

HOUSE No. 776

The Commonwealth of Massachusetts

PRESENTED BY:

Josh S. Cutler

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.

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

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.

[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:

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

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

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

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

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

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

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

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

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

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

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

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

55 (1) A producer with less than \$100,000 per year in sales, or

56 2) A producer which supplies less than 15 tons of packaging and printed paper per year.

57 (b) Any producer selling a product in the commonwealth that includes packaging or printed
58 paper shall register with the department annually. The department shall promulgate a registration
59 fee schedule to cover administrative costs, including a schedule for re-evaluating the fee
60 structure.

61 (c) The governor shall appoint a Sustainable Packaging Advisory board which shall
62 advise the commissioner of the department, the producers and producer responsibility
63 organization(s) on the plans and regulations required herein, and oversee the Sustainable
64 Packaging Trust established in section 35EEE of Chapter 10. The board shall consist of 9
65 members: 1 of whom shall be the commissioner of the department of environmental protection or
66 a designee, 2 of whom shall be a representative of commonwealth retailers having less than 40%
67 of their annual sales in the commonwealth being online which are subject to the fee; 2 of whom
68 shall be a representative of retailers having more than 40% of their annual sales in the
69 commonwealth being online which are subject to the fee; 2 of whom shall represent of the waste
70 hauling and material recovery facility industry; 1 of whom shall be a representative of statewide

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

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

77 The submitted plan shall, at a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

111 (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,

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

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

136 Section 11E Authority

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

140 Section 11F Enforcement

141 Failure to comply with any of the requirements established by or pursuant to Section
142 11D shall obligate the producers covered under that material-type to pay not less than two
143 hundred thousand dollars (\$200,000) per year of non-compliance. The department shall deposit
144 the funds received from producers into the Sustainable Packaging Trust for grants for market
145 development related to the collection and recycling of the material type, and to municipalities to
146 offset disposal costs related to the managing the un-recycled packaging and/or printed paper.
147 Producers' individual contributions shall not exceed their respective market shares of packaging
148 sold in the state.

149

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

152 Section 35EEE.

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

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

167 (c) monies deposited in the fund shall be used for the administration and enforcement of
168 the provisions of this section and Section 11D of Chapter 21A. Funds shall be distributed to the
169 department of environmental protection and local authorities based initially on the projected
170 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.