SENATE DOCKET, NO. 2074 FILED ON: 1/20/2023

SENATE . . . . . No. 570

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

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 plastics.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	
James B. Eldridge	*Middlesex and Worcester*	*2/14/2023*
Jason M. Lewis	*Fifth Middlesex*	*2/28/2023*
Edward R. Philips	*8th Norfolk*	*6/2/2023*

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SENATE . . . . . No. 570

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 570) of Rebecca L. Rausch, James B. Eldridge and Jason M. Lewis for legislation to reduce plastics. Environment and Natural Resources.

The Commonwealth of Massachusetts

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

An Act to reduce plastics.

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 21O the following chapter:-

CHAPTER 21P: MASSACHUSETTS PLASTICS REDUCTION ACT

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Biodegradable", made entirely of organic materials, including wood, paper, bagasse and cellulose.

"Carryout bag", a bag provided to a customer to hold items purchased from or serviced by a retail establishment. A carryout bag does not include a bag: (i) provided by a pharmacy to a customer purchasing prescription medication; (ii) used to protect items from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable grocery bag;

(iii) provided to contain an unwrapped food item; (iv) used to protect articles of clothing on a hanger; (v) used to prevent frozen food items from thawing; (vi) containing products or items that are saturated, wet, prone to leak or need to be immersed in a liquid; (vii) containing products or items that are granular, powdery, dirty or greasy; or (viii) used to protect small items from loss.

"Compostable", made entirely of material capable of being broken down or decomposed at the end of its useful life into a beneficial soil amendment or conditioner. Composting shall not include thermochemical processing.

"Department", the department of environmental protection.

"Disposable", designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.

"Food facility", an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, regardless of the intended location of such consumption.

"Food service ware", disposable products used for serving or transporting foods or beverages for human consumption, including without limitation plates, bowls, trays, cups, cartons, hinged or lidded containers, straws, stirrers, cup spill plugs, cup sleeves, condiments containers, utensils, cocktail sticks/picks, toothpicks, film wrap, and napkins. Food service ware does not include detachable lids for beverage cups or food containers, coolers or ice chests.

"Person", an individual, partnership, trust, association, corporation, society, club, institution, organization or other entity.

"Postconsumer recycled material", material used in a recycled paper bag that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle, and that does not comprise any material or byproduct generated from, and commonly reused within, an original manufacturing and fabrication process.

"Recycle", to separate, dismantle, or process the materials, components or commodities in covered materials for the purpose of preparation for use or reuse in new products or components. Recycling shall not include energy recovery or energy generation by means of combustion including but not limited to pyrolysis, gasification and any other heat chemical conversion processes, landfill disposal of discovered covered products, or discarded product component materials.

"Recycled paper bag", a paper bag that is 100 per cent recyclable and contains at least 20 per cent postconsumer recycled material; provided, however, that a paper bag with a weight load capacity of more than 8 pounds shall contain at least 40 per cent postconsumer recycled material.

"Retail establishment", a store or premises in which a person is engaged in the business of selling or providing merchandise, goods, foods, or item servicing directly to customers, including, but not limited to, grocery stores, department stores, pharmacies, convenience stores, restaurants, coffee shops, food trucks and other mobile businesses, and seasonal and temporary businesses, such as farmers markets and public markets; provided, however, that a "retail establishment" shall include a non-profit organization, charity or religious institution that holds itself out to the public as engaging and does engage in retail activities that are characteristic of similar type retail businesses, whether or not for profit when engaging in such activity.

"Reusable bag", a bag that: is made of machine-washable cloth, fabric, hemp or other woven or non-woven fibers; has handles that are stitched and not heat-fused; and is designed and manufactured for multiple uses. A bag made of plastic film of any thickness is not a reusable bag.

"Serviced" or "Servicing", the past or present act of cleaning, repairing, improving, refinishing or altering an item owned by a customer by a person engaged in a retail business of customarily providing such services, including, but not limited to, dry cleaning and tailoring articles of clothing, jewelry repair and shoe and leather repair.

Section 2. (a) A retail establishment shall not provide a customer with a carryout bag unless such carryout bag is a recycled paper bag or a reusable bag; provided, however, that a retail establishment shall charge a customer not less than ten cents per carryout bag; and provided further, that a carryout bag purchased under this section shall not be subject to taxation pursuant to chapter 64H or 64I.

(b) A retail establishment shall remit five cents per recycled paper bag sold to the commissioner of revenue at the same time and in the same manner as sales taxes are due to the commonwealth. The department of revenue may promulgate regulations to facilitate the collection of the fee set forth in this subsection.

(c) Except as provided in subsection (b), a retail establishment shall retain amounts charged to customers for carryout bags.

(d) Nothing in this section shall prohibit: (i) a customer from bringing a personal bag made or comprised of any material to a retail establishment to carry out items purchased from or serviced by the retail establishment; or (ii) a retail establishment from selling or offering for sale

to customers packages containing several bags, products or goods with a protective or other bag received from a manufacturer or distributor, or bags offered for sale as a product or merchandise that are not carryout bags.

(e) This section shall not apply to bags otherwise required to be used under state or federal law or a nonprofit organization, charity or religious institution in the provision or distribution of food, clothing or other items at no cost or substantially reduced cost.

(f) A retail establishment that violates this section shall be subject to a warning for a first violation, a civil penalty of not more than $500 for a second violation and a civil penalty of not more than $1,000 for a third or subsequent violation. Each day a retail establishment is in violation of this section shall be considered a separate violation.

(g) Upon attestation to the department confirming satisfaction of the criteria set forth in this subsection, this section shall not apply to retail establishments with not more than 3 store locations under the same ownership; provided, however, that each location has not more than 4,000 square feet of retail selling space and not more than 15 employees; and provided further, that the retail establishment provided fewer than 15,000 carryout bags in total during the previous calendar year. Retail establishments exempt under this subsection shall not be prohibited from offering carryout bags for sale.

Section 3. (a) A food facility shall not provide a customer with disposable food service ware unless such food service ware is biodegradable or compostable; provided, however, that drinking straws that are not biodegradable or compostable may be provided to a customer by the customer.

(b) A food facility may charge a customer a fee for disposable food service ware; provided, however, that any such fee charged pursuant to this section shall not be subject to taxation pursuant to chapter 64H or 64I; and provided further, that a food facility charging a fee pursuant to this section shall retain the entirety of any such fee charged.

(c) A food facility that violates this section shall be subject to a warning for a first violation, a civil penalty of not more than $250 for a second violation and a civil penalty of not more than $500 for a third and each subsequent violation. Each day a food facility is in violation of this section shall be considered a separate violation.

Section 4. The department shall establish a program to provide for recycling of child passenger restraints, as defined in section 1 of chapter 90, and is hereby authorized to: (i) implement state, local, or regional child passenger restraint recycling programs; (ii) accept applications from municipalities for grants and to award grants to assist in the development or establishment of local and regional child passenger restraint recycling projects; and (iii) to partner or contract with private organizations to assist in the development or establishment of a child passenger restraint recycling program.

Section 5. No retail establishment shall sell or otherwise provide to a consumer alcoholic beverages in plastic containers less than or equal to 100 milliliters. A retail establishment that violates this section shall be subject to a warning for a first violation, a civil penalty of not more than $150 for a second violation and a civil penalty of not more than $300 for a third and each subsequent violation. Each day a retail establishment is in violation of this section shall be considered a separate violation.

Section 6. (a) No retail establishment shall sell or otherwise provide to a consumer plastic bottles containing 1 liter or less of non-carbonated, non-flavored water, except as may be required for safety, health, or emergency situations. A retail establishment that violates this section shall be subject to a warning for a first violation, a civil penalty of not more than $150 for a second violation and a civil penalty of not more than $300 for a third and each subsequent violation. Each day a retail establishment is in violation of this section shall be considered a separate violation.

(b) State funds shall not be used to purchase plastic bottles containing 64 ounces or less of non-carbonated, non-flavored water for use in facilities that are served by public water supplies or potable well water, except as may be required for safety, health, or emergency situations.

Section 7. No ordinance, by-law or other rule or regulation inconsistent with the provisions of this chapter may be adopted, promulgated or otherwise effectuated.

Section 8. The department shall conduct an annual assessment of packaging production and sales in the commonwealth. The assessment shall include, without limitation: the volume of packaging made from plastics, metals, newsprint and other paper, glass, and other material produced or sold in the commonwealth, delineated by material; the percentage of such packaging deposited into a waste management stream, including recycling and composting, delineated by material and waste management stream type; and of the packaging deposited into a waste management stream, the percentage of recyclable or compostable material actually recycled or composted, delineated by material. The department shall submit a report summarizing the assessment to the senate and house committees on ways and means and the joint committee on

the environment, natural resources and agriculture not later than January 31 of each year for the preceding calendar year. The department shall also provide access to the raw data of the assessment. Each report and data set shall be a public record.

Section 9. Except as otherwise provided, the department shall promulgate regulations to implement the provisions of this chapter. The department may promulgate regulations to increase: (i) the minimum postconsumer recycled material required for recycled paper bags; and (ii) the fee established in subsection (b) of section 2.

SECTION 2. Chapter 29 of the General Laws is hereby amended by inserting after section 2QQQQQ the following section:-

Section 2RRRRR. (a) There shall be an Environmental Protection Trust Fund. The fund shall be expended to: improve the air, water, soil, or other environmental conditions for environmental justice populations, as defined by section 62 of chapter 30; provide reusable bags to environmental justice populations and individuals receiving benefits administered by the department of transitional assistance at no cost; issue grants to small businesses that are incorporated and have principal places of business in the commonwealth to assist in the reduction of plastic use within each business, including without limitation small businesses in the food service and production industries; and provide multilingual, culturally competent educational materials and programming, including but not limited to experiential education, regarding bag reuse and recycling and other aspects of environmental protection. The fund shall consist of: (i) revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund; (ii) interest earned on such revenues; (iii) funds from public and private sources, including but not limited to gifts, grants, donations, and

settlements received by the commonwealth that are specifically designated to be credited to the fund; (iv) federal funds paid to the commonwealth designated to be credited to the fund; and (v) monies paid to the commonwealth pursuant to chapter 21P. Any bond proceeds deposited into the fund shall be kept separate from any and all other funds deposited into the fund. Any balance in the fund at the close of a fiscal year shall be available for expenditure in subsequent fiscal years and shall not be transferred to any other fund or revert to the general fund.

(b) The department of environmental protection shall administer the fund. Annually not later than March 1, the department shall report on the activities of the fund from the previous calendar year to the senate and house committees on ways and means and the joint committee on environment, natural resources and agriculture. The department may promulgate regulations or issue other guidance to implement this section. The department shall consult with the department of transitional assistance to equitably implement the provision of no-cost reusable bags as set forth in subsection (a). The department shall consult with the Massachusetts growth capital corporation to equitably implement the provision of grants to small businesses to assist in the reduction of plastic use.

SECTION 3. The department of environmental protection shall prepare a plan to establish comprehensive publicly accessible statewide composting. The plan shall be designed to increase the rate at which food and organic waste is composted and reduce the contamination of waste and recycling streams by compostable materials. Not later than August 31, 2024, the department shall submit to the senate and house committees on ways and means and the joint committee on the environment, natural resources and agriculture a report stating the plan and indicating any resources necessary to implement the plan. Subject to appropriation, the department shall implement the plan by December 31, 2025.

SECTION 4. There shall be a special legislative commission for the purpose of recommending to the legislature an extended producer responsibility plan for the commonwealth. The commission shall include the commissioner of the department of environmental protection or a designee, who shall serve as chair; the commissioner of the department of agricultural resources, or a designee; the director of the office of business development, or a designee; an appointee of the attorney general with expertise in consumer protection; an appointee of the senate chair of the joint committee on environment, natural resources and agriculture; an appointee of the house chair of the joint committee on environment, natural resources and agriculture; and additional individuals appointed by the chair who represent packaging producers, retailers, waste haulers, material recovery facility operators, municipalities, food producers, farmers, statewide environmental protection organizations, statewide or community environmental justice organizations, regional or community environmental protection organizations, freshwater and marine litter programs, regional waste management entities, and environmental and human health scientists. Each commission member may represent only 1 listed category and the chair shall ensure that no category is disproportionately represented on the commission. The chair may select a third-party facilitator for the commission. The commission shall use the initial assessment report required by section 8 of chapter 21P of the General Laws in crafting its recommended extended producer responsibility plan. The recommended plan shall include a material cost differentiation system; a proposed structure for producer payments and collector reimbursements; net costs of residential curbside collection or transfer station operations, on-site processing costs for each readily recyclable material type, management costs of non-readily recyclable materials, and other cost factors; and methods of incentivizing packaging production and waste stream contamination reduction, which may

include reuse and lifespan extensions. Not later than December 2, 2024, the commission shall submit its recommendations and related factual findings to the senate and house committees on ways and means and the joint committee on the environment, natural resources and agriculture and publish said recommendations and related factual findings on the website of the department of environmental protection.

SECTION 5. Except as otherwise provided herein, the provisions of this act shall take effect on August 1, 2024.

SECTION 6. Section 3 of chapter 21P of the General Laws shall take effect on September 1, 2026.

SECTION 7. Subsection (g) of section 2 of chapter 21P of the General Laws is hereby repealed.

SECTION 8. Section 7 shall take effect on September 1, 2026.