

HOUSE No. 4263

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, January 18, 2024.

The committee on Environment and Natural Resources to whom was referred the petition (accompanied by bill, Senate No. 471) of Sal N. DiDomenico, Jason M. Lewis, Patrick M. O'Connor, John J. Cronin and other members of the General Court for legislation to save recycling costs in the commonwealth, the petition (accompanied by bill, Senate, No. 542) of Susan L. Moran and Mathew J. Muratore for legislation to establish safe paint stewardship, the petition (accompanied by bill, Senate, No. 551) of Patrick M. O'Connor and Mathew J. Muratore for legislation relative to paint recycling, the petition (accompanied by bill, Senate, No. 554) of Jacob R. Oliveira, Steven Owens, James K. Hawkins, Joanne M. Comerford and others for legislation to require producer responsibility for the collection, reuse and recycling of discarded electronic products, the petition (accompanied by bill, Senate, No. 572) of Michael F. Rush, Paul McMurtry, Jack Patrick Lewis, John J. Cronin and other members of the General Court for legislation to save recycling costs in the commonwealth, the petition (accompanied by bill, House, No. 779) of Michael S. Day relative to recycling costs, the petition (accompanied by bill, House, No. 823) of Patricia A. Haddad and others relative to the recycling of certain paints, and the petition (accompanied by bill, House, No. 871) of Steven Owens, David M. Rogers and others relative to producer responsibility for the collection, reuse and recycling of discarded electronic products, reports recommending that the accompanying bill (House, No. 4263) ought to pass.

For the committee,

DANIEL CAHILL.

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The Commonwealth of Massachusetts

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

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 10 of the General Laws is hereby amended by inserting after
2 section 35DDD the following section:

3 Section 35EEE. (a) There shall be established an expendable trust to be known as the
4 sustainable packaging trust. Amounts deposited in the trust shall be used for department
5 administration of the packaging and paper product program or an alternative collection program
6 developed under sections 330 to 345, inclusive, of chapter 94 and for other uses described in this
7 section. Proceeds of the trust shall be invested by the treasurer and shall be under the care and
8 custody of the commissioner of the department of environmental protection, in consultation with
9 the committee established in paragraph (c) of section 332 of chapter 94. Interest earnings on
10 funds deposited in said trust shall be credited to and become part of the trust. Proceeds from the
11 trust shall be expended by said commissioner without further appropriation to cover
12 administrative costs for the implementation and enforcement of this section, including oversight,
13 issuance of any regulations, planning, plan review, review of proposed modifications to a plan
14 developed under sections 334 or 338 of chapter 94, compliance, enforcement, and adequate staff

15 positions to administer the packaging and paper products program or an alternative collection
16 program. Adequate department staff positions shall include but not be limited to 5 FTE positions:
17 one managerial position, three compliance and enforcement positions, and one administrative
18 position.

19 (b) Any funds collected under section 343 of chapter 94 in an action in which the attorney
20 general has prevailed shall be deposited in the trust, and shall be used to administer grants and
21 loans to businesses, non-profits and collectors, as defined in section 330 of chapter 94, to reduce
22 environmental impacts related to the collection and recycling of the covered material category
23 for which the penalty was exacted.

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

27 SECTION 2. Chapter 21H of the General Laws is hereby amended by adding the
28 following section:-

29 Section 9. (a) As used in this section, the following words shall have the following
30 meanings unless the context clearly requires otherwise:

31 “Architectural paint”, interior and exterior architectural coatings sold in containers of 5
32 gallons or less; provided, however, that “architectural paint” shall not include industrial, original
33 equipment or specialty coatings.

34 “Collection site”, any location or event at which architectural paint is accepted into a
35 postconsumer paint collection program pursuant to a postconsumer paint collection program
36 plan.

37 “Commissioner”, the commissioner of environmental protection.

38 “Department”, the department of environmental protection.

39 “Environmentally sound management practices”, procedures for the collection, storage,
40 transportation, reuse, recycling, and disposal of architectural paint, to be implemented by the
41 manufacturer or representative organization or by the manufacturers or representative
42 organization’s contracted partners to comply with all applicable federal, state and local laws and
43 any regulations and ordinances for the protection of human health and the environment. These
44 procedures shall address adequate record keeping, tracking and documenting of the final
45 disposition of materials and appropriate environmental liability coverage for the representative
46 organization.

47 “Household waste”, household waste as defined in 40 CFR § 261.4(b)(1).

48 “Postconsumer paint”, architectural paint not used and no longer wanted by a purchaser.

49 “Manufacturer”, manufacturer of architectural paint who sells, offers for sale or
50 distributes the architectural paint in the State under the manufacturer’s own name or brand.

51 “Program”, the postconsumer paint stewardship program established pursuant to section
52 (b).

53 “Recycling”, a process by which discarded products, components and by-products are
54 transformed into new usable or marketable materials in a manner in which the original products
55 may lose their identity.

56 “Representative organization”, a nonprofit organization established by a manufacturer to
57 implement the postconsumer paint stewardship program.

58 “Retailer”, a company that offers architectural paint or other allied products for retail sale
59 in the commonwealth.

60 “Very small quantity generator”, very small quantity generators as defined in 40 CFR §
61 260.10.

62 (b)(1) A manufacturer of architectural paint sold at retail in the state or a representative
63 organization shall submit to the commissioner a plan for the establishment of a postconsumer
64 paint stewardship program. The program will seek to reduce the generation of postconsumer
65 paint, promote its reuse and recycling, and manage this waste stream using environmentally
66 sound management practices.

67 (2) The plan submitted by the manufacturer or representative organization to the
68 department under this section shall:

69 (i) Provide a list of participating manufacturers and brands covered by the program.

70 (ii) Provide information on the architectural paint products covered under the program,
71 such as interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings.

72 (iii) Describe how it will provide for convenient and cost-effective statewide collection of
73 postconsumer architectural paint in the commonwealth. The manufacturer or representative

74 organization may coordinate the program with existing household hazardous waste collection
75 infrastructure as is mutually agreeable. A paint retailer may be authorized by the manufacturer
76 or representative organization as a paint collection site if the paint retailer volunteers to act as
77 such, complies with all applicable laws and regulations, and the retail location is consistent with
78 the maintenance of a cost-effective network of paint collection locations.

79 (iv) Establish a goal for the number and geographic distribution of collection sites for
80 postconsumer architectural paint, using geographic modeling and the following criteria: (A) at
81 least 90 percent of Massachusetts residents shall have a collection site within a 15-mile radius;
82 and (B) one site will be available for every 50,000 residents of an Urbanized Area (as defined by
83 the U.S. Census Bureau), unless otherwise approved by the commissioner.

84 (v) Describe how postconsumer paint will be managed in an environmentally and
85 economically sound manner using the following strategies, in this order: reuse, recycling, energy
86 recovery, and disposal.

87 (vi) Describe education and outreach efforts to inform consumers about the program.
88 These materials should include (A) information about collection opportunities for postconsumer
89 paint; (B) information about the fee for the operation of the program that shall be included in the
90 purchase price of all architectural paint sold in the commonwealth; and (C) efforts to promote the
91 source reduction, reuse, and recycling of architectural paint.

92 (vii) Be reviewed by an independent auditor to assure that any added fee to paint sold in
93 the commonwealth as a result of the postconsumer paint stewardship program does not exceed
94 the costs to operate and sustain the program in accordance with sound management practices.

95 The independent auditor shall verify that the amount added to each unit of paint will cover the
96 aforementioned costs of the postconsumer paint stewardship program.

97 (3) The stewardship organization shall select the independent auditor in consultation with
98 the department. The department shall review the work product of the independent auditor. The
99 cost of any work performed by such independent auditor shall be funded by the program.

100 (4) Not later than 60 days after submission of the plan under this section, the
101 commissioner shall make a determination in writing, whether to approve the plan as submitted or
102 disapprove the plan.

103 (5) The department shall enforce the plan and may, by regulation, establish enforcement
104 procedures including the circumstances under which a new plan or an amendment to the plan
105 must be filed by the manufacturer or representative organization.

106 (6) No later than the implementation date of the program, information regarding the
107 approved plan, the names of participating producers, and the brands of architectural paint
108 covered by the program shall be posted on the department's website and on the website of the
109 representative organization.

110 (7) Upon implementation of the program, each manufacturer shall include in the price of
111 any architectural paint sold to retailers and distributors in the commonwealth the per container
112 amount in the approved program plan. A retailer or distributor shall not deduct this amount from
113 the purchase price.

114 (c)(1) A manufacturer or retailer shall not sell, or offer for sale, architectural paint to any
115 person in the commonwealth unless the manufacturer of a paint brand or manufacturer's

116 representative organization is implementing an approved paint stewardship plan as required by
117 section (b).

118 (2) A retailer shall be in compliance with this section if, on the date the architectural paint
119 was offered for sale, the manufacturer is listed on the department's website as implementing or
120 participating in an approved program or if the paint brand is listed on the department's website as
121 being included in the program.

122 (3) A paint collection site authorized under the provisions of this section shall not charge
123 any additional amount for the disposal of paint when it is offered for disposal.

124 (4) A manufacturer or the representative organization participating in a postconsumer
125 paint stewardship program shall not be liable for any claim of a violation of antitrust, restraint of
126 trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in
127 accordance with the program.

128 (5) Annually, the manufacturer or representative organization shall submit a report to the
129 commissioner that details the program. The report shall include: (i) a description of the methods
130 used to collect and transport postconsumer paint collected in the State; (ii) the volume and type
131 of postconsumer paint collected, and a description of the methods used to process the paint,
132 including reuse, recycling and other methods; (iii) samples of educational materials provided to
133 consumers of architectural paint; and (iv) the total cost of the program and an independent
134 financial audit. An independent financial auditor shall be chosen by the producer or
135 representative organization. The report or information relating to the report shall be posted on
136 the department's website and on the website of the representative organization.

137 (6) Financial, production or sales data reported to the department by a manufacturer or by
138 the representative organization shall not be subject to disclosure but the commissioner may
139 release a summary form of such data that does not disclose financial, production or sales data of
140 the manufacturer, retailer or representative organization.

141 (d)(1) Generators of household wastes and very small quantity generators are authorized
142 to transport or send their architectural paints to a paint collection site to the extent permitted by a
143 postconsumer paint stewardship program approved by the commissioner.

144 (2) Notwithstanding any general or special law to the contrary, paint collection sites are
145 authorized to collect and temporarily store architectural paints generated by persons specified in
146 this section in accordance with the requirements of the paint stewardship program in lieu of any
147 otherwise applicable law, rule or regulation.

148 (3) Nothing in this section shall be construed as restricting the collection of architectural
149 paint by a postconsumer paint stewardship program where such collection is authorized under
150 any other laws or regulations.

151 (4) Nothing in this section shall be construed to affect any requirements applicable to
152 facilities that treat, dispose, or recycle architectural paint under an otherwise application law, rule
153 or regulation.

154 (e) The plan required by paragraph (b) of this section 9 shall be submitted not later than
155 July 1, 2025. The manufacturer or representative organization shall implement the plan within 6
156 months of the date that the program plan is approved by the commissioner. The department may
157 extend the date of the plan submission or the date of the implementation of the program for good
158 cause shown.

159 (f) The manufacturer or representative organization shall submit the first annual report
160 detailing the postconsumer paint collection program as required by subparagraph (5) of
161 paragraph (c) of this section 9 to the commissioner not later than September 1, 2026, and
162 annually thereafter. The department may extend the time for submission of the annual report for
163 cause shown.

164 SECTION 3. Chapter 94 of the General Laws is hereby amended by inserting after
165 section 329 the following new sections:-

166 Section 330. In sections 330 to 345, inclusive, the following terms shall have the
167 following meanings unless the context clearly requires otherwise:

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

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

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

175 "Committee", the advisory committee as established by the department pursuant to
176 section 342.

177 "Coordinating body", the entity formed by producer responsibility organizations if more
178 than one organization is formed, pursuant to section 332.

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

182 "Covered material category", the categories of covered materials as defined by the
183 department pursuant to paragraph (d) of section 342.

184 "Department", the department of environmental protection.

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

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

192 "Material recovery facility" or "facility", a facility that receives, processes, and sells or
193 otherwise distributes post-consumer materials for recycling.

194 "Municipal solid waste", any residential or commercial solid waste, as defined in 310
195 CMR 19.006.

196 "Municipality", a city, town, or regional association acting on behalf of a city or town.

197 "Needs assessment", a statewide evaluation of current funding needs affecting recycling
198 access and availability, the capacity and costs associated with the collection and transportation of
199 recyclable material, the processing capacity, market conditions, and opportunities in the state and

200 regionally for recyclable material, and consumer education needs with respect to recycling and
201 reducing contamination in collected recyclable material.

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

205 "Packaging material" does not include:

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

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

211 "Paper products", paper that can or has been printed on including flyers, brochures,
212 booklets, catalogues, greeting cards, telephone directories, magazines, paper used for copying,
213 writing or any other general use. Paper products does not include:

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

216 (b) any literary, text, reference, or other bound book; or

217 (c) any newspaper.

218 "Producer", with respect to a covered material, means a party that has legal ownership of
219 the brand of a product for sale, use, or distribution in the state, including online retailers who sell
220 into the state, that utilizes covered material. For packaging, responsible parties shall be

221 determined based on the following criteria: (a) A person who manufactures a product under the
222 manufacturer's own brand that uses covered material; (b) If subparagraph (a) does not apply, a
223 person who is not the manufacturer of a product under the manufacturer's own brand that uses
224 covered material, but is the owner or licensee of a trademark under which a covered material is
225 used in a commercial enterprise, sold, offered for sale or distributed in the state, whether or not
226 the trademark is registered; or (c) If subparagraphs (a) and (b) do not apply, a person who
227 imports the product that uses the covered material into the state for use in a commercial
228 enterprise, sale, offer for sale or distribution in the commonwealth.

229 (d) the definition of "producer" includes a franchisor of a franchise located in the
230 commonwealth but does not include the franchisee operating that franchise.

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

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

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

239 "Producer responsibility plan" or "plan", a detailed plan that describes the manner in
240 which producers shall comply with the requirements of sections 330 to 345 and all regulations
241 promulgated by the department pursuant to sections 330 to 345.

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

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

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

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

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

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

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

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

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

274 "Sustainable packaging trust" or "trust", an expendable trust under control of the
275 department, created under Chapter 10 section 35EEE of the Massachusetts General Laws, for the
276 purpose of collecting funds for department administration of the packaging and paper products
277 program or an alternative collection program, and for collecting fines related to the packaging
278 and paper products program or an alternative collection program.

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

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

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

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

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

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

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

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

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

298 Section 331. Notwithstanding any provision of sections 330 to 345 to the contrary, a
299 producer is exempt from the requirements and prohibitions of sections 330 to 345 in any
300 calendar year in which the producer (a) realized less than \$1,000,000 in total gross revenue
301 during the prior calendar year, or (b) the producer sold, offered for sale or distributed for sale in
302 or into the commonwealth during the prior calendar year products contained, protected,
303 delivered, presented or distributed in or using less than one ton of covered material in total.

304 Section 332. (a) To satisfy the requirements under sections 330 to 345, producers of
305 covered materials sold or distributed into the commonwealth shall, within 6 months following

306 the enactment of this legislation, establish (a) producer responsibility organization(s) that shall
307 act as an agent and on behalf of each producer to operate the packaging and paper products
308 program. If more than one (1) producer responsibility organization is established with respect to
309 a category or categories of covered materials, the producer responsibility organizations may
310 establish a coordinating body to coordinate and manage those producer responsibility
311 organizations, and conduct business between those producer responsibility organizations,
312 collectors, and the department.

313 (b) If multiple producer responsibility organizations are formed, they must submit one
314 single producer responsibility plan to the department and ensure seamless operation of the
315 packaging and paper products program, thereby assigning responsibility equitably among
316 producer responsibility organizations and relieving the department of responsibility associated
317 with coordinating multiple producer responsibility organizations.

318 (c) Any producer responsibility organization formed in compliance with sections 330 to
319 345 shall be established and operated as an organization described in section 501(c)(3) of the
320 Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

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

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

328 which producers may request and receive assistance from the organization in the reporting of
329 required information and guidance for covered material modifications that would reduce fee
330 payments; and the mechanism or process, to be developed with input from collectors, by which
331 participating collectors may request and receive assistance from the organization in the reporting
332 of required information and guidance for recycling program modifications that would increase
333 access to and participation in residential recycling programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

393 defined by the department, in compliance with all applicable provisions of sections 330 to 345.
394 The description must include a flat-rate fee schedule for producers generating between one (1)
395 and fifteen (15) tons of covered materials annually. The organization shall develop an evaluation
396 system for the fee structure, and shall annually evaluate, revise and submit an updated
397 assessment schedule along with the annual report submitted to the department pursuant to section
398 339.

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

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

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

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

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

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

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

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

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

426 Section 334. In accordance with the applicable provisions of sections 330 to 345, the
427 department shall review the producer responsibility plan and amendments to such plan submitted
428 by the organization or coordinating body and shall require the implementation of corrective
429 actions by the organization to the packaging and paper products program. Following approval of
430 the plan by the department under this section, the producer responsibility organization shall
431 immediately begin implementation of the plan.

432 (a) The department shall review the producer responsibility plan submitted by the
433 organization or coordinating body pursuant to section 333 and approve or deny the plan within
434 ninety (90) days of receipt. The department shall approve the plan if the department determines

435 that the plan meets the requirements of section 333 and is otherwise consistent with all
436 applicable requirements of sections 330 to 345 of this chapter. If the department approves the
437 plan, the department shall transmit written notice of that approval to the organization. An
438 approval under this section must terminate five (5) years from the date of that approval but may
439 be extended for an additional five (5)-year period following the submission by the stewardship
440 organization of an updated plan consistent with section 333 that is approved by the department
441 consistent with this section. The organization or coordinating body must submit an updated plan
442 no later than one hundred twenty (120) days prior to the date its current plan expires.

443 (b) If the department determines that a submitted plan fails to meet any applicable
444 requirements of sections 330 to 345, the department shall provide written notice to the
445 organization describing the reasons for rejecting the plan. No later than forty-five (45) days after
446 receiving written notice rejecting a submitted plan, the organization shall revise and resubmit the
447 plan to the department. The department shall review the revised plan, decide whether to approve
448 it and provide written notice of the department's decision within forty-five (45) days of receipt of
449 the revised plan.

450 (c) The organization may propose modifications to the approved plan, provided the
451 organization submits the proposed modifications to the department for review and consults the
452 advisory committee as required under paragraph (d) of section 332. Not later than forty-five (45)
453 days following receipt of proposed modifications, the department shall approve the modifications
454 if the department determines the revision is in accordance with sections 330 to 345. If the
455 department determines the revision is not in accordance with sections 330 to 345, the department
456 shall communicate the determination to the organization, at which time the organization shall
457 resubmit proposed modifications to the department for approval. If the department does not make

458 a determination under this paragraph within forty-five (45) days of the receipt of a proposed
459 modification, the modification shall be considered to be approved.

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

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

480 made by producers to the organization shall be sufficient to cover all expenditures under section
481 337.

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

492 Section 337. In accordance with the provisions of this section and the regulations
493 promulgated by the department, the organization or coordinating body shall establish and
494 manage a producer responsibility fund. The organization shall deposit into the fund all payments
495 received from producers in accordance with section 335 and shall expend those funds for the
496 following uses:

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

498 (b) To fund the actual operating costs of the organization, which may not exceed the
499 estimated operating costs indicated in the plan approved by the department pursuant to section
500 341, and which must be verified through a third-party audit paid for by the stewardship
501 organization.

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

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

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

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

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

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

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

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

527 Section 338. In accordance with the requirements of this section and the regulations
528 promulgated by the department, a producer or group of producers may develop and operate an
529 alternative collection program to collect and manage a type or types of covered material sold,
530 offered for sale or distributed for sale in or into the commonwealth by the producer or producers.
531 A producer that manages a type of covered material under an approved alternative collection
532 program through reduction, reuse, or recycling may wholly or partially offset the producer's
533 payment obligations under the packaging and paper product program with respect to that same
534 type of covered material only.

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

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

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

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

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

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

564 (5) To what extent the alternative collection program may: (i) disproportionately impact
565 one community over another; (ii) impact environmental justice populations, as defined in section
566 62 of chapter 30, and (iii) provide equitable regional access to the program.

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

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

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

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

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

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

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

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

590 (f) If the department determines that an approved alternative collection program is not
591 operating in a manner consistent with the proposal approved under this section or the provisions
592 of this section, the department shall provide written notice to the producer or producers operating
593 the alternative collection program regarding the nature of the deficiency, the actions necessary to
594 correct the deficiency and the time by which such actions must be implemented. If the
595 department determines that the producer or group of producers have failed to implement the
596 actions described in the written notice within the required time frame, the department shall notify
597 the producers or group of producers as well as the producer responsibility organization or
598 coordinating body in writing that the producer or group of producers are ineligible to offset
599 payment obligations under the packaging and paper product program based on covered material
600 managed under the alternative collection program. The department may also bring enforcement
601 actions against the producer or group of producers under section 343.

602 Section 339. The producer responsibility organization shall submit an annual report to the
603 department on a regular schedule determined by the department for the preceding calendar year
604 the program was in operation, which shall include:

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

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

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

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

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

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

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

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

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

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

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

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

630 Section 340. In accordance with the provisions of this section and the regulations
631 promulgated by the department, a collector may elect to, but is not required to, participate in the
632 program under sections 330 to 345. All collectors shall provide collection and recycling of
633 covered recyclables to all residential units and schools to which they provide service. The
634 producer responsibility organization(s) or coordinating body shall reimburse participating
635 collectors for incurred net costs associated with collection, processing, transportation and
636 recycling or disposal of covered materials from all residential units and schools and shall ensure
637 that, in the event no collector has elected to participate in the program in a given jurisdiction,
638 convenient, equitable and free access to recycling services is available to residential units and
639 schools within that jurisdiction. Participating collectors shall not charge fees to residential units
640 or schools for reimbursable costs.

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

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

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

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

655 Section 341. In accordance with the provisions of this section and regulations
656 promulgated by the department, the organization or coordinating body shall calculate and make
657 reimbursement payments from the fund to participating collectors to reimburse those collectors
658 for incurred costs associated with collection, processing, transportation and recycling of covered
659 materials from all residential units and schools.

660 (a) In accordance with the regulations promulgated by the department pursuant to section
661 342, the organization or coordinating body shall determine the amount of reimbursements to
662 participating collectors under this section based on the following information:

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

666 (2) Information provided to the department by facilities pursuant to paragraph (f) of
667 section 342 and made available by the department to the organization or coordinating body,

668 including the tons of readily recyclable material received by each facility from each collector, the
669 tons of processed readily recyclable material sold by each facility, and any revenue received.

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

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

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

682 Section 342. The department shall administer and enforce this section and shall
683 promulgate regulations as necessary to implement, administer and enforce this section. All
684 regulations developed under this section shall be promulgated no later than six months after the
685 passage of this act.

686 (a) The department shall establish an advisory committee that represents a range of
687 interested and engaged persons relevant to the category of covered materials of the applicable
688 program, including the commissioner of the department of environmental protection or a
689 designee, one member who shall be appointed by the attorney general and who shall have

690 expertise in consumer protection, and individuals representing producers, retailers, waste haulers,
691 material recovery facility operators, municipalities, environmental and community organizations,
692 freshwater and marine litter programs, regional end-of-life management of covered materials,
693 and environmental and human health scientists. Each individual serving on an advisory
694 committee may represent only one (1) member of each category listed under this paragraph, and
695 the organization or coordinating body shall ensure that no category has a disproportionate
696 representation on an advisory committee. The department may select a third-party facilitator for
697 the advisory committee.

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

702 (c) The department shall conduct an initial needs assessment within six months of the
703 enactment of this legislation. The needs assessment shall include an assessment of the impact of
704 the newspaper industry on recycling infrastructure and the environment in the Commonwealth
705 and may include recommendations regarding definitions in section 330 of this chapter. The
706 initial needs assessment may also include recommendations for a producer responsibility
707 organization plan. The needs assessment shall be published and publicly accessible on the
708 department's website. A copy of the needs assessment shall be filed with the clerks of the senate
709 of the house of representatives and the joint committee on environment, natural resources and
710 agriculture.

711 (d) Subsequent needs assessments shall be conducted every four years by the department
712 in consultation with the committee. Subsequent needs assessments may include an assessment of
713 the impacts of the newspaper industry on recycling infrastructure in the Commonwealth and may
714 include recommendations regarding definitions in section 330 of this chapter. Subsequent needs
715 assessments may also include recommendations to include a producer responsibility organization
716 plan. Subsequent needs assessments shall be published and publicly accessible on the
717 department's website. A copy of subsequent needs assessments shall be filed with the clerks of
718 the senate and the house of representatives and the joint committee on environment, natural
719 resources and agriculture.

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

729 (f) The department shall regularly publish a schedule of adjustments to be used by the
730 producer responsibility organization in determining the amount of producer payments required
731 under section 335. The schedule of adjustments shall apply to both readily and non-readily
732 recyclable covered materials as defined in paragraph (c) and shall be used to individually adjust
733 the fees assessed for each category of covered material as defined in paragraph (d). To minimize

734 the extraction, manufacture, use, and end-of-life-management impacts of covered materials, the
735 schedule of adjustments must be structured to incent:

736 (1) Covered material waste reduction.

737 (2) Reuse and lifespan extension of packaging.

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

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

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

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

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

747 (8) Domestic processing of covered materials.

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

749 (g) The department shall regularly publish a list of readily recyclable materials,
750 developed through coordination with the producer responsibility organization and material
751 recovery facilities or other entities managing covered materials. The department shall provide for
752 a transitional period between the time that a type of covered material is determined to be readily
753 recyclable or to not be readily recyclable and the time that such determinations will be effective

754 for the purposes of determining producer payments and collector reimbursements in accordance
755 with sections 330 to 345. The department may amend the list of readily recyclable materials as
756 needed.

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

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

772 (j) Beginning at the time that a producer or producers managing an alternative collection
773 program are required to submit the first annual report to the department pursuant to section
774 338(d), the department shall submit to the producer or producers, and quarterly thereafter, all
775 costs incurred in the administration of the alternative collection program, including oversight,

776 issuance of any regulations, planning, plan review, including proposed modifications to the plan
777 under section 338, compliance, enforcement, and sufficient staff positions to administer the
778 program. All funds shall be deposited in the sustainable packaging trust.

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

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

789 (m) Based on the information provided to the department under paragraph (g) and any
790 other information considered by the department, the department shall make available on its
791 publicly accessible website a regularly updated list of producers that the department has
792 determined are compliant with all applicable requirements of this section and a list of producers
793 and, where applicable, specific products that the department has determined are not compliant
794 with all applicable requirements of this section. The department shall conduct outreach to
795 retailers to ensure that retailers are aware of the information made available under this paragraph
796 and any changes to that information.

797 Section 343. Within 18 months of the passage of this chapter, no producer, distributor,
798 retailer, or other responsible party for a covered material shall sell, offer for sale, use, or
799 distribute any covered material to any person in the commonwealth if the producer of such
800 materials is not in compliance with all applicable parts of sections 330 to 345.

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

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

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

810 Section 344. A producer or producer responsibility organization, including a producer's
811 or organization's officers, members, employees and agents that organize a packaging and paper
812 product program or an alternative collection program under sections 330 to 345, is immune from
813 liability for the producer's or organization's conduct under state laws relating to antitrust,
814 restraint of trade, unfair trade practices and other regulation of trade or commerce only to the
815 extent necessary to plan and implement the producer's or organization's packaging and paper
816 product program or alternative collection program consistent with the provisions of sections 330
817 to 345.

818 Section 345. Proprietary information submitted to the department pursuant to the
819 requirements of sections 330 to 345 or the rules adopted pursuant to sections 330 to 345 that is
820 identified by the submitter as proprietary information is confidential.