

# HOUSE . . . . . No. 776

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Josh S. Cutler*

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*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 reducing packaging waste in the Commonwealth.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/18/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/25/2023</i>
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>2/9/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/27/2023</i>

# HOUSE . . . . . No. 776

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By Representative Cutler of Pembroke, a petition (accompanied by bill, House, No. 776) of Josh S. Cutler and others relative to reducing paper and packaging waste in the Commonwealth. Environment and Natural Resources.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 745 OF 2019-2020.]

## The Commonwealth of Massachusetts

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

An Act reducing packaging waste 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 21A of the General Laws is hereby amended by inserting after  
2           section 11C the following section:

3           Section 11D.

4           (a) For the purposes of this section the following terms shall, unless the context clearly  
5           appears otherwise, have the following meanings:

6           “Board”, the Sustainable Packaging Advisory Board

7           "Brand", a name, symbol, word or mark that identifies a product and attributes the  
8           product to the owner of the brand as the producer.

9 “Department”, the department of environmental protection.

10 “Designated materials” means any packaging materials or printed paper material that  
11 producers generate in the marketplace and are obliged to recover per this section.

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

14 “Packaging”, any material used to ship, hold, protect, and present goods for sale to  
15 consumers in the commonwealth by a producer.

16 “Packaging types”, including but not limited to corrugated cardboard, boxboard, rigid  
17 plastic containers, etc., as designated by the department, based on material type, recyclability,  
18 recycled content and other attributes.

19 "Plan", a detailed plan that describes the manner in which producers shall arrange for the  
20 collection and recycling of post-consumer packaging.

21 "Post-consumer" means material that would normally be discarded as municipal solid  
22 waste having completed its life cycle as a consumer item.

23 “Printed paper”, paper that can or has been printed on including flyers, brochures,  
24 booklets, catalogues, greeting cards, telephone directories, newspapers, magazines, paper used  
25 for copying, writing or any other general use. Printed paper does not include paper products that,  
26 by virtue of their anticipated use, could become unsafe or unsanitary to recycle and any type of  
27 bound book not otherwise specified in this definition.

28 "Producer", an entity with more than \$100,000 per year in sales in the commonwealth to  
29 which one or more of the following apply:

(1) Which manufactures consumer goods and sells, offers to sell, delivers or distributes in the commonwealth under the manufacturer's own name or brand;

(2) Which is the owner or licensee of a trademark or brand under which the material is sold, offered for sale, delivered or distributed in the commonwealth, whether or not the trademark is registered;

(3) Which imports the consumer goods into the commonwealth for sale or distribution;

(4) Which sells containers into which products are dispensed at a retail establishment for offsite consumption; or

(5) Which sells at wholesale or retail a designated material, does not have legal ownership of the brand, and elects to fulfill the responsibilities of the producer for that product.

(6) Which does not fall under the definition of “small producer”

"Producer responsibility organization", an organization designated by a group of producers to act as an agent on behalf of each producer to develop and implement a plan.

“Product”, any physical product sold to consumers in the commonwealth through retail establishments, wholesale distributor, internet sales or mail order.

(1) Any materials on which a mandatory fee or deposit applies, including beverage containers covered in Chapter 94 section 321, shall be excluded

"Recovery rate", the percentage of packaging and printed material by weight that is ultimately recycled.

"Recycled", material that is collected, prepared, delivered and incorporated in new products as a replacement for, or supplement to, raw material inputs in manufacturing, agriculture or construction. Recycling does not include destruction by incineration, conversion into a fuel without material recovery, or landfill disposal.

"Small producer", an entity which meets the above specifications defining a producer with the following exceptions:

- (1) A producer with less than \$100,000 per year in sales, or
  - 2) A producer which supplies less than 15 tons of packaging and printed paper per year.
- (b) Any producer selling a product in the commonwealth that includes packaging or printed paper shall register with the department annually. The department shall promulgate a registration fee schedule to cover administrative costs, including a schedule for re-evaluating the fee structure.
- (c) The governor shall appoint a Sustainable Packaging Advisory board which shall advise the commissioner of the department, the producers and producer responsibility organization(s) on the plans and regulations required herein, and oversee the Sustainable Packaging Trust established in section 35EEE of Chapter 10. The board shall consist of 9 members: 1 of whom shall be the commissioner of the department of environmental protection or a designee, 2 of whom shall be a representative of commonwealth retailers having less than 40% of their annual sales in the commonwealth being online which are subject to the fee; 2 of whom shall be a representative of retailers having more than 40% of their annual sales in the commonwealth being online which are subject to the fee; 2 of whom shall represent of the waste hauling and material recovery facility industry; 1 of whom shall be a representative of statewide

nonprofit environmental organizations that participate on the department's solid waste advisory committee; and 1 of whom shall be a representative of municipal solid waste programs.

(d) Producers, or a producer responsibility organization acting as their designated agent, shall develop and submit a program plan to the department within 4 (four) months of the promulgation of related regulations by the department that arranges for and finances the collection and recycling of post-consumer packaging as described within this section.

The submitted plan shall, at a minimum:

(1) Identify the producer(s) to which the plan applies

(2) Identify and quantify the packaging material type(s) for which the producer, or producer responsibility organization, is responsible for generating within the borders of the commonwealth. For the materials identified, the producer or producer responsibility organization will outline how they will achieve a combined reduction and recovery rate of no less than sixty five percent (65%) by weight by the year 2027, and no less than eighty percent (80%) by 2032;

(2) Explain the process for determining how much of each type of packaging, based on weight, is sold into the commonwealth each year, and determining the amount of material recycled;

(3) Include a financing structure that is sufficient to cover the cost of registering, operating and updating the plan, and maintaining a financial reserve sufficient to operate the program in a fiscally prudent and responsible manner, such that it considers historical variations in market values of their post-consumer packaging type(s). Financing costs shall be apportioned using the following cost criteria:

(i) Position on the Zero Waste International Alliance hierarchy, with higher cost for prohibited or less desirable processes, lower costs for processes further u in the hierarchy

(ii) End of life management cost of each material type per ton, including collection, disposal, recycling, contamination cost at material recovery facilities

(iii) Environmental impact of production, recovery and disposal as determined by an independent third party conducting a life cycle assessment for each material type; and

(ivi) Recovery rate for each material based on audits of incoming loads at representative transfer stations, disposal facilities and material recovery facilities in the commonwealth.

(4) Include a description of a public education program to develop awareness and increase public participation in existing or new recovery programs;

(5) Indicate how the producers, or the producer responsibility organization, will work with existing waste haulers, material recovery facilities and municipalities to operate or expand current collection programs so they are at least as convenient to commonwealth residents, businesses and institutions as they were on the date of enactment.

(e) Producers and (the) producer responsibility organization(s) shall consult with the board during the development of plans, and address stakeholder concerns regarding the plan before submitting the plan to the department for review.

(f) Not later than ninety (90) days after the submission of a plan pursuant to this section, the department shall make a determination whether to:

(1) Approve the plan as submitted;

112 (2) Approve the plan with conditions; or

113 (3) Deny the plan.

114 (g) Not later than six (6) months after the date the plan is approved, the producers, or  
115 producer responsibility organization, shall implement the approved plan.

116 (h) Not later than the implementation date of the program, the department shall publicly  
117 list the names of participating producers and the brands covered by the approved program.

118 (i) Within twenty-four (24) months of the passage of this chapter, no producer, distributor  
119 or retailer shall sell or offer for sale any packaging materials to any person in the commonwealth  
120 if the producer of such materials has not had a plan approved by the department independently or  
121 through a producer responsibility organization .

122 (j) Producers of packaging or their producer responsibility organization(s) shall submit an  
123 annual report to the department on a regular schedule determined by the department for the  
124 preceding calendar year the program plan was in operation, which shall include:

125 (1) the amount of material sold into the commonwealth, including a detailed  
126 methodology for how this figure was determined,

127 (2) the amount of material recovered and recycled, including a detailed methodology for  
128 how this figure was determined,

129 (3) a summary of fees assessed and program expenses incurred,



(4) a summary of business development and job creation, within the scope of the approved plan, related to the collection, transportation, processing and recycling of packaging and printed paper within the commonwealth;

(5) and any other information required by the department pertaining to this Section. This information may be audited by the department by an independent auditor chosen by the department. Audits are funded from the Sustainable Packaging Trust.

#### Section 11E Authority

The department is hereby authorized to promulgate rules and regulations as may be necessary to implement and carry out the provisions of this chapter, and to assess fines for noncompliance as detailed in Section 11F.

#### Section 11F Enforcement

Failure to comply with any of the requirements established by or pursuant to Section 11D shall obligate the producers covered under that material-type to pay not less than two hundred thousand dollars (\$200,000) per year of non-compliance. The department shall deposit the funds received from producers into the Sustainable Packaging Trust for grants for market development related to the collection and recycling of the material type, and to municipalities to offset disposal costs related to the managing the un-recycled packaging and/or printed paper. Producers' individual contributions shall not exceed their respective market shares of packaging sold in the state.

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

Section 35EEE.

(a) There shall be established an expendable trust to be known as the Sustainable Packaging Trust. Amounts deposited in the trust shall be used for programs described in sections (c) and (d). Proceeds of the trust shall be invested by the treasurer and shall be under the care and custody of the commissioner of the department of environmental protection, in consultation with the board established in section 11D of Chapter 21A. Interest earnings on funds deposited in said trust shall be credited to and become part of the trust. The proceeds of the trust shall be expended by said commissioner without further appropriation to cover administrative costs for the implementation and enforcement of this section, including the creation of adequate[9] [CG10] department staff positions which will include at a minimum five (5) FTE positions: one managerial position, three compliance and enforcement positions, and one administrative position.

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

(c) monies deposited in the fund shall be used for the administration and enforcement of the provisions of this section and Section 11D of Chapter 21A. Funds shall be distributed to the department of environmental protection and local authorities based initially on the projected costs, and thereafter on actual costs.

171           SECTION 3. The department shall, on or before July 1, 2024, promulgate regulations to  
172   set a timeline for the types of packaging to be covered by the plans set forth in section 1, with  
173   priority materials being those that are most costly to manage based on aggregate disposed weight  
174   and aggregate contamination volume at material recovery facilities. All packaging types as  
175   defined in section 1 shall be included by 5 years from initial promulgation.

176           SECTION 4. Effective January 1, 2025, packaged products sold in the commonwealth  
177   shall become subject to a packaging reduction and recovery plan according to the schedule set by  
178   the department as authorized by section 11D of Chapter 21A.