

# HOUSE . . . . . No. 4851

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, June 8, 2022.

The committee on Environment, Natural Resources and Agriculture to whom was referred the petition (accompanied by bill, House, No. 878) of Michael S. Day and others relative to recycling costs, and the petition (accompanied by bill, House, No. 948) of Bradley H. Jones, Jr., and others for an investigation by a special commission (including members of the General Court) relative to implementing extended producer responsibility laws, reports recommending that the accompanying bill (House, No. 4851) ought to pass.

For the committee,

MINDY DOMB.

**HOUSE . . . . . No. 4851**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
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An Act to save recycling costs 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. Chapter 94 of the General Laws is hereby amended by inserting after  
2 section 329 the following sections:

3           Section 330. Definitions applicable to Secs. 330 to 345. In section three hundred and  
4 thirty to section three hundred and forty-five, inclusive, the following terms shall, unless the  
5 context clearly appears otherwise, have the following meanings:

6           "Alternative collection program", a program for the management of packaging material  
7 that is operated by an individual producer or group of producers and that has been approved by  
8 the department in accordance with section 338.

9           "Brand", a name, symbol, word or mark that identifies a product, rather than its  
10 components, and attributes the product to the owner of the brand.

11           "Collector", a municipality, private hauler, association, or other entity that collects solid  
12 waste from residential generators or schools.

13           “Committee”, the advisory committee as established by the department pursuant to  
14 section 342.

15           “Coordinating body”, the entity formed by producer responsibility organizations if more  
16 than one organization is formed, pursuant to section 332.

17           "Covered materials", any packaging material or paper products, regardless of  
18 recyclability or compostability, that are sold, offered for sale, or distributed to consumers in the  
19 state, including through an internet transaction.

20           “Covered material category”, the categories of covered materials as defined by the  
21 department pursuant to paragraph (d) of section 342.

22           “Department”, the department of environmental protection.

23           "Franchisee", a person that is granted a license by a franchisor to use the franchisor's  
24 trade name, service mark or related characteristic and to share in the franchisor's proprietary  
25 knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite  
26 period.

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28           "Franchisor", a person that grants to a franchisee a license to use the person's trade name,  
29 service mark or related characteristic and to share in the person's proprietary knowledge or  
30 processes pursuant to an oral or written arrangement for a definite or indefinite period.

31

32           “Material recovery facility” or “facility”, a facility that receives, processes, and sells or  
33 otherwise distributes post-consumer materials for recycling.

34           “Municipal solid waste”, any residential or commercial solid waste, as defined in 310  
35 CMR 19.006.

36           “Municipality”, a city, town, or regional association acting on behalf of a city or town.

37           “Needs assessment”, a statewide evaluation of current funding needs affecting recycling  
38 access and availability, the capacity and costs associated with the collection and transportation of  
39 recyclable material, the processing capacity, market conditions, and opportunities in the state and  
40 regionally for recyclable material, and consumer education needs with respect to recycling and  
41 reducing contamination in collected recyclable material.

42           "Packaging material", any part of a package or container, including material that is used  
43 for the containment, protection, handling, delivery, and presentation of a product that is sold,  
44 offered for sale, imported, or distributed in the state, including through internet transactions

45 "Packaging material" does not include:

46

47           (a) A discrete type of material, or a category of material that includes multiple discrete  
48 types of material, intended to be used for the long-term storage or protection of a durable product  
49 and that can be expected to be usable for that purpose for a period of at least 5 years; or

50           (b) A discrete type of material, or a category of material that includes multiple discrete  
51 types of material, that is a beverage container, as defined in section 321 of this chapter.

52           “Paper products”, paper that can or has been printed on including flyers, brochures,  
53 booklets, catalogues, greeting cards, telephone directories, magazines, paper used for copying,  
54 writing or any other general use. Paper products does not include:

55           (a) paper products that, by virtue of their anticipated use, could become unsafe or  
56 unsanitary to recycle; and

57           (b) any literary, text, reference, or other bound book.

58           (c) any newspaper.

59           "Producer", with respect to a covered material, means a party that has legal ownership of  
60 the brand of a product for sale, use, or distribution in the state, including online retailers who sell  
61 into the state, that utilizes covered material. For packaging, responsible parties shall be  
62 determined based on the following criteria: (a) A person who manufactures a product under the  
63 manufacturer’s own brand that uses covered material; (b) If subparagraph (a) does not apply, a  
64 person who is not the manufacturer of a product under the manufacturer’s own brand that uses  
65 covered material, but is the owner or licensee of a trademark under which a covered material is  
66 used in a commercial enterprise, sold, offered for sale or distributed in the state, whether or not  
67 the trademark is registered; or (c) If subparagraphs (a) and (b) do not apply, a person who  
68 imports the product that uses the covered material into the state for use in a commercial  
69 enterprise, sale, offer for sale or distribution in the commonwealth.

70           (d) the definition of “producer” includes a franchisor of a franchise located in the  
71 commonwealth but does not include the franchisee operating that franchise.

72 (e). the definition of “producer” does not include a nonprofit organization exempt from  
73 taxation under the United States Internal Revenue Code, Section 501(c)(3), and any entity  
74 exempted from the program under section 331 of this chapter.

75 "Producer responsibility fund" or "fund", a privately held account established and  
76 managed by the stewardship organization pursuant to section 337.

77 "Producer responsibility organization" or "organization", a not-for-profit entity formed by  
78 a group of producers and contracted by the department under section 332 to act as an agent on  
79 behalf of each producer to develop and implement a producer responsibility plan.

80 "Producer responsibility plan" or “plan”, a detailed plan that describes the manner in  
81 which producers shall comply with the requirements of secs. 330 to 345 and all regulations  
82 promulgated by the department pursuant to secs. 330 to 345.

83 "Packaging and paper products program" or “program”, the program implemented under  
84 secs. 330 to 345 by the organization to assess and collect payments from producers based on the  
85 type and weight of packaging material sold, offered for sale or distributed for sale in the State by  
86 each producer and to reimburse participating municipalities for certain incurred municipal  
87 recycling and waste management costs.

88 “Readily-recycled”, with respect to a covered material, that the type of packaging  
89 material or paper product, as annually determined by the department:

90

91 (a) can be sorted by entities that process recyclable material generated in the  
92 commonwealth; and

93

94 (b) has a consistent market for purchase, as based on data from the prior two (2) calendar  
95 years. For the purposes of this paragraph, "consistent market for purchase" means, with respect  
96 to a type of packaging material, that entities processing recyclable material are willing to  
97 purchase full bales of that type of fully sorted packaging material in quantities equal to or in  
98 excess of the supply of that fully sorted packaging material.

99 "Readily-recycled", does not include covered material categories or types that facilities  
100 accept in low quantities or sort out of material during additional processing steps; if facilities  
101 cannot aggregate or sell a full bale of a specific covered material category or type due to a lack  
102 of market or inability to feasibly separate, that covered material type is not readily-recyclable.  
103 Covered material categories or types shall not be considered readily-recyclable, recyclable,  
104 compostable, or reusable if they contain toxic substances as defined in this section.

105 "Recycling", to separate, dismantle or process the materials, components or commodities  
106 in covered materials for the purpose of preparing the materials, components or commodities for  
107 use or reuse in new products or components. "Recycling" does not include energy recovery or  
108 energy generation by means of combustion; pyrolysis, gasification and any other high-heat  
109 chemical conversion processes; or landfill disposal of discarded covered material or discarded  
110 product component materials.

111 "Residential", of a place where residents live, stay, or are cared for over a period of more  
112 than two full days and nights, including but not limited to single and multifamily homes,  
113 apartments, condominiums, congregate housing, public housing, mobile home parks,  
114 dormitories, assisted living residences, nursing homes, hospitals, camps and hotels.

115 “School”, a public, private, or charter school, including pre-schools, K-12 schools,  
116 colleges, and universities.

117 “Sustainable packaging trust” or “trust”, an expendable trust under control of the  
118 department, created under Chapter 10 section 35EEE of the Massachusetts General Laws, for the  
119 purpose of collecting funds for department administration of the packaging and paper products  
120 program or an alternative collection program, and for collecting fines related to the packaging  
121 and paper products program or an alternative collection program.

122 "Toxic substance", with respect to packaging material, means a chemical or chemical  
123 class identified by a state agency, federal agency, international intergovernmental agency,  
124 accredited research university, or other scientific evidence deemed authoritative by the  
125 department on the basis of credible scientific evidence as being one or more of the following:

126 (a) a chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant,  
127 immunotoxicant, neurotoxicant, endocrine disruptor.

128 (b) a chemical or chemical class that is persistent or bioaccumulative.

129 (c) a chemical or chemical class that may harm the normal development of a fetus or  
130 child or cause other developmental toxicity in humans or wildlife.

131 (d) a chemical or chemical class that may harm organs or cause other systemic toxicity.

132 (e) a chemical or chemical class that may have adverse air quality impacts, adverse  
133 ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

134 (f) the department has determined a chemical or chemical class has equivalent toxicity to  
135 the above criteria.



136 “Toxic substance”, for the purposes of secs. 330 to 345, includes the following chemicals  
137 or chemical classes: Per and Poly Fluor Alkyl Substances (PFAS); an ortho phthalate; a  
138 bisphenol compound; a halogenated, organophosphorus, organonitrogen, or nanoscale flame  
139 retardant chemical; Lead; Cadmium; Mercury; Hexavalent Chromium; and Formaldehyde.

140 “Waste disposal bans”, has the same meaning as in 310 CMR 19.000.

141 Section 331. Producer exemptions. Notwithstanding any provision of secs. 330 to 345 to  
142 the contrary, a producer is exempt from the requirements and prohibitions of sections 330 to 345  
143 in any calendar year in which the producer (a) realized less than \$1,000,000 in total gross  
144 revenue during the prior calendar year, or (b) the producer sold, offered for sale or distributed for  
145 sale in or into the commonwealth during the prior calendar year products contained, protected,  
146 delivered, presented or distributed in or using less than one ton of covered material in total.

147 Section 332. Producer responsibility organizations. To satisfy the requirements under  
148 secs. 330 to 345, producers of covered materials sold or distributed into the commonwealth shall,  
149 within 6 months following the enactment of this legislation, establish (a) producer responsibility  
150 organization(s) that shall act as an agent and on behalf of each producer to operate the packaging  
151 and paper products program. If more than one (1) producer responsibility organization is  
152 established with respect to a category or categories of covered materials, the producer  
153 responsibility organizations may establish a coordinating body to coordinate and manage those  
154 producer responsibility organizations, and conduct business between those producer  
155 responsibility organizations, collectors, and the department.

156 (a) If multiple producer responsibility organizations are formed, they must submit one  
157 single producer responsibility plan to the department and ensure seamless operation of the

158 packaging and paper products program, thereby assigning responsibility equitably among  
159 producer responsibility organizations and relieving the department of responsibility associated  
160 with coordinating multiple producer responsibility organizations.

161 (b) Any producer responsibility organization formed in compliance with secs. 330 to 345  
162 shall be established and operated as an organization described in section 501(c)(3) of the Internal  
163 Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

164 Section 333. Producer plan. Within eight (8) months of the promulgation  
165 of related regulations by the department pursuant to section 342 the producer responsibility  
166 organization(s) shall submit a plan for the establishment of the packaging and paper product  
167 program to the department for approval. With the exception of paragraph (h), the plan shall have  
168 a duration of five (5) years. The plan(s) must include, at a minimum:

169 (a) A description of how the producer responsibility organization will administer the  
170 program, including the mechanism or process, to be developed with input from producers, by  
171 which producers may request and receive assistance from the organization in the reporting of  
172 required information and guidance for covered material modifications that would reduce fee  
173 payments; and the mechanism or process, to be developed with input from collectors, by which  
174 participating collectors may request and receive assistance from the organization in the reporting  
175 of required information and guidance for recycling program modifications that would increase  
176 access to and participation in residential recycling programs.

177 (b) A description of how the organization intends to solicit and consider input from the  
178 advisory committee and other interested entities, including, but not limited to, producers,

179 collectors, environmental organizations, and waste and recycling entities, regarding the operation  
180 of the packaging and paper products program.

181 (c) A description of the funding mechanism covering the entire cost of the program,  
182 including how the organization intends to establish and manage the producer responsibility fund  
183 consistent with the requirements of sections 335 and 337, including, but not limited to: staffing  
184 the organization and coordinating body to manage the fund; a plan to ensure equity of access for  
185 financially or otherwise challenged municipal participants; technical support to producers and  
186 collectors regarding program requirements; administering and collecting payments to and  
187 reimbursements from the fund and the financial mechanisms, including investment types if any,  
188 the organization intends to use to manage monies within the fund.

189 (d) A proposed budget outlining the anticipated costs of operating the program, including  
190 identification of any start-up costs that will not be ongoing and a description of the method by  
191 which the organization intends to determine and collect producer payments during the start-up  
192 period of program operation, and to reimburse or require additional payments by those producers  
193 subsequent to the start-up period based on producer reporting of the actual amount of packaging  
194 material sold, offered for sale or distributed for sale in or into the commonwealth by each  
195 producer during the start-up period. The proposed budget should describe how the organization  
196 will maintain a financial reserve sufficient to operate the program in a fiscally prudent and  
197 responsible manner, such that it considers historical variations in market values of post-consumer  
198 packaging types. The proposed budget under this paragraph may overestimate the cost of  
199 operating the program during the start-up period of operation but must describe the method and  
200 basis for any overestimate.

201 (e) A proposal for how expenditures from the fund will be used for investments in public  
202 outreach, education, communication, and infrastructure enhancement in a way that increases  
203 access to recycling and reuse throughout the commonwealth, and how the organization's  
204 development of such investment proposals must incorporate input from producers, participating  
205 collectors, municipalities, environmental organizations, and waste and recycling entities. Public  
206 outreach, education, and communication shall:

207 (1) Promote the proper end-of-life management of covered materials.

208 (2) Provide information on how to prevent litter of covered materials.

209 (3) Provide recycling instructions that are, to the extent practicable; consistent statewide;  
210 easy to understand; easily accessible; and in compliance with the annually published list of  
211 readily recyclable materials under paragraph (c) of section 342.

212 (4) Provide for outreach and education that are; designed to achieve covered materials  
213 goals under paragraph (e) of this section, including the prevention of contamination of materials;  
214 coordinated across programs or regions to avoid confusion for consumers; and developed in  
215 consultation with local governments and other stakeholders.

216 (f) A description of how, through the proposed expenditures under paragraph (e), the  
217 organization intends to provide convenient and free consumer access to collection services or  
218 collection facilities for all residents in the Commonwealth, and how the organization intends to  
219 achieve and assist collectors and facilities in achieving a combined reduction and recycling rate,  
220 based on regular audits of inbound waste at facilities as described in paragraph (i) of this section  
221 and outbound tonnages of covered material from facilities as reported to the department pursuant  
222 to paragraph (f) of section 342, of no less than sixty-five (65) percent by weight by July 1, 2027,

223 no less than eighty (80) percent by weight by July 1, 2031, and no less than one hundred (100)  
224 percent by weight by July 1, 2035 of covered materials managed by the organization. The  
225 organization shall also provide a description of how it intends to achieve and assist collectors in  
226 achieving performance standards for each type of covered material as published annually by the  
227 department pursuant to paragraph (d) of section 342.

228 (g) A proposed schedule of minimum post-consumer recycled material content rate  
229 requirements for covered materials, including a description of how the organization intends to  
230 meet the proposed minimum post-consumer recycled material content rates. The minimum post-  
231 consumer recycled material content rates shall include each covered material category, and shall  
232 not be less than ten (10) percent of all material in each covered material category, by weight.

233 (h) A description of how the organization intends to use the materials cost differentiation  
234 system developed by the department and the annual schedule of adjustments under paragraphs  
235 (a) and (b) of section 342 to assess fees for producers of each type of covered materials, as  
236 defined by the department, in compliance with all applicable provisions of secs 330 to 345. The  
237 description must include a flat-rate fee schedule for producers generating between one (1) and  
238 fifteen (15) tons of covered materials annually. The organization shall develop an evaluation  
239 system for the fee structure, and shall annually evaluate, revise and submit an updated  
240 assessment schedule along with the annual report submitted to the department pursuant to section  
241 339.

242 (i) A description of how the organization intends to fund representative third-party,  
243 independent audits of both inbound and outbound recyclable material generated in the  
244 commonwealth that is processed and sold by facilities; waste characterizations of municipal solid

245 waste being disposed of in the commonwealth; and litter audits. The audits must be conducted at  
246 least annually, and must include:

247 (1) A description of the sampling techniques to be used in those audits, which must  
248 include random sampling.

249 (2) A description of how those audits, at a minimum, will be designed to solicit  
250 information regarding the extent to which recyclable material processed and sold by those  
251 facilities reflects the tons of each type of covered material recycled in the commonwealth and the  
252 ultimate state or country destination of and intended use for that material.

253 (3) Requirements regarding how the audits will be designed so that information obtained  
254 through the audit of one facility will not be used to infer information about a different facility  
255 that uses different processing equipment, different sorting processes or different staffing levels to  
256 conduct such processing.

257 (4) Requirements regarding how a facility will be allowed to request and receive an audit  
258 if it can credibly demonstrate that an audit result being applied to its material output is not  
259 representative of its current operations.

260 (5) For waste disposal audits, at a minimum, a description of the types and weight of  
261 packaging material in the disposal waste stream, and the percentage by weight and volume of the  
262 disposal waste stream that is comprised of covered materials.

263 (6) For litter audits, to the maximum extent practicable, a description of the packaging  
264 material type by weight, identification of producer, and the general description of where the litter  
265 is accumulating throughout the State.

266 (j) A description of how the plan addresses the needs identified in the most recently  
267 published needs assessment.

268 (k) Any additional information required by the department.

269 Section 334. Approval of plan; plan amendments; corrective actions, termination of plan.  
270 In accordance with the applicable provisions of secs. 330 to 345, the department shall review the  
271 producer responsibility plan and amendments to such plan submitted by the organization or  
272 coordinating body, and shall require the implementation of corrective actions by the organization  
273 to the packaging and paper products program. Following approval of the plan by the department  
274 under this section, the producer responsibility organization shall immediately begin  
275 implementation of the plan.

276 (a) The department shall review the producer responsibility plan submitted by the  
277 organization or coordinating body pursuant to section 333 and approve or deny the plan within  
278 ninety (90) days of receipt. The department shall approve the plan if the department determines  
279 that the plan meets the requirements of section 333 and is otherwise consistent with all  
280 applicable requirements of secs. 330 to 345 of this chapter. If the department approves the plan,  
281 the department shall transmit written notice of that approval to the organization. An approval  
282 under this section must terminate five (5) years from the date of that approval but may be  
283 extended for an additional five (5)-year period following the submission by the stewardship  
284 organization of an updated plan consistent with section 333 that is approved by the department  
285 consistent with this section. The organization or coordinating body must submit an updated plan  
286 no later than one hundred twenty (120) days prior to the date its current plan expires.

287 (b) If the department determines that a submitted plan fails to meet any applicable  
288 requirements of secs. 330 to 345, the department shall provide written notice to the organization  
289 describing the reasons for rejecting the plan. No later than forty-five (45) days after receiving  
290 written notice rejecting a submitted plan, the organization shall revise and resubmit the plan to  
291 the department. The department shall review the revised plan, decide whether to approve it and  
292 provide written notice of the department's decision within forty-five (45) days of receipt of the  
293 revised plan.

294 (c) The organization may propose modifications to the approved plan, provided the  
295 organization submits the proposed modifications to the department for review and consults the  
296 advisory committee as required under paragraph (d) of section 332. Not later than forty-five (45)  
297 days following receipt of proposed modifications, the department shall approve the modifications  
298 if the department determines the revision is in accordance with secs. 330 to 345. If the  
299 department determines the revision is not in accordance with secs. 330 to 345, the department  
300 shall communicate the determination to the organization, at which time the organization shall  
301 resubmit proposed modifications to the department for approval. If the department does not make  
302 a determination under this paragraph within forty-five (45) days of the receipt of a proposed  
303 modification, the modification shall be considered to be approved.

304 (d) If, based on its review of an organization's annual report required under section 339 or  
305 on a different basis, the department determines that the organization is not operating the  
306 packaging and paper product program in a manner consistent with its approved plan, or the  
307 provisions of this section, the department may require the organization to implement  
308 amendments to the plan or corrective actions to the program. If the organization fails to  
309 implement a department-required amendment to the plan or corrective action to the program



310 within the time frame for implementation required by the department, the department may take  
311 enforcement actions pursuant to section 343.

312           Section 335. Producer payments. In accordance with the provisions of this section and the  
313 regulations promulgated by the department, no later than thirty (30) days after the approval of the  
314 producer responsibility plan under section 334, and quarterly thereafter, a producer shall make  
315 payments to the organization to be deposited into the producer responsibility fund under section  
316 337, based on the amount of each type of covered material sold, offered for sale or distributed for  
317 sale in or into the commonwealth by the producer and not managed under an approved  
318 alternative collection program. The department shall promulgate regulations under section 342  
319 setting forth the manner in which such payments must be calculated. Payments must include a  
320 producer's share of administrative, enforcement, education and infrastructure costs, and must  
321 reflect the per ton costs associated with collection, processing, transportation and recycling or  
322 disposal of covered materials; the costs associated with increasing access to reuse and recycling  
323 of covered materials; and other criteria as determined by paragraph (b) of section 342. In total,  
324 payments made by producers to the organization shall be sufficient to cover all expenditures  
325 under section 337.

326           Section 336. Annual reporting by producers. Beginning no later than 180 days after the  
327 approval of the producer responsibility plan under section 334, and in conjunction with payments  
328 made pursuant to section 335, a producer shall annually report to an organization the total tons of  
329 each type of packaging material sold, offered for sale or distributed for sale in or into the  
330 commonwealth by the producer in the prior calendar year and the methods for determining the  
331 reported amounts; the characteristics of that packaging material that are relevant to the fee  
332 adjustment criteria as determined by the department by rule in accordance with paragraph (b),

333 section 342; and a list of all of the producer's brands associated with that packaging material. The  
334 advisory committee may (i) request additional data and information from the producer; and (ii)  
335 recommend amendments to the annual reporting requirements for producers.

336 Section 337. Producer responsibility fund; authorized expenditures. In accordance with  
337 the provisions of this section and the regulations promulgated by the department, the  
338 organization or coordinating body shall establish and manage a producer responsibility fund. The  
339 organization shall deposit into the fund all payments received from producers in accordance with  
340 section 335 and shall expend those funds for the following uses:

341 (a) To reimburse participating collectors in accordance with section 341.

342 (b) To fund the actual operating costs of the organization, which may not exceed the  
343 estimated operating costs indicated in the plan approved by the department pursuant to section  
344 341, and which must be verified through a third-party audit paid for by the stewardship  
345 organization.

346 (c) To pay into the sustainable packaging trust all applicable fees required by the  
347 department under section 342(e).

348 (d) To make investments in education and infrastructure that support the recycling of  
349 covered material in the commonwealth, which are directly supported by producer payments for  
350 covered materials and must be approved by the department prior to any such expenditures, and  
351 which must incorporate input from producers, facilities, and participating collectors. Of the  
352 expenditures from the producer responsibility fund for a fiscal year, the organization shall ensure  
353 that not less than two (2) percent is used for education and not less than eight (8) percent is used

354 for infrastructure described under this section and in compliance with the approved producer  
355 responsibility plan under section 334.

356 (1) The organization shall submit any proposed expenditure under this paragraph to the  
357 advisory committee for approval prior to making such expenditure.

358 (2) The department shall promulgate regulations setting approval criteria for the  
359 evaluation of proposed expenditures under this paragraph.

360 (3) The department shall approve or deny a proposed expenditure under this paragraph  
361 within 90 days of receipt of the proposal.

362

363 (e) To fulfill any other obligation required by the producer responsibility plan, including  
364 representative audits of covered materials from materials recovery facilities, solid waste  
365 facilities, and litter.

366 (f) Expenditures from the producer responsibility fund shall be used only for the uses  
367 described in this section; and shall not be used to pay penalties imposed under section 342, or  
368 any costs associated with litigation against the commonwealth.

369 (g) If for any reason secs 330 to 345 are repealed, or the producer responsibility  
370 organization ceases operation, the entire fund balance shall be transferred by the organization to  
371 the commonwealth of Massachusetts to be deposited into the sustainable packaging trust.

372

373           Section 338. Alternative collection program. In accordance with the requirements of this  
374 section and the regulations promulgated by the department, a producer or group of producers  
375 may develop and operate an alternative collection program to collect and manage a type or types  
376 of covered material sold, offered for sale or distributed for sale in or into the commonwealth by  
377 the producer or producers. A producer that manages a type of covered material under an  
378 approved alternative collection program through reduction, reuse, recycling may wholly or  
379 partially offset the producer's payment obligations under the packaging and paper product  
380 program with respect to that same type of covered material only.

381           (a) Once a producer responsibility organization or coordinating body has a plan approved  
382 by the department for the creation of a packaging and paper products program, a producer or  
383 group of producers seeking to implement an alternative collection program shall submit a  
384 proposal for the establishment of that program to the department for approval. The department  
385 shall provide an opportunity for public review and comment on the proposal or deny the proposal  
386 within ninety (90) days of receipt. The department may approve an alternative collection  
387 program for a term of five (5) years and, at the expiration of such term, the producer or group of  
388 producers operating the program may submit an updated proposal to the department for approval.

389           (b) In determining whether to approve a proposed alternative collection program, the  
390 department shall consider:

391           (1) Whether the alternative collection program will provide convenient, free, statewide  
392 collection opportunities for the types of packaging material to be collected under that program.

393           (2) To what extent the alternative collection program intends to manage those types of  
394 covered material to be collected under the program through reduction, reuse for an original

395 purpose, through recycling or through disposal at an incineration facility. The department may  
396 not approve an alternative collection program that proposes management of a covered material  
397 type through disposal at an incineration facility unless that covered material is not readily  
398 recyclable as defined by the department pursuant to section 342 and the program proposes a  
399 process to begin reuse or recycling of that type of covered material within a period of 3 years or  
400 less. The program shall ensure that a combined reduction and recycling rate is achieved of no  
401 less than sixty-five (65) percent by weight by July 1, 2027, no less than eighty (80) percent by  
402 weight by July 1, 2031, and no less than one hundred (100) percent by weight by July 1, 2035 of  
403 covered materials managed by the organization.

404 (3) Whether the education and outreach strategies proposed for the alternative collection  
405 program can be expected to significantly increase consumer awareness of the program  
406 throughout the commonwealth.

407 (4) How the alternative collection program intends to accurately measure the amount of  
408 each covered material type collected, reused, recycled, disposed at an incineration facility or  
409 otherwise managed under the program.

410 (5) To what extent the alternative collection program may: (i) disproportionately impact  
411 one community over another; (ii) impact environmental justice populations, as defined in section  
412 62 of chapter 30, and (iii) provide equitable regional access to the program.

413 (c) A proposed modification to an approved alternative collection program must be  
414 submitted to the department for written approval. The department shall approve or deny a  
415 proposed modification based on application of the criteria described in paragraph (b).

416 (d) A producer or producers managing an approved alternative collection program shall  
417 report annually and concurrent with the reporting required by section 339 to the organization and  
418 to the department the following information:

419 (1) The total tons of each type of covered material collected, reused, recycled, disposed at  
420 an incineration facility or otherwise managed under the alternative collection program in the  
421 prior twelve months, including a breakdown of the total tons of each type of material to be  
422 credited to each producer participating in the alternative collection program.

423 (2) A list of the collection opportunities in the commonwealth for the types of covered  
424 material managed under the alternative collection program that were made available in the prior  
425 twelve months.

426 (3) A description of the education and outreach strategies implemented by the alternative  
427 collection program in the prior calendar year to increase consumer awareness of the program  
428 throughout the commonwealth.

429 (4) Progress toward reducing the disposed tons of the material.

430 (5) Any additional information required by the department.

431 (e) No later than thirty (30) days after the approval of an alternative collection program  
432 under this section, and quarterly thereafter, a producer or producers participating in an approved  
433 alternative collection program shall make a payment into the sustainable packaging trust for the  
434 department's administrative costs of operating the program as determined by the department  
435 pursuant to section 342(f).

436 (f) If the department determines that an approved alternative collection program is not  
437 operating in a manner consistent with the proposal approved under this section or the provisions  
438 of this section, the department shall provide written notice to the producer or producers operating  
439 the alternative collection program regarding the nature of the deficiency, the actions necessary to  
440 correct the deficiency and the time by which such actions must be implemented. If the  
441 department determines that the producer or group of producers have failed to implement the  
442 actions described in the written notice within the required time frame, the department shall notify  
443 the producers or group of producers as well as the producer responsibility organization or  
444 coordinating body in writing that the producer or group of producers are ineligible to offset  
445 payment obligations under the packaging and paper product program based on covered material  
446 managed under the alternative collection program. The department may also bring enforcement  
447 actions against the producer or group of producers under section 343.

448 Section 339. Annual reporting by producer responsibility organization. The producer  
449 responsibility organization shall submit an annual report to the department on a regular schedule  
450 determined by the department for the preceding calendar year the program was in operation,  
451 which shall include:

452 (a) Contact information for the producer responsibility organization.

453 (b) A list of participating producers and the brands of products associated with those  
454 producers.

455 (c) The total amounts of each type of covered material sold, offered for sale or distributed  
456 for sale in or into the commonwealth by each participating producer as reported in accordance  
457 with section 336.

458 (d) As applicable, the total amount of each type of packaging material collected and  
459 managed by each participating producer through alternative collection programs approved by the  
460 department under section 338

461 (e) A complete accounting of payments made to and by the organization during the prior  
462 calendar year, as determined by an independent financial audit, as performed by an independent  
463 auditor, including information on how the organization determined the amount of such payments  
464 in conformance with regulations promulgated in accordance with section 342.

465 (f) A copy of the independent audit described in paragraph (e).

466 (g) A list of producers not participating in the program that are required to participate in  
467 the program and any product specific non-compliance, if known by the organization.

468 (h) A description of education and infrastructure investments made by the organization in  
469 prior calendar years and how those expenditures quantifiably increased access to recycling and  
470 reuse of covered materials throughout the commonwealth.

471 (i) An updated assessment schedule, as required under paragraph (h) of section 333.

472 (j) Results of representative inbound and outbound audits of recyclable material  
473 processed and sold by materials recycling facilities in the commonwealth, waste characterization  
474 of municipal solid waste being disposed of in the commonwealth, and litter audits.

475 (k) Progress toward any program goals determined in the producer responsibility plan.

476 (l) Any other information the department determines to be appropriate.



477           Section 340. Requirements for collector reimbursements. In accordance with the  
478 provisions of this section and the regulations promulgated by the department, a collector may  
479 elect to, but is not required to, participate in the program under secs. 330 to 345. All collectors  
480 shall provide collection and recycling of covered recyclables to all residential units and schools  
481 to which they provide service. The producer responsibility organization(s) or coordinating body  
482 shall reimburse participating collectors for incurred net costs associated with collection,  
483 processing, transportation and recycling or disposal of covered materials from all residential  
484 units and schools and shall ensure that, in the event no collector has elected to participate in the  
485 program in a given jurisdiction, convenient, equitable and free access to recycling services is  
486 available to residential units and schools within that jurisdiction. Participating collectors shall not  
487 charge fees to residential units or schools for reimbursable costs.

488           (a) To be eligible for reimbursement of costs under sections 341 as a participating  
489 collector, a collector must provide for the collection and recycling of covered materials that are  
490 generated by all residential and school generators using its service and that are readily recyclable  
491 as listed regularly by the department and that are not collected by an alternative collection  
492 program in accordance with section 338, must annually report to the organization or coordinating  
493 body all information necessary for the organization or coordinating body to determine the  
494 collector's incurred net costs associated with collection, processing, transportation and recycling  
495 or disposal of recyclable material and of municipal solid waste.

496           (b) A collector shall report the information described in paragraph (a) to the organization  
497 or coordinating body on a form provided by or approved by the department.

498 (c) Two or more municipalities, a regional refuse district or association, a municipally  
499 owned processing facility or quasi-municipal entity that manages materials on behalf of a  
500 municipality may elect to jointly report to the organization and jointly receive reimbursement  
501 payments from the stewardship organization.

502 Section 341. Calculation and disbursement of collector reimbursements. In accordance  
503 with the provisions of this section and regulations promulgated by the department, the  
504 organization or coordinating body shall calculate and make reimbursement payments from the  
505 fund to participating collectors to reimburse those collectors for incurred costs associated with  
506 collection, processing, transportation and recycling of covered materials from all residential units  
507 and schools.

508 (a) In accordance with the regulations promulgated by the department pursuant to section  
509 342, the organization or coordinating body shall determine the amount of reimbursements to  
510 participating collectors under this section based on the following information:

511 (1) Information provided by participating collectors to the organization or coordinating  
512 body in accordance with section 340 regarding the incurred net costs associated with collection,  
513 processing, transportation and recycling or disposal of recyclable material.

514 (2) Information provided to the department by facilities pursuant to paragraph (f) of  
515 section 342 and made available by the department to the organization or coordinating body,  
516 including the tons of readily recyclable material received by each facility from each collector, the  
517 tons of processed readily recyclable material sold by each facility, and any revenue received.

518 (3) Information obtained by the organization or coordinating body through the audits of  
519 facilities that process readily recyclable material generated in the commonwealth as required in  
520 the approved plan under section 333.

521 (4) Any other information specified by the department by rule.

522 (b) In accordance with regulations promulgated by the department, the organization or  
523 coordinating body shall use the information described in paragraph (a) to determine the total tons  
524 of each covered material type recycled by all collectors at each recycling establishment and the  
525 percentage of those total tons attributable to each participating collector. In the case of two or  
526 more municipalities that jointly send recyclable material to a recycling establishment, the  
527 organization shall assume that an equal amount of the jointly sent material is attributable to each  
528 resident of each municipality unless those municipalities by agreement identify an unequal per  
529 capita division of that jointly sent material for the purposes of this section.

530 Section 342. Administration and enforcement; rulemaking; fees; additional department  
531 responsibilities. The department shall administer and enforce this section and shall promulgate  
532 regulations as necessary to implement, administer and enforce this section. All regulations  
533 developed under this section shall be promulgated no later than six months after the passage of  
534 this act.

535 (a) The department shall establish an advisory committee that represents a range of  
536 interested and engaged persons relevant to the category of covered materials of the applicable  
537 program, including the commissioner of the department of environmental protection or a  
538 designee, one member who shall be appointed by the attorney general and who shall have  
539 expertise in consumer protection, and individuals representing producers, retailers, waste haulers,

540 material recovery facility operators, municipalities, environmental and community organizations,  
541 freshwater and marine litter programs, regional end-of-life management of covered materials,  
542 and environmental and human health scientists. Each individual serving on an advisory  
543 committee may represent only one (1) member of each category listed under this paragraph, and  
544 the organization or coordinating body shall ensure that no category has a disproportionate  
545 representation on an advisory committee. The department may select a third-party facilitator for  
546 the advisory committee.

547 (b) The department shall hold an advisory meeting at least quarterly; request and consider  
548 comments from the advisory committee prior to the submission to the department of the plan or  
549 any modifications to the plan; and include a summary of advisory committee engagement and  
550 input in the report under section 339.

551 (c) The department shall conduct an initial needs assessment within six months of the  
552 enactment of this legislation. The needs assessment shall include an assessment of the impact of  
553 the newspaper industry on recycling infrastructure and the environment in the Commonwealth  
554 and may include recommendations regarding definitions in section 330 of this chapter. The  
555 initial needs assessment may also include recommendations for a producer responsibility  
556 organization plan. The needs assessment shall be published and publicly accessible on the  
557 department's website. A copy of the needs assessment shall be filed with the clerks of the senate  
558 of the house of representatives and the joint committee on environment, natural resources and  
559 agriculture.

560 (d) Subsequent needs assessments shall be conducted every four years by the department  
561 in consultation with the committee. Subsequent needs assessments may include an assessment of

562 the impacts of the newspaper industry on recycling infrastructure in the Commonwealth and may  
563 include recommendations regarding definitions in section 330 of this chapter. Subsequent needs  
564 assessments may also include recommendations to include a producer responsibility organization  
565 plan. Subsequent needs assessments shall be published and publicly accessible on the  
566 department's website. A copy of subsequent needs assessments shall be filed with the clerks of  
567 the senate and the house of representatives and the joint committee on environment, natural  
568 resources and agriculture.

569 (e) The department shall develop a material cost differentiation system with which the  
570 producer responsibility organization or coordinating body will calculate material costs for  
571 collector reimbursements and producer payments. The material cost differentiation mechanism  
572 shall be based on the net cost of residential curbside collection or transfer station operation, on-  
573 site processing cost for each readily recyclable covered material types, management cost of non-  
574 readily recyclable covered materials, transportation cost for each covered material, and any other  
575 cost factors as determined by the department. Cost calculations shall take into consideration  
576 revenue generated from recyclable materials and must incentivize operational efficiency and  
577 contamination reduction.

578 (f) The department shall regularly publish a schedule of adjustments to be used by the  
579 producer responsibility organization in determining the amount of producer payments required  
580 under section 335. The schedule of adjustments shall apply to both readily and non-readily  
581 recyclable covered materials as defined in paragraph (c), and shall be used to individually adjust  
582 the fees assessed for each category of covered material as defined in paragraph (d). To minimize  
583 the extraction, manufacture, use, and end-of-life-management impacts of covered materials, the  
584 schedule of adjustments must be structured to incent:

- 585 (1) Covered material waste reduction.
- 586 (2) Reuse and lifespan extension of packaging.
- 587 (3) Use of readily recyclable materials to manufacture covered materials.
- 588 (4) Increased use of post-consumer recycled content material in covered materials so long  
589 as it does not increase the toxicity of the packaging material.
- 590 (5) Reduced use of toxic substances in covered materials, which raise the lifecycle  
591 environmental and societal costs of packaging.
- 592 (6) The use of the minimum quantity of packaging necessary to effectively deliver a  
593 product without damage or spoilage.
- 594 (7) Single-material packaging with clear recycling or disposal instructions for consumers,  
595 and other design characteristics that reduce contamination in recycling.
- 596 (8) Domestic processing of covered materials.
- 597 (9) Minimal life cycle impact of covered materials.
- 598 (g) The department shall regularly publish a list of readily recyclable materials,  
599 developed through coordination with the producer responsibility organization and material  
600 recovery facilities or other entities managing covered materials. The department shall provide for  
601 a transitional period between the time that a type of covered material is determined to be readily  
602 recyclable or to not be readily recyclable and the time that such determinations will be effective  
603 for the purposes of determining producer payments and collector reimbursements in accordance

604 with secs. 330 to 345. The department may amend the list of readily recyclable materials as  
605 needed.

606 (h) The department shall coordinate with the producer responsibility organization to  
607 establish categories of covered materials. The covered material categories shall group covered  
608 materials that have similar properties such as chemical composition, shape, or other  
609 characteristics, including, but not limited to: rigid or flexible plastics made of polyethylene  
610 terephthalate (PET), polyethylene (PE), polyvinyl chloride (PVC), polypropylene (PP),  
611 polystyrene (PS), poly coated fiber, multi-layered plastics, other (BPA, Compostable Plastics,  
612 Polycarbonate and LEXAN); metal, such as aluminum, tin, and steel; paper; cartons; and glass.

613 (i) Beginning at the time that the producer responsibility organization is required to  
614 submit its first annual report to the department, the department shall submit to the producer  
615 responsibility organization, and quarterly thereafter, all costs incurred in the administration of the  
616 packaging and paper products program, including oversight, issuance of any regulations,  
617 conducting the needs assessment, any third-party facilitators hired for the advisory committee,  
618 planning, plan review, including proposed modifications to the plan under section 334,  
619 compliance, enforcement, and sufficient staff positions to administer the program. All funds shall  
620 be deposited in the sustainable packaging trust.

621 (j) Beginning at the time that a producer or producers managing an alternative collection  
622 program are required to submit the first annual report to the department pursuant to section  
623 338(d), the department shall submit to the producer or producers, and quarterly thereafter, all  
624 costs incurred in the administration of the alternative collection program, including oversight,  
625 issuance of any regulations, planning, plan review, including proposed modifications to the plan

626 under section 338, compliance, enforcement, and sufficient staff positions to administer the  
627 program. All funds shall be deposited in the sustainable packaging trust.

628 (k) Beginning one (1) year after passage of secs. 330 to 345, the department shall  
629 establish a toxic substances list, and may reference existing toxic or hazardous substances lists  
630 created by other state agencies and the Interstate Chemicals Clearinghouse. Any person may  
631 petition the department to add a chemical or chemical class substance to the list based on  
632 scientific evidence. The department shall review and update the list of toxic substances at least  
633 every three years.

634 (l) Upon request by the department, the organization shall provide a list of producers that  
635 are participating in the program and are compliant with the program's requirements and, if  
636 known to the organization, a list of producers that are not participating in the program and are  
637 not compliant with the program's requirements.

638 (m) Based on the information provided to the department under paragraph (g) and any  
639 other information considered by the department, the department shall make available on its  
640 publicly accessible website a regularly updated list of producers that the department has  
641 determined are compliant with all applicable requirements of this section and a list of producers  
642 and, where applicable, specific products that the department has determined are not compliant  
643 with all applicable requirements of this section. The department shall conduct outreach to  
644 retailers to ensure that retailers are aware of the information made available under this paragraph  
645 and any changes to that information.

646 Section 343. Enforcement. Within eighteen (18) months of the passage of this chapter, no  
647 producer, distributor, retailer, or other responsible party for a covered material shall sell, offer for



648 sale, use, or distribute any covered material to any person in the commonwealth if the producer  
649 of such materials is not in compliance with all applicable parts of secs. 330 to 345.

650 (a) Any producer, distributor, retailer, or other responsible party that violates this section  
651 shall be subject to a fine for each violation and for each day that the violation occurs in an  
652 amount of not more than \$200,000.

653 (b) The department may bring a civil action to enjoin the sale, distribution, or importation  
654 into the commonwealth of a covered material in violation of this part.

655 (c) The penalties provided for in this section may be recovered in a civil action brought in  
656 the name of the People of the Commonwealth of Massachusetts by the Commonwealth's  
657 Attorney General. Any funds collected under this section in an action in which the Attorney  
658 General has prevailed shall be deposited in the sustainable packaging trust.

659 Section 344. Antitrust laws. A producer or producer responsibility organization,  
660 including a producer's or organization's officers, members, employees and agents that organize a  
661 packaging and paper product program or an alternative collection program under secs. 330 to  
662 345, is immune from liability for the producer's or organization's conduct under state laws  
663 relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or  
664 commerce only to the extent necessary to plan and implement the producer's or organization's  
665 packaging and paper product program or alternative collection program consistent with the  
666 provisions of secs. 330 to 345.

667 Section 345. Proprietary information. Proprietary information submitted to the  
668 department pursuant to the requirements of secs. 330 to 345 or the rules adopted pursuant to secs.  
669 330 to 345 that is identified by the submitter as proprietary information is confidential.

670 SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after  
671 section 35DDD the following section:

672 Section 35EEE. Sustainable packaging trust. There shall be established an expendable  
673 trust to be known as the sustainable packaging trust. Amounts deposited in the trust shall be used  
674 for department administration of the packaging and paper product program or an alternative  
675 collection program developed under secs. 330 to 345 of chapter 94 of the Massachusetts General  
676 Laws, and for other uses described in this section. Proceeds of the trust shall be invested by the  
677 treasurer and shall be under the care and custody of the commissioner of the department of  
678 environmental protection, in consultation with the committee established in paragraph (c) of  
679 section 332 of Chapter 94 of the Massachusetts General Laws. Interest earnings on funds  
680 deposited in said trust shall be credited to and become part of the trust. Proceeds from the trust  
681 shall be expended by said commissioner without further appropriation to cover administrative  
682 costs for the implementation and enforcement of this section, including oversight, issuance of  
683 any regulations, planning, plan review, review of proposed modifications to a plan developed  
684 under sections 334 or 338 of Chapter 94 of the Massachusetts General Laws, compliance,  
685 enforcement, and adequate staff positions to administer the packaging and paper products  
686 program or an alternative collection program. Adequate department staff positions shall include  
687 but not be limited to five (5) FTE positions: one managerial position, three compliance and  
688 enforcement positions, and one administrative position.

689

690 (a) Any funds collected under section 343 of chapter 94 of the Massachusetts General  
691 Laws in an action in which the Attorney General has prevailed shall be deposited in the trust, and

692 shall be used to administer grants and loans to businesses, non-profits and collectors, as defined  
693 in section 330 of chapter 94 of the Massachusetts General Laws, to reduce environmental  
694 impacts related to the collection and recycling of the covered material category for which the  
695 penalty was exacted.

696 (b) The commissioner of environmental protection shall cause to be filed with the chairs  
697 of the house and senate committees on ways and means an annual report regarding the revenues  
698 and expenditures provided from the trust.