

SENATE No. 2923

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-Second General Court
(2021-2022)
—

SENATE, June 16, 2022.

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petitions (accompanied by bill, Senate, No. 517) of Sal N. DiDomenico, Jessica Ann Giannino, Michelle L. Ciccolo, Patrick M. O'Connor and other members of the General Court for legislation to save recycling costs in the commonwealth; and (accompanied by bill, Senate, No. 610) of Michael F. Rush, Mathew J. Muratore, Paul McMurtry, James B. Eldridge and other members of the General Court for legislation to save recycling costs in the commonwealth, reports the accompanying bill (Senate, No. 2923).

For the committee,
Rebecca L. Rausch

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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.

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

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

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

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

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

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

43 "Packaging material" does not include:

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

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

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

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

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

55 "Producer", with respect to a covered material, means an entity that manufactures, uses in
56 a commercial enterprise, or has legal ownership of the brand of a product for sale, use, or
57 distribution in the commonwealth, including without limitation online retailers, that utilizes
58 covered material. With respect to packaging, responsible parties shall include: (i) a person or
59 entity that manufactures a product under the manufacturer's own brand that uses covered
60 material; (ii) a person or entity owns or licenses a trademark under which a covered material is
61 used in a commercial enterprise, sold, offered for sale or distributed in the commonwealth,
62 whether or not the trademark is registered; and (ii) a person or entity that imports into the
63 commonwealth a product that uses the covered material for use in a commercial enterprise, sale,
64 offer for sale or distribution in the commonwealth. A producer includes a franchisor of a
65 franchise located in the commonwealth but does not include the franchisee operating that
66 franchise. A producer does not include a nonprofit organization exempt from taxation under
67 section 501(c)(3) of the United States Internal Revenue Code or any entity exempted from the
68 program under section 331 of this chapter.

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

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

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

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

82 "Readily-recycled", with respect to a covered material, that the type of packaging
83 material or paper product, as annually determined by the department:

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

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

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

97 "Recycling", to separate, dismantle or process the materials, components or commodities
98 in covered materials for the purpose of preparing the materials, components or commodities for

99 use or reuse in new products or components. "Recycling" does not include energy recovery or
100 energy generation by means of combustion; pyrolysis, gasification and any other high-heat
101 chemical conversion processes; or landfill disposal of discarded covered material or discarded
102 product component materials.

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

107 "School", a public, private, or charter school, including pre-schools, K-12 schools,
108 colleges, and universities.

109 "Sustainable packaging trust" or "trust", an expendable trust under control of the
110 department, created under Chapter 10 section 35EEE of the Massachusetts General Laws, for the
111 purpose of collecting funds for department administration of the packaging and paper products
112 program or an alternative collection program, and for collecting fines related to the packaging
113 and paper products program or an alternative collection program.

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

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

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

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

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

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

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

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

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

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

139 Section 332. Producer responsibility organizations. To satisfy the requirements under
140 secs. 330 to 345, producers of covered materials sold or distributed into the commonwealth shall,

141 within 6 months following the enactment of this legislation, establish (a) producer responsibility
142 organization(s) that shall act as an agent and on behalf of each producer to operate the packaging
143 and paper products program. If more than one (1) producer responsibility organization is
144 established with respect to a category or categories of covered materials, the commissioner of the
145 department may establish a coordinating body to coordinate and manage those producer
146 responsibility organizations, and conduct business between those producer responsibility
147 organizations, collectors, and the department.

148 (a) If multiple producer responsibility organizations are formed, they must submit one
149 single producer responsibility plan to the department and ensure seamless operation of the
150 packaging and paper products program, thereby assigning responsibility equitably among
151 producer responsibility organizations and relieving the department of responsibility associated
152 with coordinating multiple producer responsibility organizations.

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

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

161 (a) A description of how the producer responsibility organization will administer the
162 program, including the mechanism or process, to be developed with input from producers, by

163 which producers may request and receive assistance from the organization in the reporting of
164 required information and guidance for covered material modifications that would reduce fee
165 payments; and the mechanism or process, to be developed with input from collectors, by which
166 participating collectors may request and receive assistance from the organization in the reporting
167 of required information and guidance for recycling program modifications that would increase
168 access to and participation in residential recycling programs.

169 (b) A description of how the organization intends to solicit and consider input from the
170 advisory committee and other interested entities, including, but not limited to, producers,
171 collectors, environmental organizations, and waste and recycling entities, regarding the operation
172 of the packaging and paper products program.

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

181 (d) A proposed budget outlining the anticipated costs of operating the program, including
182 identification of any start-up costs that will not be ongoing and a description of the method by
183 which the organization intends to determine and collect producer payments during the start-up
184 period of program operation, and to reimburse or require additional payments by those producers

185 subsequent to the start-up period based on producer reporting of the actual amount of packaging
186 material sold, offered for sale or distributed for sale in or into the commonwealth by each
187 producer during the start-up period. The proposed budget should describe how the organization
188 will maintain a financial reserve sufficient to operate the program in a fiscally prudent and
189 responsible manner, such that it considers historical variations in market values of post-consumer
190 packaging types. The proposed budget under this paragraph may overestimate the cost of
191 operating the program during the start-up period of operation but must describe the method and
192 basis for any overestimate.

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

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

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

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

204 (4) Provide for outreach and education that are; designed to achieve covered materials
205 goals under paragraph (e) of this section, including the prevention of contamination of materials;

206 coordinated across programs or regions to avoid confusion for consumers; and developed in
207 consultation with local governments and other stakeholders.

208 (f) A description of how, through the proposed expenditures under paragraph (e), the
209 organization intends to provide convenient and free consumer access to collection services or
210 collection facilities for all residents in the Commonwealth, and how the organization intends to
211 achieve and assist collectors and facilities in achieving a combined reduction and recycling rate,
212 based on regular audits of inbound waste at facilities as described in paragraph (i) of this section
213 and outbound tonnages of covered material from facilities as reported to the department pursuant
214 to paragraph (f) of section 342, of no less than sixty-five (65) percent by weight by July 1, 2027,
215 no less than eighty (80) percent by weight by July 1, 2031, and no less than one hundred (100)
216 percent by weight by July 1, 2035 of covered materials managed by the organization. The
217 organization shall also provide a description of how it intends to achieve and assist collectors in
218 achieving performance standards for each type of covered material as published annually by the
219 department pursuant to paragraph (d) of section 342.

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

225 (h) A description of how the organization intends to use the materials cost differentiation
226 system developed by the department and the annual schedule of adjustments under paragraphs
227 (a) and (b) of section 342 to assess fees for producers of each type of covered materials, as

228 defined by the department, in compliance with all applicable provisions of secs 330 to 345. The
229 description must include a flat-rate fee schedule for producers generating between one (1) and
230 fifteen (15) tons of covered materials annually. The organization shall develop an evaluation
231 system for the fee structure, and shall annually evaluate, revise and submit an updated
232 assessment schedule along with the annual report submitted to the department pursuant to section
233 339.

234 (i) A description of how the organization intends to fund representative third-party,
235 independent audits of both inbound and outbound recyclable material generated in the
236 commonwealth that is processed and sold by facilities; waste characterizations of municipal solid
237 waste being disposed of in the commonwealth; and litter audits. The audits must be conducted at
238 least annually, and must include:

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

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

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

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

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

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

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

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

261 Section 334. Approval of plan; plan amendments; corrective actions, termination of plan.
262 In accordance with the applicable provisions of secs. 330 to 345, the department shall review the
263 producer responsibility plan and amendments to such plan submitted by the organization or
264 coordinating body, and shall require the implementation of corrective actions by the organization
265 to the packaging and paper products program. Following approval of the plan by the department
266 under this section, the producer responsibility organization shall immediately begin
267 implementation of the plan.

268 (a) The department shall review the producer responsibility plan submitted by the
269 organization or coordinating body pursuant to section 333 and approve or deny the plan within

270 ninety (90) days of receipt. The department shall approve the plan if the department determines
271 that the plan meets the requirements of section 333 and is otherwise consistent with all
272 applicable requirements of secs. 330 to 345 of this chapter. If the department approves the plan,
273 the department shall transmit written notice of that approval to the organization. An approval
274 under this section must terminate five (5) years from the date of that approval but may be
275 extended for an additional five (5)-year period following the submission by the stewardship
276 organization of an updated plan consistent with section 333 that is approved by the department
277 consistent with this section. The organization or coordinating body must submit an updated plan
278 no later than one hundred twenty (120) days prior to the date its current plan expires.

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

286 (c) The organization may propose modifications to the approved plan, provided the
287 organization submits the proposed modifications to the department for review and consults the
288 advisory committee as required under paragraph (d) of section 332. Not later than forty-five (45)
289 days following receipt of proposed modifications, the department shall approve the modifications
290 if the department determines the revision is in accordance with secs. 330 to 345. If the
291 department determines the revision is not in accordance with secs. 330 to 345, the department
292 shall communicate the determination to the organization, at which time the organization shall

293 resubmit proposed modifications to the department for approval. If the department does not make
294 a determination under this paragraph within forty-five (45) days of the receipt of a proposed
295 modification, the modification shall be considered to be approved.

296 (d) If, based on its review of an organization's annual report required under section 339 or
297 on a different basis, the department determines that the organization is not operating the
298 packaging and paper product program in a manner consistent with its approved plan, or the
299 provisions of this section, the department may require the organization to implement
300 amendments to the plan or corrective actions to the program. If the organization fails to
301 implement a department-required amendment to the plan or corrective action to the program
302 within the time frame for implementation required by the department, the department may take
303 enforcement actions pursuant to section 343.

304 Section 335. Producer payments. In accordance with the provisions of this section and the
305 regulations promulgated by the department, no later than thirty (30) days after the approval of the
306 producer responsibility plan under section 334, and quarterly thereafter, a producer shall make
307 payments to the organization to be deposited into the producer responsibility fund under section
308 337, based on the amount of each type of covered material sold, offered for sale or distributed for
309 sale in or into the commonwealth by the producer and not managed under an approved
310 alternative collection program. The department shall promulgate regulations under section 342
311 setting forth the manner in which such payments must be calculated. Payments must include a
312 producer's share of administrative, enforcement, education and infrastructure costs, and must
313 reflect the per ton costs associated with collection, processing, transportation and recycling or
314 disposal of covered materials; the costs associated with increasing access to reuse and recycling
315 of covered materials; and other criteria as determined by paragraph (b) of section 342. In total,

316 payments made by producers to the organization shall be sufficient to cover all expenditures
317 under section 337.

318 Section 336. Annual reporting by producers. Beginning no later than 180 days after the
319 approval of the producer responsibility plan under section 334, and in conjunction with payments
320 made pursuant to section 335, a producer shall annually report to an organization the total tons of
321 each type of packaging material sold, offered for sale or distributed for sale in or into the
322 commonwealth by the producer in the prior calendar year and the methods for determining the
323 reported amounts; the characteristics of that packaging material that are relevant to the fee
324 adjustment criteria as determined by the department by rule in accordance with paragraph (b),
325 section 342; and a list of all of the producer's brands associated with that packaging material. The
326 advisory committee may (i) request additional data and information from the producer; and (ii)
327 recommend amendments to the annual reporting requirements for producers.

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

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

334 (b) To fund the actual operating costs of the organization, which may not exceed the
335 estimated operating costs indicated in the plan approved by the department pursuant to section
336 341, and which must be verified through a third-party audit paid for by the stewardship
337 organization.

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

340 (d) To make investments in education and infrastructure that support the recycling of
341 covered material in the commonwealth, which are directly supported by producer payments for
342 covered materials and must be approved by the department prior to any such expenditures, and
343 which must incorporate input from producers, facilities, and participating collectors. Of the
344 expenditures from the producer responsibility fund for a fiscal year, the organization shall ensure
345 that not less than two (2) percent is used for education and not less than eight (8) percent is used
346 for infrastructure described under this section and in compliance with the approved producer
347 responsibility plan under section 334.

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

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

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

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

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

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

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

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

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

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

383 (2) To what extent the alternative collection program intends to manage those types of
384 covered material to be collected under the program through reduction, reuse for an original
385 purpose, through recycling or through disposal at an incineration facility. The department may
386 not approve an alternative collection program that proposes management of a covered material
387 type through disposal at an incineration facility unless that covered material is not readily
388 recyclable as defined by the department pursuant to section 342 and the program proposes a
389 process to begin reuse or recycling of that type of covered material within a period of 3 years or
390 less. The program shall ensure that a combined reduction and recycling rate is achieved of no
391 less than sixty-five (65) percent by weight by July 1, 2027, no less than eighty (80) percent by
392 weight by July 1, 2031, and no less than one hundred (100) percent by weight by July 1, 2035 of
393 covered materials managed by the organization.

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

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

400 (5) To what extent the alternative collection program may: (i) disproportionately impact
401 one community over another; (ii) impact environmental justice populations, as defined in section
402 62 of chapter 30, and (iii) provide equitable regional access to the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

478 (a) To be eligible for reimbursement of costs under sections 341 as a participating
479 collector, a collector must provide for the collection and recycling of covered materials that are
480 generated by all residential and school generators using its service and that are readily recyclable
481 as listed regularly by the department and that are not collected by an alternative collection
482 program in accordance with section 338, must annually report to the organization or coordinating
483 body all information necessary for the organization or coordinating body to determine the

484 collector's incurred net costs associated with collection, processing, transportation and recycling
485 or disposal of recyclable material and of municipal solid waste.

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

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

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

498 (a) In accordance with the regulations promulgated by the department pursuant to section
499 342, the organization or coordinating body shall determine the amount of reimbursements to
500 participating collectors under this section based on the following information:

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

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

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

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

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

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

525 (a) The department shall establish an advisory committee that represents a range of
526 interested and engaged persons relevant to the category of covered materials of the applicable
527 program, including the commissioner of the department of environmental protection or a
528 designee, one member who shall be appointed by the attorney general and who shall have
529 expertise in consumer protection, and individuals representing producers, retailers, waste haulers,
530 material recovery facility operators, municipalities, environmental and community organizations,
531 freshwater and marine litter programs, regional end-of-life management of covered materials,
532 and environmental and human health scientists. Each individual serving on an advisory
533 committee may represent only one (1) member of each category listed under this paragraph, and
534 the organization or coordinating body shall ensure that no category has a disproportionate
535 representation on an advisory committee. The department may select a third-party facilitator for
536 the advisory committee.

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

541 (c) The department shall conduct an initial needs assessment within six months of the
542 enactment of this legislation. The needs assessment shall include an assessment of the impact of
543 the newspaper industry on recycling infrastructure and the environment in the Commonwealth
544 and may include recommendations regarding definitions in section 330 of this chapter. The
545 initial needs assessment may also include recommendations for a producer responsibility
546 organization plan. The needs assessment shall be published and publicly accessible on the
547 department's website. A copy of the needs assessment shall be filed with the clerks of the senate

548 of the house of representatives and the joint committee on environment, natural resources and
549 agriculture.

550 (d) Subsequent needs assessments shall be conducted every four years by the department
551 in consultation with the committee. Subsequent needs assessments may include an assessment of
552 the impacts of the newspaper industry on recycling infrastructure in the Commonwealth and may
553 include recommendations regarding definitions in section 330 of this chapter. Subsequent needs
554 assessments may also include recommendations to include a producer responsibility organization
555 plan. Subsequent needs assessments shall be published and publicly accessible on the
556 department's website. A copy of subsequent needs assessments shall be filed with the clerks of
557 the senate and the house of representatives and the joint committee on environment, natural
558 resources and agriculture.

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

568 (f) The department shall regularly publish a schedule of adjustments to be used by the
569 producer responsibility organization in determining the amount of producer payments required

570 under section 335. The schedule of adjustments shall apply to both readily and non-readily
571 recyclable covered materials as defined in paragraph (c), and shall be used to individually adjust
572 the fees assessed for each category of covered material as defined in paragraph (d). To minimize
573 the extraction, manufacture, use, and end-of-life-management impacts of covered materials, the
574 schedule of adjustments must be structured to incent:

575 (1) Covered material waste reduction.

576 (2) Reuse and lifespan extension of packaging.

577 (3) Use of readily recyclable materials to manufacture covered materials.

578 (4) Increased use of post-consumer recycled content material in covered materials so long
579 as it does not increase the toxicity of the packaging material.

580 (5) Reduced use of toxic substances in covered materials, which raise the lifecycle
581 environmental and societal costs of packaging.

582 (6) The use of the minimum quantity of packaging necessary to effectively deliver a
583 product without damage or spoilage.

584 (7) Single-material packaging with clear recycling or disposal instructions for consumers,
585 and other design characteristics that reduce contamination in recycling.

586 (8) Domestic processing of covered materials.

587 (9) Minimal life cycle impact of covered materials.

588 (g) The department shall regularly publish a list of readily recyclable materials,
589 developed through coordination with the producer responsibility organization and material

590 recovery facilities or other entities managing covered materials. The department shall provide for
591 a transitional period between the time that a type of covered material is determined to be readily
592 recyclable or to not be readily recyclable and the time that such determinations will be effective
593 for the purposes of determining producer payments and collector reimbursements in accordance
594 with secs. 330 to 345. The department may amend the list of readily recyclable materials as
595 needed.

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

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

611 (j) Beginning at the time that a producer or producers managing an alternative collection
612 program are required to submit the first annual report to the department pursuant to section
613 338(d), the department shall submit to the producer or producers, and quarterly thereafter, all
614 costs incurred in the administration of the alternative collection program, including oversight,
615 issuance of any regulations, planning, plan review, including proposed modifications to the plan
616 under section 338, compliance, enforcement, and sufficient staff positions to administer the
617 program. All funds shall be deposited in the sustainable packaging trust.

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

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

628 (m) Based on the information provided to the department under paragraph (g) and any
629 other information considered by the department, the department shall make available on its
630 publicly accessible website a regularly updated list of producers that the department has
631 determined are compliant with all applicable requirements of this section and a list of producers
632 and, where applicable, specific products that the department has determined are not compliant

633 with all applicable requirements of this section. The department shall conduct outreach to
634 retailers to ensure that retailers are aware of the information made available under this paragraph
635 and any changes to that information.

636 Section 343. Enforcement. Within eighteen (18) months of the passage of this chapter, no
637 producer, distributor, retailer, or other responsible party for a covered material shall sell, offer for
638 sale, use, or distribute any covered material to any person in the commonwealth if the producer
639 of such materials is not in compliance with all applicable parts of secs. 330 to 345.

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

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

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

649 Section 344. Antitrust laws. A producer or producer responsibility organization,
650 including a producer's or organization's officers, members, employees and agents that organize a
651 packaging and paper product program or an alternative collection program under secs. 330 to
652 345, is immune from liability for the producer's or organization's conduct under state laws
653 relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or
654 commerce only to the extent necessary to plan and implement the producer's or organization's

655 packaging and paper product program or alternative collection program consistent with the
656 provisions of secs. 330 to 345.

657 Section 345. Proprietary information. Proprietary information submitted to the
658 department pursuant to the requirements of secs. 330 to 345 or the rules adopted pursuant to secs.
659 330 to 345 that is identified by the submitter as proprietary information is confidential.

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

662 Section 35EEE. Sustainable packaging trust. There shall be established an expendable
663 trust to be known as the sustainable packaging trust. Amounts deposited in the trust shall be used
664 for department administration of the packaging and paper product program or an alternative
665 collection program developed under secs. 330 to 345 of chapter 94 of the Massachusetts General
666 Laws, and for other uses described in this section. Proceeds of the trust shall be invested by the
667 treasurer and shall be under the care and custody of the commissioner of the department of
668 environmental protection, in consultation with the committee established in paragraph (c) of
669 section 332 of Chapter 94 of the Massachusetts General Laws. Interest earnings on funds
670 deposited in said trust shall be credited to and become part of the trust. Proceeds from the trust
671 shall be expended by said commissioner without further appropriation to cover administrative
672 costs for the implementation and enforcement of this section, including oversight, issuance of
673 any regulations, planning, plan review, review of proposed modifications to a plan developed
674 under sections 334 or 338 of Chapter 94 of the Massachusetts General Laws, compliance,
675 enforcement, and adequate staff positions to administer the packaging and paper products
676 program or an alternative collection program. Adequate department staff positions shall include

677 but not be limited to five (5) FTE positions: one managerial position, three compliance and
678 enforcement positions, and one administrative position.

679 (a) Any funds collected under section 343 of chapter 94 of the Massachusetts General
680 Laws in an action in which the Attorney General has prevailed shall be deposited in the trust, and
681 shall be used to administer grants and loans to businesses, non-profits and collectors, as defined
682 in section 330 of chapter 94 of the Massachusetts General Laws, to reduce environmental
683 impacts related to the collection and recycling of the covered material category for which the
684 penalty was exacted.

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