

HOUSE No. 3676

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle L. Ciccolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to update the bottle bill.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------|--|------------------|
| <i>Michelle L. Ciccolo</i> | <i>15th Middlesex</i> | <i>1/20/2023</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> | <i>2/13/2023</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/13/2023</i> |
| <i>Edward R. Philips</i> | <i>8th Norfolk</i> | <i>3/1/2023</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>3/1/2023</i> |
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>3/1/2023</i> |
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>3/8/2023</i> |
| <i>Brian W. Murray</i> | <i>10th Worcester</i> | <i>3/8/2023</i> |
| <i>Natalie M. Higgins</i> | <i>4th Worcester</i> | <i>3/28/2023</i> |
| <i>Tommy Vitolo</i> | <i>15th Norfolk</i> | <i>4/10/2023</i> |
| <i>Kristin E. Kassner</i> | <i>2nd Essex</i> | <i>4/10/2023</i> |
| <i>Margaret R. Scarsdale</i> | <i>1st Middlesex</i> | <i>6/27/2023</i> |
| <i>Samantha Montaño</i> | <i>15th Suffolk</i> | <i>6/28/2023</i> |
| <i>Erika Uytterhoeven</i> | <i>27th Middlesex</i> | <i>8/16/2023</i> |
| <i>Kate Donaghue</i> | <i>19th Worcester</i> | <i>2/8/2024</i> |

HOUSE No. 3676

By Representative Ciccolo of Lexington, a petition (accompanied by bill, House, No. 3676) of Michelle L. Ciccolo and others relative to the provisions of the bottle bill, so-called. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to update the bottle bill.

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 striking out sections
2 321 to 323, inclusive, and inserting in place thereof the following 3 sections:-

3 Section 321. In sections 321 to 327A, inclusive, the following definitions shall, unless the
4 context clearly requires otherwise, have the following meaning:

5 “Beverage”, any drinkable liquid intended for human oral consumption. The term
6 beverage does not include:

7 (1) a drug regulated under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et
8 seq.;

9 (2) infant formula;

10 (3) a meal replacement liquid; and

11 (4) dairy products derived from animal milk.

12 “Beverage container”, a prepackaged container designed to hold a beverage that is made
13 of any material, including glass, plastic and metal, and has a volume which is not less than 50
14 milliliters, nor greater than 3 liters. The term beverage container shall not include:

15 (1) cartons;

16 (2) pouches; or

17 (3) aseptic packaging, such as a drink box.

18 “Consumer”, any person who purchases a beverage in a beverage container for use or
19 consumption with no intent to resell such beverage.

20 “Dealer”, any person, including any operator of a vending machine, who engages in the
21 sale of beverages in beverage containers to consumers in the commonwealth.

22 “Department”, the department of environmental protection.

23 “Distributor”, any person who engages in the sale of beverages in beverage containers to
24 dealers in the commonwealth including any bottler who engages in such sales.

25 “Label”, a molded imprint or raised symbol on or near the bottom of a plastic product.

26 “Plastic”, any material made of polymeric organic compounds and additives that can be
27 shaped by flow.

28 “Processing payment”, the amount of money that a distributor shall pay a curbside
29 recycling entity as determined by the department.

30 “Producer”, with respect to a beverage sold in a beverage container:

31 (1) a person that engages in the manufacturing or bottling, canning or otherwise fills
32 containers for import or sale to distributors, dealers or consumers, or, in the case of private label
33 brands, the owner of the private label trademark in the United States, including any importer that
34 engages in that sale or distribution;

35 (2) if paragraph (1) does not apply, a person that engages in the sale of a beverage in a
36 beverage container directly to a consumer in the United States; or

37 (3) if paragraphs (1) and (2) do not apply, a person that imports the beverage sold in a
38 beverage container into the United States for use in a commercial enterprise, sale, offer for sale
39 or distribution in the United States.

40 “Producer responsibility organization”, the non-profit organization that a group of
41 distributors may elect to create or appoint to fulfill its obligations under sections 321 to 327A,
42 inclusive.

43 “Recyclable”, a beverage container that:

44 (1) can be recycled in current United States market conditions;

45 (2) does not require a consumer to remove an attached component, such as a shrink
46 sleeve, label or filter, before the it can be recycled; and

47 (3) effective beginning 1 year after the start date, does not contain a toxic substance.

48 “Recycle”, the series of activities by which a covered product is: (i) collected, sorted and
49 processed; (ii) converted into a raw material with minimal loss of material quality; and (iii) used
50 in the production of a new product, including the original product.

51 The term “recycle” shall not include:

52 (i) downcycling, the method of sorting, processing and aggregating materials from solid
53 waste that does not preserve the original material quality, and, as a result, the aggregated material
54 is no longer usable for its initial purpose or a substantially similar product and can only be used
55 for inferior purposes or products;

56 (ii) the use of waste: as a fuel or fuel substitute; for energy production; for repurposing
57 into infrastructure, including pavement for streets or sidewalks, building materials and other
58 infrastructure projects, as determined by the department; for alternative operating cover; or
59 within the footprint of a landfill;

60 (iii) the conversion of waste into alternative products, such as chemicals, feedstocks,
61 fuels and energy, through: incineration; pyrolysis; methanolysis; gasification; solvolysis;
62 chemical, molecular or advanced recycling; or a similar technology, as determined by the
63 department.

64 “Rigid plastic container”, any formed or molded container, other than a bottle, intended
65 for single use, composed predominantly of plastic resin and having a relatively inflexible finite
66 shape or form with a capacity of 8 ounces or more but less than 5 gallons.

67 “Reusable beverage container”, any beverage container so constructed and designed that
68 it is structurally capable of being refilled and resold by a bottler at least 50 times after its initial
69 use.

70 Section 322. (a) Every beverage container sold or offered for sale in the commonwealth
71 shall have a refund value of not less than 10 cents. The provisions of this section shall not apply
72 to such containers sold by a distributor for use by a common carrier in the conduct of interstate
73 passenger service.

74 (b) Beginning three years after the start date, the department shall increase the minimum
75 refund value set in paragraph (1) to match inflation; provided, that, the minimum refund value
76 shall be increased by an additional 5 cents in the case of failure to meet redemption targets
77 described in section 323I

78 (c) The department may require a refund value that is greater than the minimum refund
79 value set in paragraph (1) if the redemption target is not achieved.

80 Section 323. (a) Every consumer shall deposit with the dealer the refund value of each
81 beverage container purchased from that dealer.

82 (b) Except as provided in paragraph (f), a dealer shall accept from any person during their
83 business hours any empty beverage container of the type sold by the dealer, provided that the
84 beverage container is made of the same type of material as beverage containers sold by the
85 dealer, and shall pay that person the refund value of each beverage container returned. This
86 subsection shall not apply if the dealer is: (i) an establishment providing on premises
87 consumption such as a hotel, restaurant or bar; or (ii) an establishment of less than 2,000 square
88 feet.

89 (c) Except as provided in paragraph (e), a distributor shall accept from any dealer any
90 empty beverage container and shall pay the dealer the refund value of the beverage container
91 plus a handling fee if the empty beverage container is presented at the time of and at the location
92 at which the dealer obtains filled beverage containers from the distributor. The department shall
93 set a handling fee that covers the cost of operating the infrastructure necessary to collect and
94 transport the empty beverage containers to be recycled or refilled and that covers the cost of
95 administering and enforcing sections 321 to 327A, inclusive. The department shall monitor and
96 track the location of points of redemption throughout the commonwealth. Beginning two years
97 after the Start Date, The department shall increase the handling fee by 1 cent if:

98 (i) there is less than 1 point of redemption for every 3,000 persons in the commonwealth,
99 including dealers and redemption centers; or

100 (ii) there is less than 1 point of redemption for every 3,000 persons within an
101 environmental justice community, as defined by the executive office of energy and
102 environmental affairs.

103 (d) Any person may establish a redemption center that shall accept clean beverage
104 containers in good condition. Except as provided in paragraph (e), a distributor shall take from
105 any redemption center any

106 empty beverage container of the type, size and brand sold by the distributor within the
107 past 60 days and shall pay the redemption center the refund value of the container plus a
108 handling fee of at least 1 cent per container. The department may approve procedures and
109 specifications to pay an entity that collects curbside recycling a processing payment and

110 commodity value for beverage containers sorted and delivered to producers for audit and
111 accounting. Such containers may not be added to the redemption rate calculation.

112 (e) A dealer, distributor, redemption center or bottler may refuse to accept any beverage
113 container that contains material foreign to the normal contents of the container.

114 (f) Any bottler or distributor who receives deposits or handling charges under this chapter
115 shall segregate said deposits or handling charges in a fund which shall be maintained separately
116 from all other revenues. Said bottler or distributor shall report on a monthly basis to the alcoholic
117 beverage control commission, in a manner prescribed by said commission, the amount of said
118 deposits or handling charges received and the amount refunded.

119 (g) Any bottler or distributor who is subject to the provisions of paragraphs (c) or (d)
120 shall maintain a separate account to be known as the Deposit Transaction Fund. Said fund shall
121 be kept separate from all other revenues and accounts. Each bottler or distributor shall place in
122 said fund the refund value for all non-reusable beverage containers it sells subject to the
123 provisions of this chapter. Except as specified in section 323G, amounts in such fund may only
124 be expended to pay refund values paid after December 31, 1989 for returned non-reusable
125 beverage containers pursuant to paragraphs (c) and (d). Amounts in such fund shall not be used
126 to pay the handling fees required by paragraphs (c) and (d). Each such fund shall be maintained
127 by said bottlers and distributors on behalf of consumers who have purchased beverage containers
128 and on behalf of the commonwealth; except as specified in section 323C, for no purpose are
129 amounts in such fund to be regarded as income of said bottlers or distributors.

130 (h) The obligations to accept or take empty beverage containers and to pay the refund
131 value and handling fees for such containers as described in paragraphs (b) and (c) shall apply

132 only to containers originally sold in the commonwealth as filled beverage containers. Any person
133 who tenders to a dealer, distributor, redemption center or bottler more than 10 cases of 24 empty
134 beverage containers each, which they know or have reason to know were not originally sold in
135 the commonwealth as filled beverage containers, for the purpose of obtaining a refund value or
136 handling fee, shall be subject to the enforcement action and civil penalties set forth in section
137 327. For the purpose of this section and section 327, the term person shall include any individual,
138 partnership, corporation or other combination or entity.

139 SECTION 2. Section 323A of said chapter 94, as appearing in the 2020 Official Edition,
140 is hereby amended by adding the following paragraph:-

141 Any manufacturer, importer or distributor of a beverage in a beverage container that is
142 sold in the commonwealth shall include on the label of the beverage container:

143 (1) a standardized description of the applicable refund value in such a manner that the
144 description is clearly visible; and

145 (2) a UPC barcode to identify and validate participation in the redemption program.

146 SECTION 3. Section 323B of said chapter 94, as so appearing, is hereby amended by
147 striking out, in lines 5 and 6, the words “non reusable” each time they appear.

148 SECTION 4. Section 323C of said chapter 94, as so appearing, is hereby amended by
149 striking out, in line 5, the words “non reusable”.

150 SECTION 5. Section 323D of said chapter 94, as so appearing, is hereby further amended
151 by striking out, in line 4, the words “section three hundred and twenty-three F” and inserting in
152 place thereof the following words:- section 323G.

153 SECTION 6. Said chapter 94, as so appearing, is hereby further amended by inserting
154 after section 323E the following 4 sections:-

155 Section 323G. (a) There shall be established on the books of the commonwealth a
156 separate fund to be known as the Clean Environment Fund. Amounts deposited in said fund shall
157 be used, subject to appropriation, solely for programs and projects in the management of solid
158 waste, environmental protection, and climate change mitigation; provided, however, that no
159 funds shall be used for costs associated with incineration.

160 (b) Not less than 40 per cent of amounts deposited in the Fund shall be used for
161 recycling, composting and solid waste source reduction projects and programs.

162 (c) Not less than an additional 20 per cent of amounts deposited in the Fund shall be used
163 for recycling and other solid waste projects and programs.

164 (d) Not more than 40 per cent of amounts deposited in the fund shall be used for other
165 environmental programs consistent with the purposes of the “bottle bill”, so-called.

166 Section 323H. If the redemption and recycling targets set in section 323I and the refill
167 targets set in Section 323J are met, the monies in the Clean Environment Fund established in
168 section 323G shall be used for projects and programs in line with the parameters set out in
169 section 323G. If the redemption and recycling targets set in Section 323I or the refill targets set
170 in Section 323J are not met, the monies shall be reinvested into the deposit return system at the
171 discretion of the department until such time as the targets are met.

172 Section 323I. (a) Beginning 2 years after the start date at least 60 per cent of all beverage
173 containers shall be redeemed and recycled;

174 (b) beginning 3 years after the start date, at least 75 per cent of all beverage containers
175 shall be redeemed and recycled;

176 (c) beginning 5 years after the start date, at least 85 per cent of all beverage containers
177 shall be redeemed and recycled; and

178 (D) beginning 8 years after the start date, at least 95 per cent of all beverage containers
179 shall be redeemed and recycled.

180 Section 323J. The department shall require each producer of beverage containers to plan
181 for and invest in refillable container systems so that:

182 (1) 2 years after the start date, 10 per cent of beverage containers are returned and
183 refilled;

184 (2) 5 years after the start date, 20 per cent of beverage containers are returned and
185 refilled;

186 (3) 8 years after the start date, 50 per cent of beverage containers are returned and refilled;

187 (4) 10 years after the start date, 70 per cent of beverage containers are returned and
188 refilled; and

189 (5) 15 years after the start date, 90 per cent of beverage containers are returned and
190 refilled.

191 SECTION 7. Said chapter 94 is hereby further amended by striking out section 325 and
192 inserting in place thereof the following section:-

193 Section 325. (a) Beginning 2 years after the start date, no person or entity may sell, offer
194 for sale or distribute into the commonwealth any beverage container containing any of the
195 following toxic substances:

196 (1) ortho-phthalates;

197 (B2 bisphenols;

198 (3) Per- and polyfluoroalkyl substances, or PFAS;

199 (4) lead and lead compounds;

200 (5) hexavalent chromium and compounds;

201 (6) cadmium and cadmium compounds;

202 (7) mercury and mercury compounds;

203 (8) benzophenone and its derivatives;

204 (9) halogenated flame retardants;

205 (10) perchlorate;

206 (11) formaldehyde;

207 (12) toluene;

208 (13) antimony and compounds; and

209 (14) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).

210 (b) Beginning 2 years after the start date, no person or entity shall sell, offer for sale or
211 distribute for use in the commonwealth any beverage container containing:

212 (1) polyvinyl chloride;

213 (2) polystyrene; or

214 (3) polycarbonate.

215 (c) Beginning 3 years after the start date, and every 3 years thereafter, the department
216 shall designate at least 10 additional toxic substances or families of toxic substances that may no
217 longer be used in beverage containers unless the department determines there are not 10 toxic
218 substances or families of toxic substances that are required to be banned from use in beverage
219 containers.

220 (d) Any producer that violates this section shall be subject to a fine for each violation not
221 to exceed \$50,000 per violation. For the purposes of this section, each product line that is sold,
222 offered for sale or distributed to consumers via retail commerce in the commonwealth, including
223 through an internet transaction, in violation of this section shall be considered a violation.

224 SECTION 8. Section 326 of said chapter 94, as so appearing, is hereby amended by
225 striking out, in line 4, the words “three hundred and twenty-three F” and inserting in place
226 thereof the following words:- section 323G.

227 SECTION 9. Section 327 of said chapter 94, as appearing in the 2020 Official Edition, is
228 hereby amended by adding the following paragraph:

229 Any citizen of the commonwealth may bring an action in court against any person,
230 producer or agency to enforce sections 321 through 327A, inclusive. A citizen who prevails in an
231 action brought pursuant to

232 this section may recoup damages, attorney's fees, other costs associated with bringing the
233 action and civil penalties that the non-prevailing party shall be required to pay as fines.

234 SECTION 10. Said chapter 94 is hereby further amended by inserting after section 327
235 the following section:-

236 Section 327A.(a) A producer, or its designated producer responsibility organization, shall
237 annually make available on a publicly available website a report that contains:

238 (1) the per container quantity of beverage containers sold or imported and the per
239 container quantity of beverage containers that were redeemed and recycled with a manufacturer,
240 by sub-material type, beverage category and state, for the year covered by the report and each
241 prior year;

242 (2) management of the beverage containers, including redemption and recycling rates, by
243 sub-material type and beverage category, for the year covered by the report and each prior year;

244 (3) data on the final destination and quantity of reclaimed beverage containers, by sub-
245 material type, including the form of any beverage containers exported;

246 (4) contamination in the recycling stream of the beverage containers;

247 (5) collection service vendors and collection locations, including: (i) the geographic
248 distribution of collection; (ii) distance to population centers; (iii) hours of operation; (iv) actions

249 taken to reduce barriers to collection by expanding dealer or redemption center locations; and (v)
250 frequency of collection availability;

251 (6) efforts to reduce environmental impacts at each stage of the lifecycle of the beverage
252 containers;

253 (7) expenses of producers related to the deposit return system;

254 (8) outreach and education efforts, including the results of those efforts;

255 (9) customer service efforts and results;

256 (10) performance relative to the redemption and recycling targets;

257 (11) the status of packaging innovation and design characteristics to prevent littering,
258 make beverage containers reusable or refillable or reduce overall beverage container waste; and

259 (12) any other information that the department determines to be appropriate.

260 (b) Producers, or their designated producer responsibility organizations, shall make
261 efforts to coordinate reporting under subsection (a) to provide for consistency of information
262 across a category of beverage containers.

263 (c) Every 2 years, the department shall conduct an audit of:

264 (1) collection and recycling to provide an accounting of the collection and recycling of
265 beverage containers that are not produced by producers; and

266 (2) beverage containers of brand names found in litter to provide for an accounting of
267 litter that continues to create pollution.

268 (d) Not later than 1 year after the start date, and annually thereafter, the department shall
269 prepare and make publicly available a report describing:

270 (1) the effect of this part on costs incurred by state and local governments for the
271 management and cleanup of beverage containers; and

272 (2) any reductions in state and local taxes as a result of any reductions of costs described
273 in paragraph (1).

274 (e) A producer, or its designated producer responsibility organization, shall not govern
275 the terms of this deposit return system, shall not receive any unclaimed deposits unless all the
276 targets detailed herein are met, and shall act at all times in good faith so as to optimize recycling
277 and reuse and decrease toxicity, as defined herein.

278 SECTION 11. For the purposes of this act the term “start date” shall mean the effective
279 date of this act.

280 SECTION 12. This act shall take effect 180 days after its passage.