

HOUSE No. 3765

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes

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 of leadership by the state of Massachusetts to reduce single use plastics.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/15/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>1/31/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/2/2019</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>1/29/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2019</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>5/2/2019</i>

HOUSE No. 3765

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 3765) of Dylan A. Fernandes and others relative to single use plastics. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act of leadership by the state of Massachusetts to reduce single use plastics.

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. Chapter 7 of the General Laws is hereby amended by inserting after section
2 22O the following section:-

3 Section 22P. (a) For purposes of this section, the following terms shall have the following
4 meanings, unless the context clearly requires otherwise:

5 “Beverage container”, the individual or separate bottle, can, jar, carton, or other
6 receptacle, however denominated, in which a beverage is sold, and which is constructed of metal,
7 glass, or plastic, or other material, or any combination of these materials. Beverage container
8 does not include cups or other similar open or loosely sealed receptacles.

9 “Division”, operational services division.

10 “Food service facility” means an operation or business that is located in a state-owned
11 facility, operating on or acting as a concessionaire on state property, or under contract to provide

12 food service to a state agency and that stores, prepares, packages, serves, vends, or otherwise
13 provides prepared food. “Food service facility” may include, but is not limited to, a cafeteria,
14 commissary, restaurant, deli, store, shop, market, or mobile food unit.

15 “Food service product” means a product used for serving or transporting prepared, ready-
16 to-consume food or beverages, including, but not limited to, plates, cups, beverage containers,
17 bowls, trays, hinged or lidded containers, and single-use disposable items, such as straws, cup
18 lids, plastic bags, plastic water or soda containers, and utensils, or single-use disposable products
19 for prepackaged, sealed food that was produced by a third party off the premises of the food
20 service facility.

21 “Prepared food” means a food or beverage prepared for consumption on or off a food
22 service facility’s premises, using any cooking or food preparation technique. “Prepared food”
23 does not include prepackaged, sealed food that is mass produced by a third party off the premises
24 of the food service facility.

25 “State agency” shall include all executive offices, boards, commissions, agencies,
26 departments, divisions, councils, bureaus, and offices now existing and hereafter established.

27 (b) (1) The operational services division, in consultation with the department of
28 environmental protection, shall promulgate regulations to establish a process and develop criteria
29 for determining the types of food service products that are reusable, recyclable, compostable or
30 biodegradable in accordance with this subsection. The division may consult with local
31 governments and representatives of the solid waste industry, recycling industry, and compost
32 industry, and food service product manufacturers in determining if such products are reusable,
33 recyclable, compostable or biodegradable. To the extent possible, the division may utilize

34 resources and standards of the Environmental Purchasing Policy Program to establish such
35 criteria and make such determinations.

36 (2) As part of the regulatory process, the division shall seek input and feedback from
37 stakeholders including, but not limited to, food service product manufacturers, environmental
38 and public health organizations, and food service facilities.

39 (3) The regulations promulgated pursuant to this section shall be used for determining the
40 types of food service products that shall be included on the list developed by the division
41 pursuant to subsection (d). The regulations shall also specify how the list shall be maintained
42 and updated.

43 (4) For the purpose of determining if a type of food service product is reusable, the
44 division shall consider, at a minimum, the following criteria, which shall be included in the
45 regulations:

46 (A) whether the product is conventionally disposed of after a single use; and

47 (B) whether the product is sufficiently durable and washable to allow for multiple uses.

48 (5) For the purpose of determining if a type of food service product is recyclable, the
49 division shall consider, at a minimum, the following criteria, which shall be included in the
50 regulations:

51 (A) whether the type of food service product is eligible to be labeled as “recyclable” in
52 accordance with the Environmental Purchasing Policy Program.

53 (B) whether the type of food service product is regularly collected, separated, and
54 cleansed for recycling by recycling service providers;

55 (C) whether the type of food service product is regularly sorted and aggregated into
56 defined streams for recycling processes;

57 (D) whether the type of food service product is regularly processed and reclaimed or
58 recycled with commercial recycling processes;

59 (E) whether the food service product material regularly becomes feedstock that is used in
60 the production of new products; and

61 (F) whether the food service product material is recycled in sufficient quantity, and is of
62 sufficient quality, to maintain a market value.

63 (6) For the purpose of determining if a type of food service product is compostable, the
64 division shall consider, at a minimum, all of the following criteria, which shall be included in the
65 regulations:

66 (A) whether the food service product will, in a safe and timely manner, break down or
67 otherwise become part of usable compost that can be composted in a public or private aerobic
68 compost facility designed for and capable of processing post-consumer food waste and food-
69 soiled paper;

70 (B) whether food service products made from plastic are certified to meet the ASTM
71 International standard specification for compostable plastics or biodegradable plastics used as
72 coatings on paper and other compostable substrates, if applicable;

73 (C) whether the food service product is regularly collected and accepted for processing at
74 public and private compost facilities; and

75 (D) whether the type of food service product is eligible to be labeled as “compostable” in
76 accordance with a the Environmental Purchasing Policy Program or a third party certification
77 approved by the division.

78 Local governments, solid waste facilities, recycling facilities, and composting facilities
79 shall provide information requested by the division pursuant to clauses (4) to (6), inclusive, of
80 this subsection to the division.

81 (7) The division shall determine whether a single-use plastic food service product is
82 biodegradable; provided, however, that this determination shall not apply to single-use
83 disposable products for prepackaged, sealed food that was produced by a third-party off the
84 premises of the food service facility.

85 (8) In developing said regulations, the division may take into account potential impacts
86 on litter, public health and wildlife. In evaluating these impacts, the division may consider any of
87 the following:

88 (A) information on the volume of food service product litter obtained from state entities
89 or organizations that regularly conduct litter cleanup activities;

90 (B) litter reduction policies that would assist in state efforts to prevent ocean litter and
91 protect water resources;

92 (C) whether a chemical used in the manufacture of a type of food service product has
93 been listed on the toxic or hazardous substance list pursuant to section 9 of chapter 21I,
94 designated as a toxic or hazardous substance pursuant to section 4 of chapter 111F, or otherwise
95 identified by the commonwealth as a toxic or dangerous substance;

96 (D) existing scientific information available from the United States Food and Drug
97 Administration and the department of public health pertaining to the specific chemical used in
98 the manufacture of a type of food service product; and

99 (E) information on the impacts that improperly disposed of food service products may
100 have on wildlife, as well as policy recommendations, including waste collection infrastructure
101 improvements, that could be implemented at state facilities to reduce the impact on wildlife.

102 (c) The division may convene a stakeholder group to assist the division in implementing
103 this section that consists of, but is not limited to, litter prevention organizations, environmental
104 organizations, and trade associations representing food service product manufacturers or
105 suppliers.

106 (d) (1) The division shall develop a list of approved types of food service products that
107 shall be used by food service facilities and shall publish the list on its website. The division shall
108 only include on the list a type of food service product that is reusable, recyclable, or
109 compostable, as determined in accordance with the regulations adopted by the division pursuant
110 to this section; provided, however, that single-use plastic food service products, except for
111 single-use disposable products for prepackaged, sealed food that was produced by a third-party
112 off the premises of the food service facility, shall not be included on the list unless they are
113 determined to be biodegradable pursuant to clause (7) of subsection (c).

114 (2) The division shall regularly, but not less than once every 5 years, evaluate the list of
115 approved types of food service products to determine whether the types of approved food service
116 products are reusable, recyclable, compostable or biodegradable. After such evaluation, the
117 division may amend the list to remove or add a type of food service product based on whether it

118 is reusable, recyclable, compostable or biodegradable pursuant to this section and the regulations
119 promulgated pursuant to this section. The division shall post any updates to the list on its
120 website.

121 (3) The division may require a manufacturer that seeks to have included on the list a type
122 of food service product or material to submit data for purposes of the division's evaluation of
123 whether to include the type of food service product or material on the list.

124 (4) On and after the date the list of approved types of food service products is published
125 to the division website pursuant to clause (2), and except as provided in clause (5), a food service
126 facility shall not dispense food or beverages using a food service product unless the type of food
127 service product is on said list.

128 (5) A food service facility may use a food service product that is not on the list
129 maintained and updated by the division pursuant to this subsection only under either of the
130 following circumstances:

131 (A) the food service facility possessed that specific inventory of food service products
132 before the date the list was published or the list was updated to remove the type of food service
133 product, and the type of food service product was on the list when the food service facility took
134 possession of the food service product; or

135 (B) the food service facility acquired that specific inventory of food service products
136 pursuant to a contract entered into before the date the list was published or the list was updated to
137 remove the type of food service product, and the type of food service product was on the list
138 when the food service facility entered into the contract.

139 (6) No food service facility shall dispense single-use disposable bottles containing water
140 or soda, or single-use plastic bags; provided that this shall not apply to plastic bags that are
141 single-use disposable products for prepackaged, sealed food that was produced by a third-party
142 off the premises of the food service facility

143 (e) The division may establish a process to authorize regional use of food service
144 products that is consistent with the requirements and considerations of this section.

145 (f) For a contract between a food service facility and a state agency that is subject to this
146 section and that is entered into, renewed, or updated after the date the list pursuant to subsection
147 (d) is published, the food service facility shall ensure that the food service products subject to the
148 contract are in compliance with this section.

149 (g) (1) In order to ensure compliance with this section, a food service facility shall
150 provide, upon request by the division, reasonable and timely access, as determined by the
151 division, to contracts, invoices, and purchase orders between the food service facility and a food
152 service product manufacturer or distributor that include information demonstrating whether the
153 food service product material acquired by the food service facility is in compliance with this
154 section.

155 (2) A food service facility shall maintain any record related to the requirements of this
156 section for a minimum of 5 years.

157 (3) Records or information supplied to the division pursuant to this section that are, at the
158 time of submission, claimed to be trade secrets, proprietary, or confidential shall be kept
159 confidential and not considered a public record if the division determines that such records or

160 information, if made public, would divulge a trade secret; except to the extent necessary under
161 federal law.

162 (h) (1) The operational services division and any state agency that is entering into a
163 contract or agreement or amending an existing contract or agreement with a food service facility
164 shall ensure that the relevant contract or agreement complies with the requirements of this
165 section. No contract between a state agency and a food service facility entered into after the date
166 on which the list of approved food service products is published to the division's website
167 pursuant to subsection (d) shall authorize the use of food service products not on said list, except
168 as provided in clause (5) of said subsection (d).

169 (2) The operational services division shall do the following:

170 (A) publish, within 90 days of the date the list of approved types of food service products
171 is published pursuant to subsection (d), the requirements imposed on a food service facility
172 under this section in the division's contract user guide for foodservice supplies and equipment;

173 (B) ensure that any new, modified, or renewed agreements, contracts, or procurement
174 undertaken by a food service facility as part of a contract or agreement with the operational
175 services division or a state agency complies with the requirements of this section; and

176 (C) when reasonably feasible, provide a food service facility with which the division or a
177 state agency has a contract or agreement with resources to identify food service product
178 suppliers, distributors, brokers, or manufacturers that sell the types of food service products
179 approved by the division pursuant to this section.

180 (i) The operational services division shall take the appropriate steps, including, but not
181 limited to, revising relevant state contracting and procurement rules and procedures, in order to
182 fulfill the requirements of this section.

183 (j) The division may promulgate regulations as necessary to implement this section.

184 (k) This section does not preempt the authority of a city or town to adopt and enforce
185 additional food product ordinances, regulations, or policies that are more restrictive than the
186 applicable standards required by this section; provided that such ordinances, regulations or
187 policies shall not apply to food service facilities governed by this section.

188 SECTION 2. The operational services division, in consultation with the department of
189 environmental protection, shall promulgate regulations pursuant to section 22P of chapter 7 of the
190 General Laws by January 1, 2021.

191 SECTION 3. The operational services division shall publish the list of approved types of
192 food service products on its website pursuant to subsection (d) of section 22P of chapter 7 of the
193 General Laws within 90 days after the regulations promulgated pursuant to subsection (b) of said
194 section 22P are published.