

HOUSE No. 3310

By Miss Garry of Dracut, petition of Colleen M. Garry relative to the deposit system and recycling of containers under the “bottle law”, so-called. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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 environ-
2 mentally safe solid waste management strategy includes components
3 of conservation, source reduction, reuse, recycling and litter control.
4 In order to stimulate the construction of an appropriate infrastructure
5 in an integrated system of solid waste management, business and
6 government must engage in cooperative participation to accomplish
7 these goals. The following statutory changes are necessary in order
8 to stimulate the creation of an appropriate solid waste management
9 infrastructure:— expanded access and participation to comprehen-
10 sive recycling programs, development of comprehensive litter abate-
11 ment programs, analysis and expansion of markets for recyclable
12 materials, and facilitation of expanded residential and commercial
13 recycling throughout the Commonwealth.

1 SECTION 2. Chapter 21A of the General Laws, as appearing in
2 the 2006 Official Edition, is hereby amended by inserting after
3 Section 18A the following new section:—
4 Section 18B. The Secretary shall establish a program to determine
5 the use of recyclable materials in the Commonwealth. Such program
6 shall include, but not be limited to, a method for determining the
7 percentage of recyclable material that is actually reused rather than
8 discarded. The Secretary shall file a report on the program annually
9 with the Joint Committee on Natural Resources and Agriculture, the
10 Joint Committee on Energy, and the House and Senate Committees

11 on Ways and Means on or before December thirty-first of each year.
12 The report shall contain, but not be limited to, information con-
13 cerning statewide use of recycled material in the Commonwealth.

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

4 Section 7A. The Department shall establish a program to increase
5 recycling opportunities at public facilities visited by at least five
6 thousand individuals annually, including but not limited to, sta-
7 diums, arenas, marinas, airports, theatres, and pedestrian walkways.
8 The Department shall work with MassPort, the Massachusetts Cul-
9 tural Council, the State Racing Commission, the Bureau of State
10 Office Buildings, WasteCap of Massachusetts, and other entities in
11 order to establish a program. The Department shall file a report on
12 the program annually with the Joint Committee on Natural
13 Resources and Agriculture, the Joint Committee on Energy, and the
14 House and Senate Committees on Ways and Means on or before
15 December thirty-first of each year. The report shall contain, but not
16 be limited to, activities promoting recycling at public facilities vis-
17 ited by at least five thousand individuals annually.

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

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

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

4 The Commission shall establish a program to increase recycling
5 opportunities in all public reservations located within the metropol-
6 itan parks district. The Commission shall file a report on the pro-
7 gram annually with the Joint Committee on Natural Resources and
8 Agriculture, the Joint Committee on Energy, and the House and
9 Senate Committees on Ways and Means on or before December
10 thirty-first of each year. The report shall contain, but not be limited

11 to, activities promoting recycling in all public reservations within
12 the metropolitan parks district.

1 SECTION 6. Effective July 1, 2007, Chapter 94 of the General
2 Laws is hereby amended by inserting a new Section 323F:—

3 Section 323F. Clean Environment Fund. (a) There shall be estab-
4 lished on the books of the Commonwealth a separate fund to be
5 known as the Clean Environment Fund (the “Fund”). Amounts
6 deposited in said fund shall be used, subject to appropriation, for
7 programs described in paragraphs (c) through (f) of this section.

8 (b) The Fund shall be governed by the Solid Waste Management
9 Board (the “Board”). The members of the Board shall consist of
10 eleven persons appointed by the Governor, each of whom shall be
11 represented by the following:— the Secretary of Environmental
12 Affairs, five representatives from the various segments of business
13 and industry being assessed pursuant to Section 323G of Chapter 94
14 (beverage container manufacturer, wholesaler/distributor, and
15 dealer), two representatives of the solid waste management and recy-
16 cling industries, two representatives of statewide environmental
17 organizations, and one representative of organized labor.

18 (c) Not more than sixty-five percent of amounts deposited in the
19 Fund shall be used for recycling collection programs including, but
20 not limited to, municipal performance-based incentive grants; unit-
21 based pricing programs; municipal grants for recycling equipment
22 and technical assistance; private sector grants to qualified redemp-
23 tion centers in order to develop innovative materials collection oper-
24 ations; and recycling media and education campaigns.

25 (d) Not more than fifteen percent of amounts deposited in the
26 Fund shall be used for recycling market development programs
27 including, but not limited to, the recycling loan fund for small recy-
28 cling businesses; demonstration projects to process and manufacture
29 recycled products; recycled product purchasing by state agencies;
30 municipal buy recycled programs; and expanded source reduction
31 initiatives.

32 (e) Not more than twenty percent of amounts deposited in the
33 fund shall be used for litter prevention and removal programs
34 including, but not limited to, a state grant program for litter pickup
35 and removal; litter education programs for the public and for
36 schools; research relating to litter control; and enforcement of litter

37 related laws in state/municipal-owned places and areas that are
38 accessible to the public.

39 (f) The amounts deposited in the Fund shall be used to promote
40 and expand waste diversion programs in the Commonwealth. This
41 shall include, but not be limited to, enhancing capabilities to recycle
42 beverage containers in residential and commercial programs,
43 improving access to comprehensive recycling and composting pro-
44 grams, providing technical assistance to residential and commercial
45 recycling and composting programs, promoting reduction efforts,
46 improving markets for diverted material, and other such programs as
47 determined by the Board. The Fund shall also support comprehen-
48 sive litter prevention and control measures including, at a minimum,
49 a statewide litter education and prevention campaign, promotion of
50 voluntary and public/private partnerships for litter control, and coor-
51 dination of existing litter programs in the state.

52 Subject to the approval of the Board, the Department of Environ-
53 mental Protection shall develop model municipal litter prevention
54 and control programs. Monies distributed from the Fund, to eligible
55 municipalities, shall be used solely to supplement litter pickup and
56 removal activities. To be eligible for a grant under this section, a
57 municipality must certify to the department the adoption of at least
58 one of the model programs.

59 A sum of not less than \$250,000 shall be allocated to WasteCap of
60 Massachusetts on an annual basis for developing programs that shall
61 include, but are not limited to, enhancing the ability of existing
62 Massachusetts' manufacturers to utilize and process recovered mate-
63 rials; assisting businesses and technologies in the Commonwealth;
64 identifying support needs (i.e., research and technical assistance);
65 and addressing waste reduction and recycling issues confronted by
66 businesses (i.e., Awareness Campaigns, Business Recycling Cooper-
67 atives, Buy Recycled Programs).

68 (g) The Board shall submit to the Secretary of Administration and
69 Finance, the House and Senate Committees on Ways and Means, the
70 Joint Committee on Energy, and the Joint Committee on Natural
71 Resources and Agriculture an annual report of its activities and an
72 evaluation of any and all programs entered into during the course of
73 the fiscal year.

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

3 323G. Assessment. Between January 1, 2010 and December 31,
4 2010 an amount not to exceed five million six hundred thousand dol-
5 lars (\$5,600,000) shall be deposited into said Fund based on assess-
6 ments levied by the Commissioner of Revenue (“Commissioner”) as
7 follows:—

8 (a) Distributors/wholesalers shall contribute the sum of five mil-
9 lion two hundred sixty-four thousand dollars (\$5,264,000). The
10 Commissioner shall compute the assessment for each
11 distributor/wholesaler of these beverages based on the
12 distributor/wholesaler’s pro-rated share of the total number of bev-
13 erage containers sold within the state between January 1, 2008 and
14 December 31, 2008. The Commissioner shall undertake the neces-
15 sary steps to obtain beverage container sales information for this
16 period, shall treat the information as confidential, and, by June 30,
17 2009, shall compute each distributor/wholesaler’s assessment and
18 notify each distributor/wholesaler of his assessment.

19 (b) Beverage container manufacturers shall contribute the sum of
20 two hundred eighty thousand dollars (\$280,000). After consultation
21 with the Can Manufacturers Institute, Glass Packaging Institute,
22 American Plastics Council, and the Steel Recycling Institute, the
23 Board shall file a report with the Commissioner, no later than June
24 30, 2009, detailing the assessment on beverage container manufac-
25 turers.

26 (c) Dealers shall contribute the sum of fifty-six thousand dollars
27 (\$56,000). This assessment shall be in addition to any liability of
28 dealers who may also be subject to assessments as distributor/whole-
29 salers under paragraph (a). After consultation with the Massachu-
30 setts Food Association and the Massachusetts Package Store
31 Association, the Board shall file a report with the Commissioner, no
32 later than June 30, 2009, detailing the assessment on dealers.

1 SECTION 8. The effective date of Sections 10 through 19 is Jan-
2 uary 1, 2010.

1 SECTION 9. Chapter 94 of the General Laws as appearing in the
2 2006 Official Edition, is hereby amended by striking section three

3 hundred and twenty-one and replacing it with the following new
4 section—

5 Section 321. DEFINITIONS. The following definitions shall,
6 unless the context clearly requires otherwise, have the following
7 meaning:—

8 “Beverage,” carbonated, noncarbonated-alcoholic and noncarbon-
9 ated-nonalcoholic drinks intended for human consumption except
10 milk and dairy derived products, infant formula, or medical food.

11 “Beverage container,” any sealable bottle, can, jar, or carton,
12 which is primarily composed of glass, metal, plastic or any combina-
13 tion of those materials and is produced for purpose of containing a
14 beverage. This definition shall not include containers made of
15 biodegradable material.

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

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

21 “Dealer,” any person including any operator of a vending machine
22 who sells, offers to sell or engages in the sale of beverages in bev-
23 erage containers to consumers in the state.

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

27 “Infant formula,” any liquid food described or sold as an alterna-
28 tive for human milk for the feeding of infants.

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

32 “Medical food,” a food or beverage that is formulated to be con-
33 sumed, or administered enterally under the supervision of a physi-
34 cian, and that is intended for specific dietary management of
35 diseases or health conditions for which distinctive nutritional
36 requirements, based on recognized scientific principles, are estab-
37 lished by medical evaluation. A “medical food” is a specially formu-
38 lated and processed product, for the partial or exclusive feeding of a
39 patient by means of oral intake or enteral feeding by tube, and is not
40 a naturally occurring foodstuff used in its natural state.

41 “Medical food” includes any product that meets the definition of
42 “medical food” in the federal Food, Drug, and Cosmetic Act (21
43 U.S.C. Sec.360ee (b)(3)).

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

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

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

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

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

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

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

5 Section 323C. Abandoned deposit amounts; determination. Any
6 amounts that are or should be in a bottler’s or distributor’s Deposit
7 Transaction Fund and that are in excess of the sum of (a) income
8 earned on amounts in said account and (b) the total amount of refund
9 values received by said bottler or distributor for non-reusable bev-
10 erage containers shall be deemed to constitute abandoned deposit
11 amounts. Income earned on said fund may be transferred from said
12 fund for use as funds of the bottler or distributor.

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

5 Section 323D. Transfer of abandoned deposit amounts. Each bot-
6 tler or distributor shall turn over to the commissioner of revenue any
7 deposit amounts deemed to be abandoned, pursuant to section three
8 hundred and twenty-three C. Such amounts may be paid from the
9 Deposit Transaction Fund. Amounts collected by the commissioner
10 of revenue pursuant to this section shall be deposited into the Clean
11 Environment Fund, established pursuant to section three hundred
12 and twenty-three F.

1 SECTION 15. Chapter 94 of the General Laws, as appearing in
2 the 2006 Official Edition is amended by striking section three hun-
3 dred and twenty-three E.

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

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

5 Section 326. Administration; rules and regulations. The secretary
6 of environmental affairs shall administer the provisions of sections
7 three hundred and twenty-one, three hundred and twenty-three F,
8 and three hundred and twenty-four. Said secretary shall promulgate
9 and from time to time revise rules and regulations to effectuate the
10 purposes of said sections.

11 The commissioner of revenue shall administer the provisions of
12 sections three hundred and twenty-three C, three hundred and
13 twenty-three D, and three hundred and twenty-three G. The collec-
14 tion of revenues pursuant to sections three hundred and twenty-three
15 D and three hundred and twenty-three G by said commissioner shall,
16 to the extent consistent with this chapter, be governed by the provi-
17 sions of Chapter sixty-two C.

18 The commissioner of revenue shall promulgate and from time to
19 time revise rules and regulations to effectuate the purposes of said
20 sections. Said rules and regulations shall include a provision to
21 permit manufacturers, wholesalers, distributors and retailers to
22 borrow, without any interest charge, against their deposit transaction
23 funds subject to such terms and conditions as the commissioner
24 deems appropriate.

25 Said secretary shall determine through rules and regulations
26 which plastic bottles and rigid plastic containers may be exempt
27 from the labeling requirements of section three hundred and twenty-
28 three A, including but not limited to the following:—

- 29 (1) readily identifiable plastic bottles and rigid plastic containers;
- 30 (2) plastic bottles and rigid plastic containers for which there is no
31 technological capability for recycling, reclamation or reuse; and
- 32 (3) plastic bottles and rigid plastic containers for which recycling,
33 reclamation or reuse is not economically feasible.

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

5 Section 327. Enforcement; penalty; interest. The attorney general
6 and district attorneys shall enforce the provisions of sections three
7 hundred and twenty-one to three hundred and twenty-seven, inclu-
8 sive. Any manufacturer, wholesaler, distributor, or retailer who
9 knowingly violates any provisions of sections three hundred and
10 twenty-one to three hundred and twenty-six, inclusive, shall be sub-
11 ject to a civil penalty for each violation of not more than one thou-
12 sand dollars.

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