of  
51 population-based and merit-based formulas based on the recommendations of the Board.

52 (d) Not more than twenty percent of amounts deposited in the fund shall be used for litter  
53 prevention and removal programs including, but not limited to, a state grant program for litter  
54 pickup and removal; litter education programs for the public and for schools; increased access to

55 recycling in public spaces; research relating to litter control; and enforcement of litter related  
56 laws in state/municipal-owned places and areas that are accessible to the public. Funds shall be  
57 distributed through a combination of population-based and merit-based formulas based on the  
58 recommendations of the Board.

59 (e) The Board shall work with the Department to develop best practices and standards to  
60 use as criteria for awarding grants and other funding for recycling and litter control programs.

61 (f) The Board shall submit to the Secretary of Administration and Finance, the House and  
62 Senate Committees on Ways and Means, the Joint Committee on Telecommunications, Utilities  
63 and Energy, and the Joint Committee on Environment, Natural Resources and Agriculture an  
64 annual report of its activities and an evaluation of any and all programs entered into during the  
65 course of the fiscal year.

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

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

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

73 323H. Assessment.

74 (a) Beginning July 1, 2015 all beverages in beverage containers sold in the  
75 Commonwealth shall be subject to a 1¢ recycling fee.

76 (b) The recycling fee shall be levied on the sale of beverages in beverage containers by a  
77 distributor/wholesaler. Beverage containers sold for consumption outside of the Commonwealth  
78 are exempt from the fee.

79 (c) The Commissioner of Revenue (“commissioner”) shall develop implementing  
80 regulations for the collection and deposit of the recycling fee into the Fund including procedures  
81 for identifying and registering distributor/wholesalers subject to the fee and for quarterly  
82 payment of the fee by distributor/wholesalers. The commissioner shall also develop an annual  
83 payment procedure to reduce the administrative burden on smaller distributor/wholesalers. The  
84 commissioner shall prepare an annual report at the conclusion of each fiscal year listing  
85 registered distributor/wholesalers and reporting total Fund collections. Payment amounts from  
86 individual distributor/wholesalers shall be considered confidential business information and not  
87 disclosed by the Commissioner except in conjunction with audits conducted under (d).

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

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

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

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

98           “Beverage container,” any sealable bottle, can, jar, or carton, which is primarily  
99 composed of glass, metal, plastic, paper, or any combination of those materials, has a capacity of  
100 4 liters or less, and is produced for purpose of containing a beverage.

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

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

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

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

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

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

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

122           “Noncarbonated-nonalcoholic beverage,” fruit and vegetable juices, still, flavored, and  
123 enhanced waters, iced tea, sports drinks, and other noncarbonated drinks intended for human  
124 consumption, except for milk and dairy derived products, infant formula, or medical food.

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

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

129           SECTION 9. Said chapter 94 is hereby further amended by striking out section 323C and  
130 inserting in place thereof the following section:-

131           Section 323C. Abandoned deposit amounts; determination.

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

137           SECTION 10. Said chapter 94 is hereby further amended by striking out section 323D  
138 and inserting in place thereof the following section:-

139           Section 323D. Transfer of abandoned deposit amounts.



140 Each bottler or distributor shall turn over to the commissioner of revenue any deposit  
141 amounts deemed to be abandoned, pursuant to section three hundred and twenty-three C. Such  
142 amounts may be paid from the Deposit Transaction Fund. Amounts collected by the  
143 commissioner of revenue pursuant to this section shall be deposited into the Municipal Recycling  
144 Enhancement Fund, established pursuant to section three hundred and twenty-three G.

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

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

149 Section 326. Administration; rules and regulations.

150 (a) The Secretary of the Executive Office of Energy and Environmental Affairs shall  
151 administer the provisions of sections three hundred and twenty-one, three hundred and twenty-  
152 three G (b) through (f), and three hundred and twenty-four. Said Secretary shall promulgate and  
153 from time to time revise rules and regulations to effectuate the purposes of said sections. Said  
154 Secretary shall determine through rules and regulations which plastic bottles and rigid plastic  
155 containers may be exempt from the labeling requirements of section three hundred and twenty-  
156 three A, including but not limited to the following: (1) readily identifiable plastic bottles and  
157 rigid plastic containers; (2) plastic bottles and rigid plastic containers for which there is no  
158 technological capability for recycling, reclamation or reuse; and (3) plastic bottles and rigid  
159 plastic containers for which recycling, reclamation or reuse is not economically feasible.

160 (b) The Commissioner of the Department of Revenue shall administer the provisions of  
161 sections three hundred and twenty-three C, three hundred and twenty-three D, three hundred and

162 twenty-three G (a), and three hundred and twenty-three H. The collection of revenues pursuant to  
163 sections three hundred and twenty-three D and three hundred and twenty-three H by said  
164 commissioner shall, to the extent consistent with this chapter, be governed by the provisions of  
165 chapter sixty-two C. The Commissioner of the Department of Revenue shall promulgate and  
166 from time to time revise rules and regulations to effectuate the purposes of said sections.

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

169 Section 327. Enforcement; penalty; interest.

170 The Attorney General and District Attorneys shall enforce the provisions of sections three  
171 hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer,  
172 wholesaler, distributor, or dealer who knowingly violates any provisions of sections three  
173 hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil  
174 penalty for each violation of not more than one thousand dollars.

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

179 SECTION 14. Sections 7 to 13 shall take effect on July 1, 2015.