

HOUSE No. 01763

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

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 passage of the accompanying bill:

An Act to update the bottle deposit system and lower the cost of recycling beverage containers in the Commonwealth.

PETITION OF:

NAME:

Colleen M. Garry

DISTRICT/ADDRESS:

36th Middlesex

HOUSE No. 01763

By Ms. Colleen M. Garry of Dracut, petition (accompanied by bill, House, No. 01763) of Colleen M. Garry relative to the deposit system and recycling of containers under the "bottle law", so-called. Joint Committee on Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 3079 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to update the bottle deposit system and lower the cost of recycling beverage containers 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. PURPOSE: An economically sound and environmentally safe solid waste
- 2 management strategy includes components of conservation, source reduction, reuse, recycling
- 3 and litter control. In order to stimulate the construction of an appropriate infrastructure in an
- 4 integrated system of solid waste management, business and government must engage in
- 5 cooperative participation to accomplish these goals. The following statutory changes are
- 6 necessary in order to stimulate the creation of an appropriate solid waste management
- 7 infrastructure: expanded access and participation to comprehensive recycling programs,
- 8 development of comprehensive litter abatement programs, analysis and expansion of markets for

9 recyclable materials, and facilitation of expanded residential and commercial recycling
10 throughout the Commonwealth.

11 SECTION 2. Chapter 21A of the General Laws, as appearing in the 2006 Official Edition, is
12 hereby amended by inserting after Section 18A the following new section:—

13 Section 18B. The Secretary shall establish a program to determine the use of recyclable materials
14 in the Commonwealth. Such program shall include, but not be limited to, a method for
15 determining the percentage of recyclable material that is actually reused rather than discarded.
16 The Secretary shall file a report on the program annually with the Joint Committee on
17 Environment, Natural Resources and Agriculture, the Joint Committee on Telecommunications,
18 Utilities and Energy, and the House and Senate Committees on Ways and Means on or before
19 December thirty-first of each year. The report shall contain, but not be limited to, information
20 concerning statewide use of recycled material in the Commonwealth.

21 SECTION 3. Chapter 21H of the General Laws, as appearing in the 2006 Official Edition, is
22 hereby amended by inserting after Section 7 the following new section:—

23 Section 7A. The Department shall establish a program to increase recycling opportunities at
24 public facilities visited by at least five thousand individuals annually, including but not limited
25 to, stadiums, arenas, marinas, airports, theatres, and pedestrian walkways. The Department shall
26 work with MassPort, the Massachusetts Cultural Council, the State Racing Commission, the
27 Bureau of State Office Buildings and other entities in order to establish a program. The
28 Department shall file a report on the program annually with the Joint Committee on
29 Environment, Natural Resources and Agriculture, the Joint Committee on Telecommunications,
30 Utilities and Energy, and the House and Senate Committees on Ways and Means on or before

31 December thirty-first of each year. The report shall contain, but not be limited to, activities
32 promoting recycling at public facilities visited by at least five thousand individuals annually.

33 SECTION 4. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006 Official
34 Edition is hereby amended by inserting after the first paragraph the following new paragraph:—

35 The Commission shall include the development of recycling opportunities in all new designs and
36 redesigns of reservations.

37 SECTION 5. Section 33 of Chapter 92 of the General Laws, as appearing in the 2006 Official
38 Edition, is hereby amended by inserting after the second paragraph the following new
39 paragraph:—

40 The Commission shall establish a program to increase recycling opportunities in all public
41 reservations located within the metropolitan parks district. The Commission shall file a report on
42 the program annually with the Joint Committee on Environment, Natural Resources and
43 Agriculture, the Joint Committee on Telecommunications, Utilities and Energy, and the House
44 and Senate Committees on Ways and Means on or before December thirty-first of each year.
45 The report shall contain, but not be limited to, activities promoting recycling in all public
46 reservations within the metropolitan parks district.

47 SECTION 6. Effective July 1, 2011, Chapter 94 of the General Laws is hereby amended by
48 inserting a new section 323F:—

49 Section 323F. Clean Environment Fund.

50 (a) There shall be established on the books of the Commonwealth a separate fund to be known as
51 the Clean Environment Fund (the "Fund"). Amounts deposited in said fund shall be used,
52 subject to appropriation, for programs described in paragraphs (c) through (f) of this section.

53 (b) The Fund shall be governed by the Solid Waste Management Board (the "Board"). The
54 members of the Board shall consist of eleven persons appointed by the Governor, each of whom
55 shall be represented by the following: the Secretary of Environmental Affairs, five
56 representatives from the various segments of business and industry being assessed pursuant to
57 Section 323G of Chapter 94 (beverage container manufacturer, wholesaler/distributor, and
58 dealer), two representatives of the solid waste management and recycling industries, two
59 representatives of statewide environmental organizations, and one representative of organized
60 labor.

61 (c) Not more than sixty-five percent of amounts deposited in the Fund shall be used for recycling
62 collection programs including, but not limited to, municipal performance-based incentive grants;
63 unit-based pricing programs; municipal grants for recycling equipment and technical assistance;
64 private sector grants to qualified redemption centers in order to develop innovative materials
65 collection operations; and recycling media and education campaigns.

66 (d) Not more than fifteen percent of amounts deposited in the Fund shall be used for recycling
67 market development programs including, but not limited to, the recycling loan fund for small
68 recycling businesses; demonstration projects to process and manufacture recycled products;
69 recycled product purchasing by state agencies; municipal buy recycled programs; and expanded
70 source reduction initiatives.

71 (e) Not more than twenty percent of amounts deposited in the fund shall be used for litter
72 prevention and removal programs including, but not limited to, a state grant program for litter
73 pickup and removal; litter education programs for the public and for schools; research relating to
74 litter control; and enforcement of litter related laws in state/municipal-owned places and areas
75 that are accessible to the public.

76 (f) The amounts deposited in the Fund shall be used to promote and expand waste diversion
77 programs in the Commonwealth. This shall include, but not be limited to, enhancing capabilities
78 to recycle beverage containers in residential and commercial programs, improving access to
79 comprehensive recycling and composting programs, providing technical assistance to residential
80 and commercial recycling and composting programs, promoting reduction efforts, improving
81 markets for diverted material, and other such programs as determined by the Board. The Fund
82 shall also support comprehensive litter prevention and control measures including, at a
83 minimum, a statewide litter education and prevention campaign, promotion of voluntary and
84 public/private partnerships for litter control, and coordination of existing litter programs in the
85 state.

86 Subject to the approval of the Board, the Department of Environmental Protection shall develop
87 model municipal litter prevention and control programs. Monies distributed from the Fund, to
88 eligible municipalities, shall be used solely to supplement litter pickup and removal activities.
89 To be eligible for a grant under this section, a municipality must certify to the department the
90 adoption of at least one of the model programs.

91 (g) The Board shall submit to the Secretary of Administration and Finance, the House and Senate
92 Committees on Ways and Means, the Joint Committee on Telecommunications, Utilities and

93 Energy, and the Joint Committee on Environment, Natural Resources and Agriculture an annual
94 report of its activities and an evaluation of any and all programs entered into during the course of
95 the fiscal year.

96 SECTION 7. Section 323F of Chapter 94 is hereby amended by adding the following new
97 section:—

98 323G. Assessment.

99 Between January 1, 2014 and December 31, 2014 an amount not to exceed five million six
100 hundred thousand dollars (\$5,600,000) shall be deposited into said Fund based on assessments
101 levied by the Commissioner of Revenue (“Commissioner”) as follows:

102 (a) Distributors/wholesalers shall contribute the sum of five million two hundred sixty-four
103 thousand dollars (\$5,264,000). The Commissioner shall compute the assessment for each
104 distributor/wholesaler of these beverages based on the distributor/wholesaler’s pro-rated share of
105 the total number of beverage container s sold within the state between January 1, 2012 and
106 December 31, 2012. The Commissioner shall undertake the necessary steps to obtain beverage
107 container sales information for this period, shall treat the information as confidential, and, by
108 June 30, 2013, shall compute each distributor/wholesaler’s assessment and notify each
109 distributor/wholesaler of his assessment.

110 (b) Beverage container manufacturers shall contribute the sum of two hundred eighty thousand
111 dollars (\$280,000). After consultation with the Can Manufacturers Institute, Glass Packaging
112 Institute, American Chemistry Council, and the Steel Recycling Institute, the Board shall file a
113 report with the Commissioner, no later than June 30, 2011, detailing the assessment on beverage
114 container manufacturers.

115 (c) Dealers shall contribute the sum of fifty-six thousand dollars (\$56,000). This assessment
116 shall be in addition to any liability of dealers who may also be subject to assessments as
117 distributor/wholesalers under paragraph (a). After consultation with the Massachusetts Chain
118 Pharmacy Council, the Massachusetts Food Association, the Massachusetts Package Store
119 Association, the Massachusetts Restaurant Association, the National Federation of Independent
120 Business, the New England Convenience Store Association and the Retailers Association of
121 Massachusetts, the Board shall file a report with the Commissioner, no later than June 30, 2013,
122 detailing the assessment on dealers.

123 SECTION 8. The effective date of Sections 10 through 19 is January 1, 2014.

124 SECTION 9. Chapter 94 of the General Laws as appearing in the 2006 Official Edition, is hereby
125 amended by striking section three hundred and twenty-one and replacing it with the following
126 new section:—

127 Section 321. DEFINITIONS. The following definitions shall, unless the context clearly requires
128 otherwise, have the following meaning:

129 “Beverage,” carbonated, noncarbonated-alcoholic and noncarbonated-nonalcoholic drinks
130 intended for human consumption except milk and dairy derived products, infant formula, or
131 medical food.

132 “Beverage container,” any sealable bottle, can, jar, or carton, which is primarily composed of
133 glass, metal, plastic or any combination of those materials and is produced for purpose of
134 containing a beverage. This definition shall not include containers made of biodegradable
135 material.

136 “Beverage container manufacturer,” any person who engages in the manufacture or fabrication
137 of beverage containers.

138 “Carbonated beverage,” soda water or similar carbonated soft drinks, mineral water, and beer
139 and other malt beverages intended for human consumption.

140 “Dealer,” any person including any operator of a vending machine, who sells, offers to sell or
141 engages in the sale of beverages in beverage containers to consumers in the state.

142 “Distributor/wholesaler,” any person who engages in the sale of beverages in beverage
143 containers directly to dealers in the state, including any manufacturer who engages in such sales.

144 “Infant formula,” any liquid food described or sold as an alternative for human milk for the
145 feeding of infants.

146 “Manufacturer,” any person who bottles, cans, or otherwise places beverages in beverage
147 containers for sale to a distributor/wholesaler or dealer.

148 “Medical food,” a food or beverage that is formulated to be consumed, or administered enterally
149 under the supervision of a physician, and that is intended for specific dietary management of
150 diseases or health conditions for which distinctive nutritional requirements, based on recognized
151 scientific principles, are established by medical evaluation. A “medical food” is a specially
152 formulated and processed product, for the partial or exclusive feeding of a patient by means of
153 oral intake or enteral feeding by tube, and is not a naturally occurring foodstuff used in its natural
154 state. “Medical food” includes any product that meets the definition of “medical food” in the
155 federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.360ee (b)(3)).

156 “Noncarbonated-alcoholic beverage,” any liquid intended for human consumption and
157 containing one-half of one percent or more of alcohol by volume at sixty degrees Fahrenheit,
158 including wine and wine-based drinks, spirits and spirit-based drinks and hard cider.

159 “Noncarbonated-nonalcoholic beverage,” fruit and vegetable juice, still water, iced tea , sports
160 drinks and other noncarbonated drinks intended for human consumption, except for milk and
161 dairy derived products, infant formula, or medical food.

162 “Sales within the state,” within the exterior limits of the state of Massachusetts and includes all
163 territory within these limits owned by or ceded to the United States of America.

164 SECTION 10. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
165 hereby amended by striking section three hundred and twenty-two.

166 SECTION 11. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
167 hereby amended by striking section three hundred and twenty-three.

168 SECTION 12. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
169 hereby amended by striking section three hundred and twenty-three B.

170 SECTION 13. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
171 hereby amended by striking section three hundred and twenty-three C and replacing it with the
172 following new section:—

173 Section 323C. Abandoned deposit amounts; determination.

174 Any amounts that are or should be in a bottler’s or distributor’s Deposit Transaction Fund and
175 that are in excess of the sum of (a) income earned on amounts in said account and (b) the total
176 amount of refund values received by said bottler or distributor for non-reusable beverage

177 containers shall be deemed to constitute abandoned deposit amounts. Income earned on said fund
178 may be transferred from said fund for use as funds of the bottler or distributor.

179 SECTION 14. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
180 hereby amended by striking section three hundred and twenty-three D and replacing it with the
181 following new section:—

182 Section 323D. Transfer of abandoned deposit amounts.

183 Each bottler or distributor shall turn over to the commissioner of revenue any deposit amounts
184 deemed to be abandoned, pursuant to section three hundred and twenty-three C. Such amounts
185 may be paid from the Deposit Transaction Fund. Amounts collected by the commissioner of
186 revenue pursuant to this section shall be deposited into the Clean Environment Fund, established
187 pursuant to section three hundred and twenty-three F.

188 SECTION 15. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition is
189 amended by striking section three hundred and twenty-three E.

190 SECTION 16. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
191 hereby amended by striking section three hundred and twenty-five.

192 SECTION 17. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is
193 hereby amended by striking section three hundred and twenty-six and replacing it with the
194 following section:—

195 Section 326. Administration; rules and regulations.

196 The Secretary of the Executive Office of Energy and Environmental affairs shall administer the
197 provisions of sections three hundred and twenty-one, three hundred and twenty-three F, and three

198 hundred and twenty-four. Said Secretary shall promulgate and from time to time revise rules and
199 regulations to effectuate the purposes of said sections.

200 The Commissioner of the Department of Revenue shall administer the provisions of sections
201 three hundred and twenty-three C, three hundred and twenty-three D, and three hundred and
202 twenty-three G. The collection of revenues pursuant to sections three hundred and twenty-three
203 D and three hundred and twenty-three G by said commissioner shall, to the extent consistent with
204 this chapter, be governed by the provisions of chapter sixty-two C.

205 The Commissioner of the Department of Revenue shall promulgate and from time to time revise
206 rules and regulations to effectuate the purposes of said sections. Said rules and regulations shall
207 include a provision to permit manufacturers, wholesalers, distributors and retailers to borrow,
208 without any interest charge, against their deposit transaction funds subject to such terms and
209 conditions as the commissioner deems appropriate.

210 Said Secretary shall determine through rules and regulations which plastic bottles and rigid
211 plastic containers may be exempt from the labeling requirements of section three hundred and
212 twenty-three A, including but not limited to the following: (1) readily identifiable plastic bottles
213 and rigid plastic containers; (2) plastic bottles and rigid plastic containers for which there is no
214 technological capability for recycling, reclamation or reuse; and (3) plastic bottles and rigid
215 plastic containers for which recycling, reclamation or reuse is not economically feasible.

216 SECTION 18. Chapter 94 of the General Laws, as appearing in the 2006 Official Edition , is
217 hereby amended by striking section three hundred and twenty-seven and replacing it with the
218 following section:—

219 Section 327. Enforcement; penalty; interest.

220 The Attorney General and District Attorneys shall enforce the provisions of sections three
221 hundred and twenty-one to three hundred and twenty-seven, inclusive. Any manufacturer,
222 wholesaler, distributor, or retailer who knowingly violates any provisions of sections three
223 hundred and twenty-one to three hundred and twenty-six, inclusive, shall be subject to a civil
224 penalty for each violation of not more than one thousand dollars.

225 Any manufacturer, wholesaler, distributor or retailer failing to make full and timely payments as
226 required by section three hundred and twenty-three G shall pay interest on any unpaid amounts at
227 the rate of one and one-half percent for each month or part thereof until payment is made in full.

228 SECTION 19. The Department of Environmental Protection shall conduct a study pertaining to
229 existing so-called single stream recycling programs within the commonwealth. The study shall
230 evaluate actual costs of these several programs, and actual saving experiences by these
231 communities in which they operate when compared to multi-stream systems utilized by other
232 local governments.

233 The Department of Environmental Protection shall report its findings to the Legislature's Joint
234 Committee on Utilities, Telecommunications and Energy, including recommendations for
235 encouraging and expanding so called single stream recycling programs throughout the
236 commonwealth.