

HOUSE No. 2830

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

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>Mark J. Cusack</i> | <i>5th Norfolk</i> | <i>1/16/2019</i> |
| <i>Patricia A. Haddad</i> | <i>5th Bristol</i> | <i>1/29/2019</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>1/29/2019</i> |
| <i>David M. Nangle</i> | <i>17th Middlesex</i> | <i>1/30/2019</i> |
| <i>Daniel M. Donahue</i> | <i>16th Worcester</i> | <i>2/1/2019</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> | <i>2/1/2019</i> |
| <i>Jonathan D. Zlotnik</i> | <i>2nd Worcester</i> | <i>2/1/2019</i> |

HOUSE No. 2830

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 2830) of Mark J. Cusack and others relative to the development of economically sound and environmentally progressive solid waste management strategies to improve recycling. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2686 OF 2017-2018.]

The Commonwealth of Massachusetts

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

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
20 Energy, and the House and Senate Committees on Ways and Means on or before December
21 thirty-first of each year. The report shall, at a minimum, describe activities promoting recycling
22 at these public facilities and quantify the impacts of the programs.

23 SECTION 3. Section 33 of chapter 92 of the General Laws, as appearing in the 2016
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, 2019, 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 Energy and Environmental Affairs, five distributor/wholesaler representatives
41 subject to the recycling fee pursuant to Section 323H of Chapter 94, two representatives of the
42 solid waste management and recycling industries, two representatives of statewide
43 environmental organizations, and one representative of organized labor.

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

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

53 (ii) Adopting broad-based economic incentives to promote recycling including the
54 use of unit-based pricing for disposal (often called pay as you throw programs) whereby

55 residents pay a higher per unit price (per weight or per volume) for disposing of greater
56 quantities of material and embedding recycling charges in an overall waste management fee for
57 residents so recycling service is available to residents at no additional cost compared to disposal
58 service.

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

61 (d) Not more than twenty percent of amounts deposited in the fund shall be used for litter
62 prevention and removal programs including, but not limited to, a state grant program for litter
63 pickup and removal; litter education programs for the public and for schools; increased
64 access to recycling in public spaces; research relating to litter control; and enforcement of
65 litter related laws in state/municipal-owned places and areas that are accessible to the public.
66 Funds shall be distributed through a combination of population-based and merit-based grants
67 based on the recommendations of the Board.

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

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

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

78 Effective July 1, 2019, 50% of amounts collected by the commissioner of revenue
79 pursuant to this section shall be deposited in the Municipal Recycling Enhancement Fund
80 established pursuant to section 323G.

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

83 323H. Assessment.

84 (a) Beginning July 1, 2020 all beverages in beverage containers sold in the
85 Commonwealth shall be subject to a 1¢ recycling fee. The fee shall be in effect for three years to
86 support the transition to a broader, more effective recycling system in the Commonwealth. The
87 fee shall end on June 30, 2023 and sales of beverages in beverage containers will no longer be
88 subject to the fee after that date.

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

92 (c) The Commissioner of Revenue (“commissioner”) shall develop implementing
93 regulations for the collection and deposit of the recycling fee into the Fund including procedures
94 for identifying and registering distributor/wholesalers subject to the fee and for quarterly
95 payment of the fee by distributor/wholesalers. The commissioner shall also develop an annual
96 payment procedure to reduce the administrative burden on smaller distributor/wholesalers. The

97 commissioner shall prepare an annual report at the conclusion of each fiscal year listing
98 registered distributor/wholesalers and reporting total Fund collections. Payment amounts from
99 individual distributor/wholesalers shall be considered confidential business information and not
100 disclosed by the Commissioner except in conjunction with audits conducted under (d).

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

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

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

108 "Beverage," any ready to drink beverage intended for human consumption whether
109 carbonated or noncarbonated and including both alcoholic and non-alcoholic drinks except milk
110 and dairy derived products, infant formula, or medical food.

111 "Beverage container," any sealed bottle, can, jar, or carton, which is primarily composed
112 of glass, metal, plastic, paper, or any combination of those materials, has a capacity of 4 liters or
113 less, and is produced for purpose of containing a beverage. Beverage container does not include
114 cups.

115 "Dealer," any person including any operator of a vending machine, who sells, offers to
116 sell or engages in the sale of beverages in beverage containers to consumers in the state.

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

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

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

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

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

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

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

137 Section 323C. Abandoned deposit amounts; determination.

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

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

145 Section 323D. Transfer of abandoned deposit amounts.

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

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

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

155 Section 326. Administration; rules and regulations.

156 (a) The Secretary of the Executive Office of Energy and Environmental Affairs shall
157 administer the provisions of sections three hundred and twenty-one, three hundred and twenty-
158 three G (b) through (f), and three hundred and twenty-four. Said Secretary shall promulgate and

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

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

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

175 Section 327. Enforcement; penalty; interest.

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

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

184 SECTION 14. Sections 7 to 13 shall take effect on July 1, 2020.