

# SENATE . . . . . No. 471

## The Commonwealth of Massachusetts

PRESENTED BY:

***Sal N. DiDomenico***

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

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

An Act to reduce waste and recycling costs in the commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/31/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/2/2023</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>2/7/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/8/2023</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>2/10/2023</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/14/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/17/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/21/2023</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>2/23/2023</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>3/14/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/21/2023</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>4/6/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>5/1/2023</i>
<i>Manny Cruz</i>	<i>7th Essex</i>	<i>12/21/2023</i>

**SENATE . . . . . No. 471**

By Mr. DiDomenico, a 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. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 517 OF 2021-2022.]

**The Commonwealth of Massachusetts**

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

An Act to reduce waste and recycling costs in the commonwealth.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 94 of the General Laws, as appearing in the 2020 Official Edition,  
2 is hereby amended by inserting after section 329 the following sections:-

3 Section 330. Definitions applicable to Secs. 330 to 345. In section three hundred and to  
4 section three hundred and forty-five, inclusive, the following terms shall, unless the context  
5 clearly appears otherwise, have the following meanings:

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

9           “Brand”, a name, symbol, word or mark that identifies a product, rather than its  
10 components, and attributes the product to the owner of the brand.

11           “Collector”, a municipality, private hauler, association, or other entity that collects solid  
12 waste from covered entities.

13           “Committee”, the advisory committee as established by the department pursuant to  
14 section 342.

15           “Convenience”, access to recycling is available wherever access to trash disposal is  
16 provided.

17           “Covered entities”, residences, schools, municipal buildings, public spaces, small  
18 businesses and hospitality locations.

19           “Covered materials”, any packaging material or paper products, regardless of  
20 recyclability or compostability, that are sold, offered for sale, or distributed to consumers in the  
21 state, including through an internet transaction.

22           “Covered material category”, the categories of covered materials as defined by the  
23 department pursuant to paragraph (d) of section 342.

24           “Department”, the department of environmental protection.

25           “Hospitality location”, a place that provides food and beverage service, overnight guest  
26 accommodation, entertainment or recreation.

27           “Franchisee”, a person that is granted a license by a franchisor to use the franchisor's  
28 trade name, service mark or related characteristic and to share in the franchisor's proprietary

29 knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite  
30 period.

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

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

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

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

39 "Needs assessment", a statewide evaluation of current funding needs affecting recycling  
40 access and convenience; the capacity and costs associated with the collection and transportation  
41 of recyclable material; the processing capacity, market conditions, and opportunities in the state  
42 and regionally for recyclable material; infrastructure improvement and consumer education  
43 needs and costs with respect to recycling processing, access, convenience, environmental justice  
44 and reducing contamination in collected recyclable material and in outgoing bales.

45 "Newspaper", a paper that is printed and distributed daily or weekly and that primarily  
46 contains news, articles of opinion, and non-advertisement features, with less than half of space  
47 devoted to paid content.

48 "Packaging material", any part of a package or container, including material that is used  
49 for the containment, protection, handling, delivery, and presentation of a product that is sold,

50 offered for sale, imported, or distributed in the state, including through internet transactions

51 "Packaging material" does not include:

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

55 (b) A discrete type of material, or a category of material that includes multiple discrete  
56 types of material, that is a beverage container subject to a redeemable deposit, as defined in  
57 section 321 of this chapter.

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

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

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

64 (c) newspapers

65 "Producer", with respect to a covered material, means a party that has legal ownership of  
66 the brand of a product for sale, use, or distribution in the state, including online retailers who sell  
67 into the state, that utilizes covered material. For packaging, responsible parties shall be  
68 determined based on the following criteria: (a) A person who manufactures a product under the  
69 manufacturer's own brand that uses covered material; (b) If subparagraph (a) does not apply, a  
70 person who is not the manufacturer of a product under the manufacturer's own brand that uses

71 covered material, but is the owner or licensee of a trademark under which a covered material is  
72 used in a commercial enterprise, sold, offered for sale or distributed in the state, whether or not  
73 the trademark is registered; or (c) If subparagraphs (a) and (b) do not apply, a person who  
74 imports the product that uses the covered material into the state for use in a commercial  
75 enterprise, sale, offer for sale or distribution in the commonwealth.

76 (d) the definition of “producer” includes a franchisor of a franchise located in the  
77 commonwealth but does not include the franchisee operating that franchise.

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

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

83 "Producer responsibility organization" or "organization", a not-for-profit entity formed by  
84 all producers, whether directly or by trade organizations for subgroups of producers, and  
85 contracted by the department under section 332 to act as an agent on behalf of each producer to  
86 develop and implement a producer responsibility plan.

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

90 "Packaging and paper products program" or “program”, the program implemented under  
91 section. 330 to 345 by the organization to assess and collect payments from producers based on

92 the type and weight of covered material sold, offered for sale or distributed for sale in the  
93 commonwealth by each producer and to reimburse participating collectors for certain incurred  
94 recycling costs.

95 “Readily-recycled”, with respect to a covered material, that the type of packaging  
96 material or paper product, as annually determined by the department:

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

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

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

110 "Recycling", to separate, dismantle or process the materials, components or commodities  
111 in covered materials for the purpose of preparing the materials, components or commodities for  
112 use or reuse in new products or components. "Recycling" does not include energy recovery or  
113 energy generation by means of combustion; pyrolysis, gasification and any other high-heat

114 chemical conversion processes; or landfill disposal of discarded covered material or discarded  
115 product component materials.

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

120 “School”, a public, private, or charter school, including pre-schools, K-12 schools,  
121 colleges, and universities.

122 “Small business”, a business that utilizes less than 1- 40 cubic yard dumpster or  
123 equivalent per week for its combined waste and recycling.

124 “Sustainable packaging trust” or “trust”, an expendable trust under control of the  
125 department, created under Chapter 10 section 35EEE of the Massachusetts General Laws, for the  
126 purpose of collecting funds for department administration of the packaging and paper products  
127 program or an alternative collection program, and for collecting fines related to the packaging  
128 and paper products program or an alternative collection program.

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

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



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

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

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

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

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

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

147 “Waste disposal bans”, has the same meaning as in 310 CMR 19.017.

148 Section 331. Producer exemptions. Notwithstanding any provision of sections 330 to  
149 345 to the contrary, a producer is exempt from the requirements and prohibitions of sections 330  
150 to 345 in any calendar year in which the producer (a) realized less than \$1,000,000 in total gross  
151 revenue during the prior calendar year, or (b) the producer sold, offered for sale or distributed for  
152 sale in or into the commonwealth during the prior calendar year products contained, protected,  
153 delivered, presented or distributed in or using less than one ton of covered material in total.

154 Section 332. Producer responsibility organization needs assessments. To satisfy the  
155 requirements under sections 330 to 345, producers of covered materials sold or distributed into

156 the commonwealth, or organizations formed by groups of producers for this purpose, shall,  
157 within 6 months following the enactment of this legislation, establish a producer responsibility  
158 organization that shall act as an agent and on behalf of each producer to operate the packaging  
159 and paper products program.

160 (a) The producer responsibility organization formed in compliance with sections 330 to  
161 345 shall be established and operated as an organization described in section 501(c)(3) of the  
162 Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

163 (b) The organization shall conduct an initial needs assessment within six months of  
164 contract award. The needs assessment shall include an assessment of the impact of the  
165 newspaper industry on recycling infrastructure and the environment in the commonwealth and  
166 may include recommendations regarding definitions in section 330 of this chapter. The initial  
167 needs assessment may also include recommendations for the producer responsibility organization  
168 plan. The needs assessment shall be published and publicly accessible on the department's  
169 website. A copy of the needs assessment shall be filed with the clerks of the senate of the house  
170 of representatives and the joint committee on environment, natural resources and agriculture.

171 (c) Subsequent needs assessments shall be conducted every five years by the organization  
172 in consultation with the committee. Subsequent needs assessments may include an assessment of  
173 the impacts of the newspaper industry on recycling infrastructure in the commonwealth and may  
174 include recommendations regarding definitions in section 330 of this chapter, and may also  
175 include recommendations to include in subsequent plans. Subsequent needs assessments shall be  
176 published and publicly accessible on the department's website. A copy of subsequent needs

177 assessments shall be filed with the clerks of the senate and the house of representatives and the  
178 joint committee on environment, natural resources and agriculture.

179 Section 333. Producer plan. Within six (6) months of the promulgation of related  
180 regulations by the department pursuant to section 342, the producer responsibility organization  
181 shall submit a plan for the establishment of the producer responsibility program to the  
182 department for approval. With the exception of paragraph (h), the plan shall have a duration of  
183 five (5) years. The plan must include, at a minimum:

184 (a) A description of how the producer responsibility organization will administer the  
185 program, including the mechanism or process, to be developed with input from producers, by  
186 which producers may request and receive assistance from the organization in the reporting of  
187 required information and guidance for covered material modifications that would reduce fee  
188 payments; and the mechanism or process, to be developed with input from collectors, by which  
189 participating collectors may request and receive assistance from the organization in the reporting  
190 of required information and guidance for recycling program modifications that would increase  
191 access to and participation in covered entity recycling programs.

192 (b) A description of how the organization intends to solicit and consider input from the  
193 advisory committee

194 (c) A description of the funding mechanism covering the entire cost of the program,  
195 including how the organization intends to establish and manage the producer responsibility fund  
196 consistent with the requirements of sections 335 and 337, including, but not limited to: staffing  
197 the organization to manage the fund; a plan to ensure equity of access for financially or  
198 otherwise challenged municipal participants; technical support to producers and collectors

199 regarding program requirements; administering and collecting payments to and reimbursements  
200 from the fund and the financial mechanisms, including investment types if any, the organization  
201 intends to use to manage monies within the fund.

202 (d) A proposed budget outlining the anticipated costs of operating the program, including  
203 identification of any start-up costs that will not be ongoing and a description of the method by  
204 which the organization intends to determine and collect producer payments during the start-up  
205 period of program operation, and to reimburse or require additional payments by those producers  
206 subsequent to the start-up period based on producer reporting of the actual amount of covered  
207 material sold, offered for sale or distributed for sale in or into the commonwealth by each  
208 producer during the start-up period. The proposed budget should describe how the organization  
209 will maintain a financial reserve sufficient to operate the program in a fiscally prudent and  
210 responsible manner, such that it considers historical variations in market values of post-consumer  
211 packaging types. The proposed budget under this paragraph may overestimate the cost of  
212 operating the program during the start-up period of operation but must describe the method and  
213 basis for any overestimate.

214 (e) A proposal for how expenditures from the fund will be used for investments in  
215 convenience, public outreach, education, communication, and infrastructure enhancement in a  
216 way that increases access to recycling and reuse throughout the commonwealth, and how the  
217 organization's development of such investment proposals must incorporate input from the  
218 committee. Public outreach, education, and communication shall:

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

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

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

224 (4) Provide for outreach and education that are (i) designed to achieve covered materials  
225 goals under paragraph (f ) of this section, including the prevention of contamination of  
226 materials; (ii) coordinated across programs or regions to avoid confusion for consumers; and (iii)  
227 developed in consultation with the advisory committee.

228 (f) A description of how, through the proposed expenditures under paragraph (e), the  
229 organization intends to provide convenient and free consumer access to collection services or  
230 collection facilities for all covered entities in the commonwealth, and how the organization  
231 intends to achieve and assist collectors and facilities in achieving a combined reduction from a  
232 specified baseline and recycling rate, based on regular audits of outbound tonnages of covered  
233 material from facilities as reported to the department pursuant to paragraph (f) of section 342, of  
234 no less than sixty (60) percent by weight by July 1, 2030, no less than seventy five (75) percent  
235 by weight by July 1, 2035, and no less than ninety (90) percent by weight by July 1, 2040, of  
236 covered materials managed by the organization. The organization shall also provide a description  
237 of how it intends to achieve and assist collectors and facilities in achieving performance  
238 standards for each type of covered material as published annually by the department pursuant to  
239 paragraph (d) of section 342.

240 (g) A proposed schedule of minimum post-consumer recycled material content rate  
241 requirements for covered materials, including a description of how the organization intends to  
242 meet the proposed minimum post-consumer recycled material content rates. The minimum post-

243 consumer recycled material content rates shall include each covered material category, and shall  
244 not be less than ten (10) percent of all material in each covered material category, by weight by  
245 2035.

246 (h) A description of how the organization intends to use the materials cost differentiation  
247 system developed by the department and the annual schedule of adjustments under paragraphs  
248 (a) and (b) of section 342 to assess fees for producers of each type of covered materials, as  
249 defined by the department, in compliance with all applicable provisions of sections 330 to 345.  
250 The description must include a flat-rate fee schedule for producers generating between one (1)  
251 and fifteen (15) tons of covered materials annually. The organization shall develop an evaluation  
252 system for the fee structure, and shall annually evaluate, revise and submit an updated  
253 assessment schedule along with the annual report submitted to the department pursuant to section  
254 339.

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

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

262 (2) A description of how those audits, at a minimum, will be designed to solicit  
263 information regarding the extent to which recyclable material processed and sold by those

264 facilities reflects the tons of each type of covered material recycled in the commonwealth and the  
265 ultimate state or country destination of and intended use for that material.

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

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

273 (5) For waste disposal audits, at a minimum, a description of the types and weight of  
274 covered material in the disposal waste stream, and the percentage by weight of the disposal waste  
275 stream that is comprised of covered materials.

276 (6) For litter audits, to the maximum extent practicable, a description of the covered  
277 material type by weight, identification of producer, and the general description of where the litter  
278 is accumulating throughout the commonwealth.

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

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

282 Section 334. Approval of plan; plan amendments; corrective actions, termination of plan.

283 In accordance with the applicable provisions of sections 330 to 345, the department shall  
284 review the producer responsibility plan and amendments to such plan submitted by the

285 organization, and shall require the implementation of corrective actions by the organization to  
286 the packaging and paper products program within a specified timeframe. Following approval of  
287 the plan by the department under this section, the producer responsibility organization shall  
288 immediately begin implementation of the plan.

289 (a) The department shall review the producer responsibility plan submitted by the  
290 organization pursuant to section 333 and approve or deny the plan within ninety (90) days of  
291 receipt. The department shall approve the plan if the department determines that the plan meets  
292 the requirements of section 333 and is otherwise consistent with all applicable requirements of  
293 sections 330 to 345. If the department approves the plan, the department shall transmit written  
294 notice of that approval to the organization. An approval under this section must terminate five (5)  
295 years from the date of that approval but may be extended for an additional five (5)-year period  
296 following the submission by the organization of an updated plan consistent with section 333 that  
297 is approved by the department consistent with this section. The organization must submit an  
298 updated plan no later than one hundred eighty (180) days prior to the date its current plan  
299 expires.

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



307 (c) The organization may propose modifications to the approved plan, provided the  
308 organization submits the proposed modifications to the department for review and consults the  
309 advisory committee as required under paragraph (a ) (ii) of section 332. Not later than forty-  
310 five (45) days following receipt of proposed modifications, the department shall approve the  
311 modifications if the department determines the revision is in accordance with sections 330 to  
312 345. If the department determines the revision is not in accordance with sections 330 to 345, the  
313 department shall communicate the determination to the organization, at which time the  
314 organization shall resubmit proposed modifications to the department for approval. If the  
315 department does not make a determination under this paragraph within forty-five (45) days of the  
316 receipt of a proposed modification, the modification shall be considered to be approved.

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

325 Section 335. Producer payments. In accordance with the provisions of this section and the  
326 regulations promulgated by the department, within six (6) months of establishment of the  
327 organization no later than thirty (30) days after the approval under section 332, and quarterly  
328 until the first producer report is submitted to the organization, a producer shall make payments to  
329 the organization to be deposited into the producer responsibility fund under section 337, based

330 on the amount of each type of covered material sold, offered for sale or distributed for sale in or  
331 into the commonwealth by the producer and not managed under an approved alternative  
332 collection program. The department shall promulgate regulations under section 342 setting forth  
333 the manner in which such payments must be calculated. Payments must include a producer's  
334 share of administrative, enforcement, education and infrastructure costs, and must reflect the per  
335 ton costs associated with collection, processing, transportation and recycling or disposal of  
336 covered materials; the costs associated with increasing access to reuse and recycling of covered  
337 materials; and other criteria as determined by paragraph (b) of section 342. In total, payments  
338 made by producers to the organization shall be sufficient to cover all expenditures under section  
339 337.

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

350           Section 337. Producer responsibility fund; authorized expenditures. In accordance with  
351 the provisions of this section and the regulations promulgated by the department, the  
352 organization shall establish and manage a producer responsibility fund. The organization shall

353 deposit into the fund all payments received from producers in accordance with section 335 and  
354 shall expend those funds for the following uses:

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

356 (b) To fund the actual operating costs of the organization, which may not exceed the  
357 estimated operating costs indicated in the plan approved by the department pursuant to section  
358 341, and which must be verified through a third-party audit paid for by the organization.

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

361 (d) To make investments in education and infrastructure that support the reduction,  
362 recycling and reuse of covered material in the commonwealth, which are directly supported by  
363 producer payments for covered materials and must be approved by the department prior to any  
364 such expenditures, and which must incorporate input from the advisory committee. Of the  
365 expenditures from the producer responsibility fund for a fiscal year, the organization shall ensure  
366 that not less than two (2) percent is used for education and not less than eight (8) percent is used  
367 for infrastructure described under this section and in compliance with the approved producer  
368 responsibility plan under section 334. These amounts may be adjusted with approval by the  
369 department based on progress toward the achievement of the reduction and recycling targets in  
370 section 333 paragraph (c).

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

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

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

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

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

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

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

394 (a) Once a producer responsibility organization has a plan approved by the department  
395 for the creation of a packaging and paper products program, a producer or group of producers  
396 seeking to implement an alternative collection program shall submit a proposal for the  
397 establishment of that program to the department for approval. The department shall provide an  
398 opportunity for public review and comment on the proposal or deny the proposal within ninety  
399 (90) days of receipt. The department may approve an alternative collection program for a term of  
400 five (5) years and, at the expiration of such term, the producer or group of producers operating  
401 the program may submit an updated proposal to the department for approval.

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

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

406 (2) To what extent the alternative collection program intends to manage those types of  
407 covered material to be collected under the program through reduction, reuse for an original  
408 purpose, recycling or disposal at an incineration facility. The department may not approve an  
409 alternative collection program that proposes management of a covered material type through  
410 disposal at an incineration facility unless that covered material is not readily recyclable as  
411 defined by the department pursuant to section 342 and the program proposes a process to begin  
412 reuse or recycling of that type of covered material within a period of 3 years or less. The  
413 program shall ensure that a combined reduction and recycling rate is achieved of no less than  
414 sixty-five (65) percent by weight by July 1, 2030, no less than eighty (80) percent by weight by

415 July 1, 2035, and no less than ninety (90) percent by weight by July 1, 2040 of covered materials  
416 managed by the organization.

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

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

423 (5) To what extent the alternative collection program may: (i) disproportionately impact  
424 one community over another; (ii) impact environmental justice populations, as defined in section  
425 62 of chapter 30, and (iii) provide equitable regional access to the program.

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

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

432 (1) The total tons of each type of covered material collected, reused, recycled, disposed at  
433 a landfill or municipal waste combustor or otherwise managed under the alternative collection  
434 program in the prior twelve months, including a breakdown of the total tons of each type of  
435 material to be credited to each producer participating in the alternative collection program.

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

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

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

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

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

449 (f) If the department determines that an approved alternative collection program is not  
450 operating in a manner consistent with the proposal approved under this section or the provisions  
451 of this section, the department shall provide written notice to the producer or producers operating  
452 the alternative collection program regarding the nature of the deficiency, the actions necessary to  
453 correct the deficiency and the time by which such actions must be implemented. If the  
454 department determines that the producer or group of producers have failed to implement the  
455 actions described in the written notice within the required time frame, the department shall notify  
456 the producers or group of producers as well as the producer responsibility organization in writing  
457 that the producer or group of producers are ineligible to offset payment obligations under the

458 packaging and paper product program based on covered material managed under the alternative  
459 collection program. The department may also bring enforcement actions against the producer or  
460 group of producers under section 343.

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

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

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

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

471 (d) As applicable, the total amount of each type of covered material collected and  
472 managed by each producer participating in an alternative collection programs approved by the  
473 department under section 338

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

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



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

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

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

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

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

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

490 Section 340. Requirements for collector reimbursements. In accordance with the  
491 provisions of this section and the regulations promulgated by the department, a collector may  
492 elect to, but is not required to, participate in the program under sections 330 to 345.

493 All collectors, regardless of participation status, shall provide collection and recycling of  
494 readily recycled materials covered recyclables to all covered entities to which they provide  
495 disposal service at a single cost incorporated in the trash collection rate.

496 The organization shall reimburse participating collectors for incurred net costs associated  
497 with collection, processing, transportation and recycling of covered materials from all residential  
498 units and schools for incurred net costs associated with processing and recycling of covered  
499 materials from covered entities. The organization shall ensure that, in the event no collector has

500 elected to participate in the program in a given jurisdiction, convenient, equitable and free access  
501 to recycling services is available to all covered entities within that jurisdiction. Participating  
502 collectors shall not charge fees to covered entities for reimbursable costs.

503 (a) To be eligible for reimbursement of costs under sections 341 as a participating  
504 collector, a collector must provide for the collection and recycling of covered materials that are  
505 generated by all covered entities using its service and that are readily recyclable as listed  
506 regularly by the department and that are not collected by an alternative collection program in  
507 accordance with section 338, and must quarterly report to the organization all information  
508 necessary for the organization, on a form provided by or approved by the department, to  
509 determine the collector's incurred net costs associated with collection, processing, transportation  
510 and recycling of recyclable material.

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

513 (b) Two or more municipalities, a regional refuse district or association, a municipally  
514 owned processing facility or quasi-municipal entity that manages materials on behalf of a  
515 municipality may elect to jointly report to the organization and jointly receive reimbursement  
516 payments from the organization.

517 (c) The organization shall reimburse collectors for qualifying costs within thirty (30) days  
518 of submission.

519 Section 341. Disbursement of collector reimbursements. In accordance with the  
520 provisions of this section, section 340, and regulations promulgated by the department, the  
521 organization shall make reimbursement payments from the fund to participating collectors for

522 incurred costs associated with collection, processing, transportation and recycling of covered  
523 materials from all covered entities.

524 (a) In accordance with the regulations promulgated by the department pursuant to section  
525 342, the organization or coordinating body shall determine the amount of reimbursements to  
526 participating collectors under this section based on the following information:

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

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

531 (a) In accordance with regulations promulgated by the department, the organization shall  
532 use the information described in paragraph (a) to determine the total tons of each covered  
533 material type recycled by all collectors at each recycling establishment and the percentage of  
534 those total tons attributable to each participating collector. In the case of two or more  
535 municipalities that jointly send recyclable material to a recycling establishment, the organization  
536 shall assume that an equal amount of the jointly sent material is attributable to each resident of  
537 each municipality unless those municipalities by agreement identify an unequal per capita  
538 division of that jointly sent material for the purposes of this section.

539 Section 342. Administration and enforcement; rulemaking; fees; additional department  
540 responsibilities. The department shall administer and enforce this section and shall promulgate  
541 regulations as necessary to implement, administer and enforce this section. All regulations  
542 developed under this section shall be promulgated no later than twelve (12) months after the  
543 passage of this act.

544 (a) No later than three (3) months from enactment, the department shall establish an  
545 advisory committee that represents a range of interested and engaged persons, including the  
546 commissioner of the department of environmental protection or a designee, one member who  
547 shall be appointed by the attorney general and who shall have expertise in consumer protection,  
548 and one individual each representing producers, retailers, waste haulers, material recovery  
549 facility operators, municipalities, environmental and community organizations, freshwater and  
550 marine litter programs, reuse organizations, regional end-of-life management of covered  
551 materials, and environmental and human health scientists. Each individual serving on the  
552 advisory committee may represent only one (1) member of each category listed under this  
553 paragraph, and the organization shall ensure that no category has a disproportionate  
554 representation on an advisory committee. The department may select a third-party facilitator for  
555 the advisory committee.

556 (b) The department shall hold an advisory meeting at least quarterly; request and consider  
557 comments from the advisory committee prior to developing guidance for the plan or any  
558 modifications to the plan, and proposals by the organization for infrastructure and education  
559 investments; and include a summary of advisory committee engagement and input in the report  
560 under section 339.

561 (c) The department shall develop a material cost differentiation system with which the  
562 producer responsibility organization will calculate material category-specific per-ton producer  
563 payments. The material cost differentiation mechanism shall be based on the net cost of  
564 residential curbside collection or transfer station operation, on-site processing cost for each  
565 readily recyclable covered material types, management cost of non-readily recyclable covered  
566 materials, transportation cost for each covered material, and any other cost factors as determined

567 by the department. Cost calculations shall take into consideration revenue generated from  
568 recyclable materials and must incentivize operational efficiency and contamination reduction.

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

576 (1) Covered material waste reduction.

577 (2) Reuse and lifespan extension of packaging.

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

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

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

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

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

587 (8) Domestic processing of covered materials.

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

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

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

604 (g) Beginning at the time that the producer responsibility organization is formed, the  
605 department shall submit to the organization, and quarterly thereafter, all costs incurred in the  
606 administration of the packaging and paper products program, including oversight, issuance of  
607 any regulations, conducting the needs assessment, any third-party facilitators hired for the  
608 advisory committee, planning, plan review, including proposed modifications to the plan under

609 section 334, compliance, enforcement, and sufficient staff positions to administer the program.  
610 All funds shall be deposited in the sustainable packaging trust.

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

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

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

628 (k) Based on the information provided to the department under paragraph (g) and any  
629 other information considered by the department, the department shall make available on its  
630 publicly accessible website a regularly updated list of producers that the department has

631 determined are compliant with all applicable requirements of this section and a list of producers  
632 and, where applicable, specific producers or products that the department has determined are not  
633 compliant with all applicable requirements of this section. The department shall conduct  
634 outreach to retailers to ensure that retailers are aware of the information made available under  
635 this paragraph and any changes to that information.

636 Section 343. Enforcement. Within thirty (30) days of approval of the plan, no producer,  
637 distributor, retailer, or other responsible party for a covered material shall sell, offer for sale, use,  
638 or distribute any covered material to any person in the commonwealth if the producer of such  
639 materials is not in compliance with sections 330 to 345. No collector may provide collection for  
640 disposal unless they are in compliance with section 340.

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

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

645 (c) The department may bring a civil action to enjoin the operation of a collector that fails  
646 to provide convenient recycling service at an all-inclusive price to covered entities.

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



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

659 Section 345. Proprietary information. Proprietary information submitted to the  
660 department pursuant to the requirements of section 330 to 345 or the rules adopted pursuant to  
661 sections 330 to 345 that is identified by the submitter as proprietary information shall be kept  
662 confidential.

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

665 Section 35EEE. Sustainable packaging trust. There shall be established an expendable  
666 trust to be known as the sustainable packaging trust. Amounts deposited in the trust shall be used  
667 for department administration of the packaging and paper product program or an alternative  
668 collect

669 ion program developed under section. 330 to 345 of chapter 94 of the Massachusetts  
670 General Laws, and for other uses described in this section. Proceeds of the trust shall be invested  
671 by the treasurer and shall be under the care and custody of the commissioner of the department  
672 of environmental protection, in consultation with the committee established in paragraph (c) of

673 section 332 of Chapter 94 of the Massachusetts General Laws. Interest earnings on funds  
674 deposited in said trust shall be credited to and become part of the trust. Proceeds from the trust  
675 shall be expended by said commissioner without further appropriation to cover administrative  
676 costs for the implementation and enforcement of this section, including oversight, issuance of  
677 any regulations, planning, plan review, review of proposed modifications to a plan developed  
678 under sections 334 or 338 of Chapter 94 of the Massachusetts General Laws, compliance,  
679 enforcement, and adequate staff positions to administer the packaging and paper products  
680 program or an alternative collection program. Adequate department staff positions shall include  
681 but not be limited to five (5) FTE positions: one managerial position, three compliance and  
682 enforcement positions, and one administrative position.

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

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