

HOUSE No. 878

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

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 save recycling costs in the commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>2/9/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/19/2021</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/22/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/23/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/24/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/25/2021</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/25/2021</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>2/25/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/26/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>2/26/2021</i>
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/26/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/26/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/26/2021</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>2/26/2021</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/26/2021</i>
<i>Brandy Fluker Oakley</i>	<i>12th Suffolk</i>	<i>3/4/2021</i>

<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/4/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/12/2021</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>3/18/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>3/18/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/18/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>3/18/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/25/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>4/13/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>4/13/2021</i>

HOUSE No. 878

By Mr. Day of Stoneham, a petition (accompanied by bill, House, No. 878) of Michael S. Day and others relative to recycling costs. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to save 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 is hereby amended by inserting after
2 section 329 the following sections:

3 Section 330. Definitions applicable to Secs. 330 to 345. In section three hundred and
4 thirty to section three hundred and forty-five, inclusive, the following terms shall, unless the
5 context 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 residential generators or schools.

13 “Committee”, the advisory committee as established by the producer responsibility
14 organization or coordinating body pursuant to section 332.

15 “Coordinating body”, the entity formed by producer responsibility organizations if more
16 than one organization is formed, pursuant to section 332.

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

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

22 “Department”, the department of environmental protection.

23 "Franchisee", a person that is granted a license by a franchisor to use the franchisor's
24 trade name, service mark or related characteristic and to share in the franchisor's proprietary
25 knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite
26 period.

27

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

31

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

34 “Municipal solid waste”, any residential or commercial solid waste, as defined in 310
35 CMR 19.006.

36 “Municipality”, a city, town, or regional association acting on behalf of a city or town.

37 "Packaging material", any part of a package or container, including material that is used
38 for the containment, protection, handling, delivery, and presentation of a product that is sold,
39 offered for sale, imported, or distributed in the state, including through internet transactions

40 "Packaging material" does not include:

41

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

45 (b) A discrete type of material, or a category of material that includes multiple discrete
46 types of material, that is a beverage container, as defined in section 321 of this chapter.

47 “Paper products”, paper that can or has been printed on including flyers, brochures,
48 booklets, catalogues, greeting cards, telephone directories, newspapers, magazines, paper used
49 for copying, writing or any other general use. Paper products does not include:

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

52 (b) any literary, text, reference, or other bound book.

53 "Producer", with respect to a covered material, producer means:

54 (a) an entity that manufactures and uses in a commercial enterprise, sells, offers for sale,
55 or distributes the covered material in the commonwealth under the brand of the manufacturer;

56 (b) if clause (a) does not apply, an entity that is not the manufacturer of the covered
57 material but is the owner or licensee of a trademark under which the covered product is used in a
58 commercial enterprise, sold, offered for sale, or distributed in the commonwealth, whether or not
59 the trademark is registered; or

60 (c) if clauses (a) and (b) do not apply, an entity that imports the covered material into the
61 United States or the commonwealth for use in a commercial enterprise, sale, offer for sale, or
62 distribution in the commonwealth.

63 (d) the definition of "producer" includes a franchisor of a franchise located in the
64 commonwealth but does not include the franchisee operating that franchise.

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

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

70 "Producer responsibility organization" or "organization", a not-for-profit entity formed by
71 a group of producers and contracted by the department under section 332 to act as an agent on
72 behalf of each producer to develop and implement a producer responsibility plan.

73 "Producer responsibility plan" or "plan", a detailed plan that describes the manner in
74 which producers shall comply with the requirements of secs. 330 to 345 and all regulations
75 promulgated by the department pursuant to secs. 330 to 345.

76 "Packaging and paper products program" or "program", the program implemented under
77 secs. 330 to 345 by the organization to assess and collect payments from producers based on the
78 type and weight of packaging material sold, offered for sale or distributed for sale in the State by
79 each producer and to reimburse participating municipalities for certain incurred municipal
80 recycling and waste management costs.

81 "Readily-recycled", with respect to a covered material, that the type of packaging
82 material or paper product, as annually determined by the department:

83

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

86

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

92 "Readily-recycled", does not include covered material categories or types that facilities
93 accept in low quantities or sort out of material during additional processing steps; if facilities

94 cannot aggregate or sell a full bale of a specific covered material category or type due to a lack
95 of market or inability to feasibly separate, that covered material type is not readily-recyclable.
96 Covered material categories or types shall not be considered readily-recyclable, recyclable,
97 compostable, or reusable if they contain toxic substances as defined in this section.

98 "Recycling", to separate, dismantle or process the materials, components or commodities
99 in covered materials for the purpose of preparing the materials, components or commodities for
100 use or reuse in new products or components. "Recycling" does not include energy recovery or
101 energy generation by means of combustion; pyrolysis, gasification and any other high-heat
102 chemical conversion processes; or landfill disposal of discarded covered products or discarded
103 product component materials.

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

108 "School", a public, private, or charter school, including pre-schools, K-12 schools,
109 colleges, and universities.

110 "Sustainable packaging trust" or "trust", an expendable trust under control of the
111 department, created under Chapter 10 section 35EEE of the Massachusetts General Laws, for the
112 purpose of collecting funds for department administration of the packaging and paper products
113 program or an alternative collection program, and for collecting fines related to the packaging
114 and paper products program or an alternative collection program.

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

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

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

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

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

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

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

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

133 "Waste disposal bans", has the same meaning as in 310 CMR 19.000.

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

140 Section 332. Producer responsibility organizations. To satisfy the requirements under
141 secs. 330 to 345, producers of covered materials sold or distributed into the commonwealth shall
142 establish (a) producer responsibility organization(s) that shall act as an agent and on behalf of
143 each producer to operate the packaging and paper products program. If more than one (1)
144 producer responsibility organization is established with respect to a category or categories of
145 covered materials, the commissioner of the department may establish a coordinating body to
146 coordinate and manage those producer responsibility organizations, and conduct business
147 between those producer responsibility organizations, collectors, and the department.

148 (a) If multiple producer responsibility organizations are formed, they must submit one
149 single producer responsibility plan to the department and ensure seamless operation of the
150 packaging and paper products program, thereby assigning responsibility equitably among
151 producer responsibility organizations and relieving the department of responsibility associated
152 with coordinating multiple producer responsibility organizations.

153 (b) Any producer responsibility organization formed in compliance with secs. 330 to 345
154 shall be established and operated as an organization described in section 501(c)(3) of the Internal
155 Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

156 (c) The organization or coordinating body shall establish an advisory committee that
157 represents a range of interested and engaged persons relevant to the category of covered products
158 of the applicable program, including the commissioner of the department of environmental
159 protection or a designee, and individuals representing producers, retailers, waste haulers,
160 material recovery facility operators, waste pickers, municipalities, environmental and community
161 organizations, freshwater and marine litter programs, and environmental and human health
162 scientists. Each individual serving on an advisory committee may represent only one (1) member
163 of each category listed under this paragraph, and the organization or coordinating body shall
164 ensure that no category has a disproportionate representation on an advisory committee.

165 (d) The producer responsibility organization or coordinating body shall hold an advisory
166 meeting at least quarterly; request and consider comments from the advisory committee of the
167 organization prior to the submission to the department of the plan or any modifications to the
168 plan; report comments of the advisory committee to the department as an appendix to any
169 revisions to the plan submitted to the department; and include a summary of advisory committee
170 engagement and input in the report under section 339.

171 Section 333. Producer plan. Within eight (8) months of the promulgation of related
172 regulations by the department pursuant to section 342 the producer responsibility organization(s)
173 shall submit a plan for the establishment of the packaging and paper product program to the
174 department for approval. With the exception of paragraph (h), the plan shall have a duration of
175 five (5) years. The plan(s) must include, at a minimum:

176 (a) A description of how the producer responsibility organization will administer the
177 program, including the mechanism or process, to be developed with input from producers, by

178 which producers may request and receive assistance from the organization in the reporting of
179 required information and guidance for covered material modifications that would reduce fee
180 payments; and the mechanism or process, to be developed with input from collectors, by which
181 participating collectors may request and receive assistance from the organization in the reporting
182 of required information and guidance for recycling program modifications that would increase
183 access to and participation in residential recycling programs.

184 (b) A description of how the organization intends to solicit and consider input from the
185 advisory committee and other interested entities, including, but not limited to, producers,
186 collectors, environmental organizations, and waste and recycling entities, regarding the operation
187 of the packaging and paper products program.

188 (c) A description of the funding mechanism covering the entire cost of the program,
189 including how the organization intends to establish and manage the producer responsibility fund
190 consistent with the requirements of sections 335 and 337, including, but not limited to: staffing
191 the organization and coordinating body to manage the fund; a plan to ensure equity of access for
192 financially or otherwise challenged municipal participants; technical support to producers and
193 collectors regarding program requirements; administering and collecting payments to and
194 reimbursements from the fund and the financial mechanisms, including investment types if any,
195 the organization intends to use to manage monies within the fund.

196 (d) A proposed budget outlining the anticipated costs of operating the program, including
197 identification of any start-up costs that will not be ongoing and a description of the method by
198 which the organization intends to determine and collect producer payments during the start-up
199 period of program operation, and to reimburse or require additional payments by those producers

200 subsequent to the start-up period based on producer reporting of the actual amount of packaging
201 material sold, offered for sale or distributed for sale in or into the commonwealth by each
202 producer during the start-up period. The proposed budget should describe how the organization
203 will maintain a financial reserve sufficient to operate the program in a fiscally prudent and
204 responsible manner, such that it considers historical variations in market values of post-consumer
205 packaging types. The proposed budget under this paragraph may overestimate the cost of
206 operating the program during the start-up period of operation but must describe the method and
207 basis for any overestimate.

208 (e) A proposal for how expenditures from the fund will be used for investments in public
209 outreach, education, communication, and infrastructure enhancement in a way that increases
210 access to recycling and reuse throughout the commonwealth, and how the organization's
211 development of such investment proposals must incorporate input from producers, participating
212 collectors, municipalities, environmental organizations, and waste and recycling entities. Public
213 outreach, education, and communication shall:

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

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

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

219 (4) Provide for outreach and education that are; designed to achieve covered materials
220 goals under paragraph (e) of this section, including the prevention of contamination of materials;

221 coordinated across programs or regions to avoid confusion for consumers; and developed in
222 consultation with local governments and other stakeholders.

223 (f) A description of how, through the proposed expenditures under paragraph (e), the
224 organization intends to provide convenient and free consumer access to collection services or
225 collection facilities for all residents in the Commonwealth, and how the organization intends to
226 achieve and assist collectors and facilities in achieving a combined reduction and recycling rate,
227 based on regular audits of inbound waste at facilities as described in paragraph (i) of this section
228 and outbound tonnages of covered material from facilities as reported to the department pursuant
229 to paragraph (f) of section 342, of no less than sixty-five (65) percent by weight by July 1, 2027,
230 no less than eighty (80) percent by weight by July 1, 2031, and no less than one hundred (100)
231 percent by weight by July 1, 2035 of covered materials managed by the organization. The
232 organization shall also provide a description of how it intends to achieve and assist collectors in
233 achieving performance standards for each type of covered material as published annually by the
234 department pursuant to paragraph (d) of section 342.

235 (g) A proposed schedule of minimum post-consumer recycled material content rate
236 requirements for covered materials, including a description of how the organization intends to
237 meet the proposed minimum post-consumer recycled material content rates. The minimum post-
238 consumer recycled material content rates shall include each covered material category, and shall
239 not be less than ten (10) percent of all material in each covered material category, by weight.

240 (h) A description of how the organization intends to use the materials cost differentiation
241 system developed by the department and the annual schedule of adjustments under paragraphs
242 (a) and (b) of section 342 to assess fees for producers of each type of covered materials, as

243 defined by the department, in compliance with all applicable provisions of secs 330 to 345. The
244 description must include a flat-rate fee schedule for producers generating between one (1) and
245 fifteen (15) tons of covered materials annually. The organization shall develop an evaluation
246 system for the fee structure, and shall annually evaluate, revise and submit an updated
247 assessment schedule along with the annual report submitted to the department pursuant to section
248 339.

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

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

256 (2) A description of how those audits, at a minimum, will be designed to solicit
257 information regarding the extent to which recyclable material processed and sold by those
258 facilities reflects the tons of each type of covered material recycled in the commonwealth and the
259 ultimate state or country destination of and intended use for that material.

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

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

267 (5) For waste disposal audits, at a minimum, a description of the types and weight of
268 packaging material in the disposal waste stream, and the percentage by weight and volume of the
269 disposal waste stream that is comprised of covered materials.

270 (6) For litter audits, to the maximum extent practicable, a description of the packaging
271 material type by weight, identification of producer, and the general description of where the litter
272 is accumulating throughout the State.

273 (j) Any additional information required by the department.

274 Section 334. Approval of plan; plan amendments; corrective actions, termination of plan.
275 In accordance with the applicable provisions of secs. 330 to 345, the department shall review the
276 producer responsibility plan and amendments to such plan submitted by the organization or
277 coordinating body, and shall require the implementation of corrective actions by the organization
278 to the packaging and paper products program. Following approval of the plan by the department
279 under this section, the producer responsibility organization shall immediately begin
280 implementation of the plan.

281 (a) The department shall review the producer responsibility plan submitted by the
282 organization or coordinating body pursuant to section 333 and approve or deny the plan within
283 ninety (90) days of receipt. The department shall approve the plan if the department determines
284 that the plan meets the requirements of section 333 and is otherwise consistent with all
285 applicable requirements of secs. 330 to 345 of this chapter. If the department approves the plan,

286 the department shall transmit written notice of that approval to the organization. An approval
287 under this section must terminate five (5) years from the date of that approval but may be
288 extended for an additional five (5)-year period following the submission by the stewardship
289 organization of an updated plan consistent with section 333 that is approved by the department
290 consistent with this section. The organization or coordinating body must submit an updated plan
291 no later than one hundred twenty (120) days prior to the date its current plan expires.

292 (b) If the department determines that a submitted plan fails to meet any applicable
293 requirements of secs. 330 to 345, the department shall provide written notice to the organization
294 describing the reasons for rejecting the plan. No later than forty-five (45) days after receiving
295 written notice rejecting a submitted plan, the organization shall revise and resubmit the plan to
296 the department. The department shall review the revised plan, decide whether to approve it and
297 provide written notice of the department's decision within forty-five (45) days of receipt of the
298 revised plan.

299 (c) The organization may propose modifications to the approved plan, provided the
300 organization submits the proposed modifications to the department for review and consults the
301 advisory committee as required under paragraph (d) of section 332. Not later than forty-five (45)
302 days following receipt of proposed modifications, the department shall approve the modifications
303 if the department determines the revision is in accordance with secs. 330 to 345. If the
304 department determines the revision is not in accordance with secs. 330 to 345, the department
305 shall communicate the determination to the organization, at which time the organization shall
306 resubmit proposed modifications to the department for approval. If the department does not make
307 a determination under this paragraph within forty-five (45) days of the receipt of a proposed
308 modification, the modification shall be considered to be approved.

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

317 Section 335. Producer payments. In accordance with the provisions of this section and the
318 regulations promulgated by the department, no later than thirty (30) days after the approval of the
319 producer responsibility plan under section 334, and quarterly thereafter, a producer shall make
320 payments to the organization to be deposited into the producer responsibility fund under section
321 337, based on the amount of each type of covered material sold, offered for sale or distributed for
322 sale in or into the commonwealth by the producer and not managed under an approved
323 alternative collection program. The department shall promulgate regulations under section 342
324 setting forth the manner in which such payments must be calculated. Payments must include a
325 producer's share of administrative, enforcement, education and infrastructure costs, and must
326 reflect the per ton costs associated with collection, processing, transportation and recycling or
327 disposal of covered materials; the costs associated with increasing access to reuse and recycling
328 of covered materials; and other criteria as determined by paragraph (b) of section 342. In total,
329 payments made by producers to the organization shall be sufficient to cover all expenditures
330 under section 337.

331 Section 336. Annual reporting by producers. Beginning no later than 180 days after the
332 approval of the producer responsibility plan under section 334, and in conjunction with payments
333 made pursuant to section 335, a producer shall annually report to an organization the total tons of
334 each type of packaging material sold, offered for sale or distributed for sale in or into the
335 commonwealth by the producer in the prior calendar year and the methods for determining the
336 reported amounts; the characteristics of that packaging material that are relevant to the fee
337 adjustment criteria as determined by the department by rule in accordance with paragraph (b),
338 section 342; and a list of all of the producer's brands associated with that packaging material.

339 Section 337. Producer responsibility fund; authorized expenditures. In accordance with
340 the provisions of this section and the regulations promulgated by the department, the
341 organization or coordinating body shall establish and manage a producer responsibility fund. The
342 organization shall deposit into the fund all payments received from producers in accordance with
343 section 335 and shall expend those funds for the following uses:

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

345 (b) To fund the actual operating costs of the organization, which may not exceed the
346 estimated operating costs indicated in the plan approved by the department pursuant to section
347 341, and which must be verified through a third-party audit paid for by the stewardship
348 organization.

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

351 (d) To make investments in education and infrastructure that support the recycling of
352 covered material in the commonwealth, which are directly supported by producer payments for

353 covered materials and must be approved by the department prior to any such expenditures, and
354 which must incorporate input from producers, facilities, and participating collectors. Of the
355 expenditures from the producer responsibility fund for a fiscal year, the organization shall ensure
356 that not less than two (2) percent is used for education and not less than eight (8) percent is used
357 for infrastructure described under this section and in compliance with the approved producer
358 responsibility plan under section 334.

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

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

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

365

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

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

372 (g) If for any reason secs 330 to 345 are repealed, or the producer responsibility
373 organization ceases operation, the entire fund balance shall be transferred by the organization to
374 the commonwealth of Massachusetts to be deposited into the sustainable packaging trust.

375

376 Section 338. Alternative collection program. In accordance with the requirements of this
377 section and the regulations promulgated by the department, a producer or group of producers
378 may develop and operate an alternative collection program to collect and manage a type or types
379 of covered material sold, offered for sale or distributed for sale in or into the commonwealth by
380 the producer or producers. A producer that manages a type of covered material under an
381 approved alternative collection program through reduction, reuse, recycling or, where approved
382 by the department, management of that covered material through incineration may wholly or
383 partially offset the producer's payment obligations under the packaging and paper product
384 program with respect to that same type of covered material only.

385 (a) Once a producer responsibility organization or coordinating body has a plan approved
386 by the department for the creation of a packaging and paper products program, a producer or
387 group of producers seeking to implement an alternative collection program shall submit a
388 proposal for the establishment of that program to the department for approval. The department
389 shall provide an opportunity for public review and comment on the proposal or deny the proposal
390 within ninety (90) days of receipt. The department may approve an alternative collection
391 program for a term of five (5) years and, at the expiration of such term, the producer or group of
392 producers operating the program may submit an updated proposal to the department for approval.

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

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

397 (2) To what extent the alternative collection program intends to manage those types of
398 covered material to be collected under the program through reduction, reuse for an original
399 purpose, through recycling or through disposal at an incineration facility. The department may
400 not approve an alternative collection program that proposes management of a covered material
401 type through disposal at an incineration facility unless that covered material is not readily
402 recyclable as defined by the department pursuant to section 342 and the program proposes a
403 process to begin reuse or recycling of that type of covered material within a period of 3 years or
404 less. The program shall ensure that a combined reduction and recycling rate is achieved of no
405 less than sixty-five (65) percent by weight by July 1, 2027, no less than eighty (80) percent by
406 weight by July 1, 2031, and no less than one hundred (100) percent by weight by July 1, 2035 of
407 covered materials managed by the organization.

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

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

414 (5) To what extent the alternative collection program may disproportionately impact one
415 community over another.

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

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

422 (1) The total tons of each type of covered material collected, reused, recycled, disposed at
423 an incineration facility or otherwise managed under the alternative collection program in the
424 prior twelve months, including a breakdown of the total tons of each type of material to be
425 credited to each producer participating in the alternative collection program.

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

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

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

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

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

439 (f) If the department determines that an approved alternative collection program is not
440 operating in a manner consistent with the proposal approved under this section or the provisions
441 of this section, the department shall provide written notice to the producer or producers operating
442 the alternative collection program regarding the nature of the deficiency, the actions necessary to
443 correct the deficiency and the time by which such actions must be implemented. If the
444 department determines that the producer or group of producers have failed to implement the
445 actions described in the written notice within the required time frame, the department shall notify
446 the producers or group of producers as well as the producer responsibility organization or
447 coordinating body in writing that the producer or group of producers are ineligible to offset
448 payment obligations under the packaging and paper product program based on covered material
449 managed under the alternative collection program. The department may also bring enforcement
450 actions against the producer or group of producers under section 343.

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

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

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

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

461 (d) As applicable, the total amount of each type of packaging material collected and
462 managed by each participating producer through alternative collection programs approved by the
463 department under section 338

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

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

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

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

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

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

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

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

480 Section 340. Requirements for collector reimbursements. In accordance with the
481 provisions of this section and the regulations promulgated by the department, a collector may
482 elect to, but is not required to, participate in the program under secs. 330 to 345. All collectors
483 shall provide collection and recycling of covered recyclables to all residential units and schools
484 to which they provide service. The producer responsibility organization(s) or coordinating body
485 shall reimburse participating collectors for incurred net costs associated with collection,
486 processing, transportation and recycling or disposal of covered materials from all residential
487 units and schools and shall ensure that, in the event no collector has elected to participate in the
488 program in a given jurisdiction, convenient, equitable and free access to recycling services is
489 available to residential units and schools within that jurisdiction. Participating collectors shall not
490 charge fees to residential units or schools for reimbursable costs.

491 (a) To be eligible for reimbursement of costs under sections 341 as a participating
492 collector, a collector must provide for the collection and recycling of covered materials that are
493 generated by all residential and school generators using its service and that are readily recyclable
494 as listed regularly by the department and that are not collected by an alternative collection
495 program in accordance with section 338, must annually report to the organization or coordinating
496 body all information necessary for the organization or coordinating body to determine the

497 collector's incurred net costs associated with collection, processing, transportation and recycling
498 or disposal of recyclable material and of municipal solid waste.

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

501 (c) Two or more municipalities, a regional refuse district or association, a municipally
502 owned processing facility or quasi-municipal entity that manages materials on behalf of a
503 municipality may elect to jointly report to the organization and jointly receive reimbursement
504 payments from the stewardship organization.

505 Section 341. Calculation and disbursement of collector reimbursements. In accordance
506 with the provisions of this section and regulations promulgated by the department, the
507 organization or coordinating body shall calculate and make reimbursement payments from the
508 fund to participating collectors to reimburse those collectors for incurred costs associated with
509 collection, processing, transportation and recycling of covered materials from all residential units
510 and schools.

511 (a) In accordance with the regulations promulgated by the department pursuant to section
512 342, the organization or coordinating body shall determine the amount of reimbursements to
513 participating collectors under this section based on the following information:

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

517 (2) Information provided to the department by facilities pursuant to paragraph (f) of
518 section 342 and made available by the department to the organization or coordinating body,
519 including the tons of readily recyclable material received by each facility from each collector, the
520 tons of processed readily recyclable material sold by each facility, and any revenue received.

521 (3) Information obtained by the organization or coordinating body through the audits of
522 facilities that process readily recyclable material generated in the commonwealth as required in
523 the approved plan under section 333.

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

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

533 Section 342. Administration and enforcement; rulemaking; fees; additional department
534 responsibilities. The department shall administer and enforce this section and shall promulgate
535 regulations as necessary to implement, administer and enforce this section. All regulations
536 developed under this section shall be promulgated no later than six months after the passage of
537 this act.

538 (a) The department shall develop a material cost differentiation system with which the
539 producer responsibility organization or coordinating body will calculate material costs for
540 collector reimbursements and producer payments. The material cost differentiation mechanism
541 shall be based on the net cost of residential curbside collection or transfer station operation, on-
542 site processing cost for each readily recyclable covered material types, management cost of non-
543 readily recyclable covered materials, transportation cost for each covered material, and any other
544 cost factors as determined by the department. Cost calculations shall take into consideration
545 revenue generated from recyclable materials and must incentivize operational efficiency and
546 contamination reduction.

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

554 (1) Covered material waste reduction.

555 (2) Reuse and lifespan extension of packaging.

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

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

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

561

562 (6) The use of the minimum quantity of packaging necessary to effectively deliver a
563 product without damage or spoilage.

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

566 (8) Domestic processing of covered materials.

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

568 (c) The department shall regularly publish a list of readily recyclable materials,
569 developed through coordination with the producer responsibility organization and material
570 recovery facilities or other entities managing covered materials. The department shall provide for
571 a transitional period between the time that a type of covered material is determined to be readily
572 recyclable or to not be readily recyclable and the time that such determinations will be effective
573 for the purposes of determining producer payments and collector reimbursements in accordance
574 with secs. 330 to 345. The department may amend the list of readily recyclable materials as
575 needed.

576 (d) The department shall coordinate with the producer responsibility organization to
577 establish categories of covered materials. The covered material categories shall group covered
578 materials that have similar properties such as chemical composition, shape, or other
579 characteristics, including, but not limited to: rigid or flexible plastics made of polyethylene

580 terephthalate (PET), polyethylene (PE), polyvinyl chloride (PVC), polypropylene (PP),
581 polystyrene (PS), poly coated fiber, multi-layered plastics, other (BPA, Compostable Plastics,
582 Polycarbonate and LEXAN); metal, such as aluminum, tin, and steel; paper; cartons; and glass.

583 (e) Beginning at the time that the producer responsibility organization is required to
584 submit its first annual report to the department, the department shall submit to the producer
585 responsibility organization, and quarterly thereafter, all costs incurred in the administration of the
586 packaging and paper products program, including oversight, issuance of any regulations,
587 planning, plan review, including proposed modifications to the plan under section 334,
588 compliance, enforcement, and sufficient staff positions to administer the program. All funds shall
589 be deposited in the sustainable packaging trust.

590 (f) Beginning at the time that a producer or producers managing an alternative collection
591 program are required to submit the first annual report to the department pursuant to section
592 338(d), the department shall submit to the producer or producers, and quarterly thereafter, all
593 costs incurred in the administration of the alternative collection program, including oversight,
594 issuance of any regulations, planning, plan review, including proposed modifications to the plan
595 under section 338, compliance, enforcement, and sufficient staff positions to administer the
596 program. All funds shall be deposited in the sustainable packaging trust.

597 (f) Beginning one (1) year after passage of secs. 330 to 345, the department shall
598 establish a toxic substances list, and may reference existing toxic or hazardous substances lists
599 created by other state agencies and the Interstate Chemicals Clearinghouse. Any person may
600 petition the department to add a chemical or chemical class substance to the list based on

601 scientific evidence. The department shall review and update the list of toxic substances at least
602 every three years.

603 (g) Upon request by the department, the organization shall provide a list of producers that
604 are participating in the program and are compliant with the program's requirements and, if
605 known to the organization, a list of producers that are not participating in the program and are
606 not compliant with the program's requirements.

607 (h) Based on the information provided to the department under paragraph (g) and any
608 other information considered by the department, the department shall make available on its
609 publicly accessible website a regularly updated list of producers that the department has
610 determined are compliant with all applicable requirements of this section and a list of producers
611 and, where applicable, specific products that the department has determined are not compliant
612 with all applicable requirements of this section. The department shall conduct outreach to
613 retailers to ensure that retailers are aware of the information made available under this paragraph
614 and any changes to that information.

615 Section 343. Enforcement. Within eighteen (18) months of the passage of this chapter, no
616 producer, distributor, retailer, or other responsible party for a covered material shall sell, offer for
617 sale, use, or distribute any covered material to any person in the commonwealth if the producer
618 of such materials is not in compliance with all applicable parts of secs. 330 to 345.

619 (a) Any producer, distributor, retailer, or other responsible party that violates this section
620 shall be subject to a fine for each violation and for each day that the violation occurs in an
621 amount of not more than \$200,000.

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

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

628 Section 344. Antitrust laws. A producer or producer responsibility organization,
629 including a producer's or organization's officers, members, employees and agents that organize a
630 packaging and paper product program or an alternative collection program under secs. 330 to
631 345, is immune from liability for the producer's or organization's conduct under state laws
632 relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or
633 commerce only to the extent necessary to plan and implement the producer's or organization's
634 packaging and paper product program or alternative collection program consistent with the
635 provisions of secs. 330 to 345.

636 Section 345. Proprietary information. Proprietary information submitted to the
637 department pursuant to the requirements of secs. 330 to 345 or the rules adopted pursuant to secs.
638 330 to 345 that is identified by the submitter as proprietary information is confidential.

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

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

644 collection program developed under secs. 330 to 345 of chapter 94 of the Massachusetts General
645 Laws, and for other uses described in this section. Proceeds of the trust shall be invested by the
646 treasurer and shall be under the care and custody of the commissioner of the department of
647 environmental protection, in consultation with the committee established in paragraph (c) of
648 section 332 of Chapter 94 of the Massachusetts General Laws. Interest earnings on funds
649 deposited in said trust shall be credited to and become part of the trust. Proceeds from the trust
650 shall be expended by said commissioner without further appropriation to cover administrative
651 costs for the implementation and enforcement of this section, including oversight, issuance of
652 any regulations, planning, plan review, review of proposed modifications to a plan developed
653 under sections 334 or 338 of Chapter 94 of the Massachusetts General Laws, compliance,
654 enforcement, and adequate staff positions to administer the packaging and paper products
655 program or an alternative collection program. Adequate department staff positions shall include
656 but not be limited to five (5) FTE positions: one managerial position, three compliance and
657 enforcement positions, and one administrative position.

658

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

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