

SENATE No. 571

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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

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

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Dylan A. Fernandes</i>	<i>Plymouth and Barnstable</i>	<i>2/4/2025</i>
<i>Manny Cruz</i>	<i>7th Essex</i>	<i>2/11/2025</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>5/29/2025</i>

SENATE No. 571

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 571) of Sal N. DiDomenico, Dylan A. Fernandes and Manny Cruz for legislation to save recycling costs in the commonwealth. Environment and Natural Resources.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 471 OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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

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

1 SECTION 1. Chapter 94 of the General Laws, as appearing in the 2022 Official Edition,
2 is hereby amended by inserting after section 329 the following sections:

3 Section 330. Definitions applicable to Secs. 330 to 346. 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 339.

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

“Collector”, a municipality, private hauler, association, or other entity that collects discarded materials from covered entities for disposal or further processing.

"Commissioner", the Commissioner of the department of environmental protection

“Committee”, the advisory committee as established by the department pursuant to section 343.

"Compost", a process of accelerated biodegradation of organic materials using microorganisms under controlled conditions in the presence of oxygen using windrows or piles.

"Compostable material", a covered material that is capable of undergoing aerobic biological decomposition in a controlled composting system, meets ASTM D6400, ASTM D6868, or any successor standards, and is accepted at composting facilities in the state.

“Composting facility”, a property on which composting activities take place and which is subject to 310 CMR 16.03, 16.04 or 16.05.

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

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

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

"Covered material category", the categories of covered materials as defined by the department pursuant to paragraph (d) of section 343.

"Department", the department of environmental protection.

"Environmental justice community", a municipality in which:

a) the annual median household income is 65 percent or less of the statewide annual median household income;

b) minorities make up 40 percent or more of the population;

c) 25 percent or more of households identify as speaking English less than "very well"; and/or

d) minorities make up 25 percent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the statewide annual median household income.

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

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

"Hospitality location", a place that provides food and beverage service, overnight guest accommodation, entertainment or recreation.

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

"Materials management", recycling, composting, deposit redemption, litter prevention and abatement, and reuse infrastructure for covered materials.

"Municipal solid waste", or "MSW", any residential or commercial solid waste sent for disposal, as defined in 310 CMR 19.006.

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

"Needs assessment", or "NA", a statewide evaluation of the amount and types of covered materials managed through materials management, landfilling or incineration and the associated costs and revenues, level of access, and infrastructure capacity for each end-of-life management pathway. The NA also includes evaluation of future needs and associated costs and recommendations for how to achieve the waste reduction goals set in Sections 330-346.

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

"Nondisclosure agreement", an agreement that requires the parties to the agreement to treat the data or information provided to complete the statewide needs assessment as confidential, commercial, or financial information that may not be disclosed to any party, person, or entity, except as provided by this Act.

"Packaging", a material or set of materials that are:

(a) used to protect, contain, transport, dispense or serve a solid, liquid, or gaseous product;

(b) sold or supplied to consumers expressly for the purpose of protecting, containing, transporting, or serving products;

(c) attached to a product or its container for the purpose of marketing or communicating information about the product, or

(d) supplied at the point of sale to facilitate the delivery of the product.

Packaging does not include:

(a) a medical device or packaging that is included with products regulated as a drug, medical device, or dietary supplement by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; as a combination product as defined under 21 CFR 3.2(e); or under the federal Dietary Supplement Health and Education Act of 1994;

(b) animal biologics, including, but not limited to, vaccines, bacterins, antisera, diagnostic kits, other products of biological origin, and other packaging and paper products regulated by the United States Department of Agriculture under the Federal Virus, Serum, Toxin Act;

(c) packaging regulated under the Federal Insecticide, Fungicide, and Rodenticide Act or another applicable federal law, rule, or regulation; or

(d) material intended to be used for the long-term storage or protection of a durable product and that can be expected to be usable for that purpose for a period of at least three years;

(e) a durable product that can be expected to be usable for a period of at least three years.

"Packaging material", any part of a package or container

"Paper product", paper that can be or has been printed on, including flyers, brochures, booklets, catalogs, greeting cards, magazines, paper used for copying, writing or any other general use.

Paper product does not include:

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

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

(c) newspapers

"Person", any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint-stock company, trust, estate, political subdivision, State agency, any other legal entity, or their legal representative, or agent.

"Post-consumer material", covered materials that have served their intended end use as consumer items. "Postconsumer material" does not include a by-product or waste material generated during or after the completion of a manufacturing or converting process.

107 "Post-consumer recycled content", the portion of an item of packaging or paper product
108 made from post-consumer material that has been recycled.

109 "Producer", with respect to a covered material, a party that has legal ownership of the
110 brand of a product using covered material for sale, use, or distribution in the state, including
111 online retailers. For packaging, responsible parties shall be determined based on the following
112 criteria:

113 (a) A person who manufactures a product under the manufacturer's own brand that uses
114 covered material;

115 (b) If subparagraph (a) does not apply, a person who is not the manufacturer of a product
116 under the manufacturer's own brand that uses covered material, but is the owner or licensee of a
117 trademark under which a covered material is used in a commercial enterprise, sold, offered for
118 sale or distributed in the state, whether or not the trademark is registered; or

119 (c) If subparagraphs (a) and (b) do not apply, a person who imports the product that uses
120 the covered material into the state for use in a commercial enterprise, sale, offer for sale or
121 distribution in the commonwealth.

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

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

127 "Packaging reduction fund" or "fund", a privately held account established and managed
128 by the organization pursuant to section 338.

129 "Packaging reduction organization" or "PRO", a not-for-profit entity formed by all
130 producers, whether directly or by trade organizations for subgroups of producers, and contracted
131 by the department under section 332 to act as an agent on behalf of each producer to develop and
132 implement a packaging reduction plan.

133 "Packaging reduction plan" or "plan", a detailed plan that describes the manner in which
134 producers shall comply with the requirements of sections 330 to 346 and all regulations
135 promulgated by the department pursuant to sections 330 to 346.

136 "Packaging reduction program" or "program", the program implemented under sections
137 330 to 346 by the organization, the assessment and collect payments from producers based on the
138 type and weight of covered material sold, offered for sale or distributed for sale in the
139 commonwealth by each producer, and the disbursement of funds for the expenses related to all
140 activities required by the plan.

141 "Public spaces", outdoor areas accessible to the general public owned or operated by
142 local, regional, county, state, or federal governments.

143 "Readily-recycled", a type of covered material category, as annually determined by the
144 department that:

145 (a) can be sorted and aggregated by entities that process recyclable material generated in
146 the commonwealth; and

(b) is based on data from the prior two (2) calendar years entities that further process or utilize the material are willing to purchase full bales of that type of fully sorted covered material in quantities equal to or in excess of the supply of that fully sorted covered material.

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

"Recycling", to separate, dismantle or process the materials or components in covered materials for the purpose of preparing the materials for use or reuse in new products or components.

"Recycling" does not include energy recovery or energy generation by means of combustion; pyrolysis, gasification and any other high-heat chemical conversion processes; landfill disposal of discarded covered material or discarded product component materials; or the residue resulting from the processing of packaging or paper products at an MRF, use as alternative daily cover, or any other beneficial use at a landfill.

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

168 "Reusable", packaging which is designed to be recirculated multiple times for the same or
169 similar purpose in its original format in a system for reuse, and is owned by producers or a third
170 party and returned to producers or a third party after each use.

171 "Reuse", the return of packaging to the economic stream for use in the same kind of
172 application intended for the original packaging without effectuating a change in the original
173 composition of the package, the identity of the product, or the components thereof.

174 "Reuse rate", the number of times a package is reused before being disposed of or
175 recycled.

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

178 "Small business", a business that utilizes less than 1- 40 cubic yard dumpster or
179 equivalent per week for its combined waste and recycling.

180 "Solid Waste Master Plan" or "SWMP", the most recent comprehensive statewide master
181 plan produced by the Department for reducing and managing solid waste, as required by MGL
182 Chapter 16, Section 21.

183 "Sustainable packaging trust" or "trust", an expendable trust under control of the
184 department, created under Chapter 10 section 35TTT of the Massachusetts General Laws, for the
185 purpose of collecting funds for department administration of the packaging and paper products
186 program or an alternative collection program, and for collecting fines related to the packaging
187 and paper products program or an alternative collection program.

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

(a) is a carcinogen, mutagen, reproductive toxicant, immunotoxicant, neurotoxicant, endocrine disruptor.

(b) is persistent or bioaccumulative.

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

(d) may harm organs or cause other systemic toxicity.

(e) may have adverse air quality impacts, adverse ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

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

"Waste disposal bans", has the same meaning as in 310 CMR 19.017.

Section 331. Producer exemptions. Notwithstanding any provision of sections 330 to 346 to the contrary, a producer is exempt from the requirements and prohibitions of sections 330 to 346 in any calendar year in which the producer (a) realized less than \$1,000,000 in total gross revenue during the prior calendar year, or (b) the producer sold, offered for sale or distributed for sale in or into the commonwealth during the prior calendar year products contained, protected, delivered, presented or distributed in or using less than one ton of covered material in total.

Section 332. Packaging reduction organization. To satisfy the requirements under sections 330 to 346, the Department shall issue a competitive solicitation in accordance with Chapter 30B of the general laws to select a qualified Packaging Reduction Organization within 120 days of enactment of this Act. The competitive solicitation issued by the Department and the contract, including any contract modification or extension, executed by the PRO and the Department must provide that the data or information received by the PRO and the Department must be used exclusively to comply with this Act and for no other purposes. The PRO shall act as an agent and on behalf of each producer to operate the packaging and paper products program.

The PRO formed in compliance with sections 330 to 346 shall be established and operated as an PRO described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

Section 333. Needs Assessment. The PRO shall complete a needs assessment within twelve months of contract award. The needs assessment shall assess consumption, materials management quantities, infrastructure and market conditions in the State for managing covered materials. This shall include identifying current capacity, costs, gaps, and needs associated with the diversion of covered materials from MSW to achieve the goals of the Solid Waste Master Plan, and to achieve full compliance with the Massachusetts Disposal Bans as stated in 310 CMR 19.017 for covered materials. The needs assessment shall inform the packaging reduction PRO plan.

(a) The Department shall establish definitions for covered material categories to be evaluated in the Needs Assessment.

230 (b) The Needs Assessment shall address, at a minimum, the following factors for covered
231 entities:

232 (1) the quantity, by weight and category, of covered materials;

233 (2) current collection systems for covered materials by and for covered entities in the
234 State, including curbside collection, carts, transfer station drop off and dumpster services;

235 (3) current materials management systems for collected covered materials, including
236 disposal;

237 (4) the quantity, by weight, of municipal solid waste by covered material category
238 collected for disposal in each Departmental region;

239 (5) the processing capacity and infrastructure for reusable, recyclable, compostable, and
240 redeemable covered materials collected in the State, including capacity and infrastructure outside
241 the State which serves or may serve the State;

242 (6) current reuse, recycling, and recovery rates for covered materials in the State by
243 material category;

244 (7) current post-consumer recycled content use by material type for all covered materials
245 sold in the State;

246 (8) current reusability, recyclability, or compostability of covered materials, by material
247 type;

248 (9) current costs incurred by each type of covered entity for collection, materials
249 management, and disposal;

(10) evaluation of the cost and operational impact of non-reusable, non-recyclable, and non-compostable covered materials on the material management systems;

(11) current operational and capital funding sources and limitations impacting materials management system access and availability throughout the State;

(12) collection and materials management system need to provide convenient access for all covered entities, with needs identified on a region-by-region basis for all five Departmental regions;

(13) program costs and capital investments required to achieve the waste reduction goals set by the department, consistent with material-specific Solid Waste Master Plan goals, by December 31, 2030, and the prorated 2050 goal by 2035 for covered materials, including investment into existing and future collection and materials management infrastructure for covered materials, and incentivization for packaging reduction and redesign;

(14) the market conditions and opportunities for reusable, recyclable, and compostable covered materials in the State and regionally;

(15) multilingual public education needs to achieve the maximum proper use of materials management systems, including, but not limited to, a scientific survey of current awareness among residents of proper end-of-life management for covered materials and the needs associated with the reduction of contamination rates at MRFs which receive covered materials;

(16) an evaluation of sources, material types, volumes, and flows of roadside, waterway and public space litter, and program and infrastructure needs for its abatement and prevention;

270 (17) an assessment of environmental justice and equity in the State relating to materials
271 management, including, but not limited to:

272 (i) an evaluation of current access to and the performance of curbside and drop-off
273 recycling and compost programs and reuse services in jurisdictions designated as environmental
274 justice areas as compared with other areas;

275 (ii) an evaluation of current access to and the performance of curbside and drop-off
276 recycling and compost programs and reuse services in dwellings with four or more units
277 throughout the State;

278 (iii) a comparison of the location of MRFs and compost facilities in units of local
279 government that have been designated as environmental justice areas with units of local
280 government that are not so designated, including analysis of the degree to which residents and
281 workers in environmental justice areas are impacted by emissions, toxic substances, and other
282 pollutants from solid waste facilities and recommendations to mitigate those impact;

283 (iv) An evaluation of material management facility worker conditions, wages and
284 benefits;

285 (v) the availability of opportunities in materials management systems for women and
286 minority individuals; and

287 (vi) recommendations for improving equity and equitable outcomes for underserved
288 populations in Massachusetts' materials management system.

289 (18) an estimate of cost impacts of the enactment of this act to producers, consumers,
290 municipalities, and waste service subscribers in the first five years.

(19) an estimate of the maximum reduction, recycling, recovery, and reuse rate potential for each covered material category by 2030, 2035, 2040, and 2050, to inform both ambitious and realistic goals in a packaging reduction program.

(20) an estimate of current lifecycle greenhouse gas emissions related to covered materials, and of maximum potential greenhouse gas emission reductions related to the findings in (s).

(21) an assessment of strategies to integrate source reduction and reuse into a packaging reduction program based on best practices implemented by other governmental bodies, including but not limited to:

(i) evaluate how recycling infrastructure is or can be used to manage reusable packaging material in other jurisdictions and provide examples of investment proposals that would allow reusable packaging material to be managed through recycling systems in the State;

(ii) evaluate the performance of existing waste reduction and reuse efforts for covered materials, as applicable, including collection rates, reuse rates, and return rates, and determine the infrastructure and investments that would be necessary to increase these rates within five years;

(iii) determine the feasibility of achieving goals of 5% returnable reusable beverage containers sold in the State by 2030, by 2040, and by 2050 and 10% returnable reusable beverage containers sold in the State by 2030, by 2040, and by 2050 and determine the infrastructure and investments that would be necessary to support those goals.

(22) an assessment of the prevalence of toxics in covered materials by category, and their impacts on materials management costs, rates, operations and the environment.

(23) recommend best practices to follow from successful packaging reduction programs for covered materials implemented by other government bodies.

(c) Persons with data or information required to complete the statewide Needs Assessment shall provide an independent entity selected by the Department with such data or information in a timely fashion to assist in completing the statewide NA. The independent entity must be a CPA firm, as defined at section 87B1/2 of chapter 112 of the general laws. The independent entity shall enter into a nondisclosure agreement with each person who provides data or information required to complete the statewide NA. The independent entity shall aggregate the data or information received from all parties using, to the extent practicable, the factors enumerated in subsection (c) and transmit the data or information to the consultant and the Department in a manner that does not identify the party who provided specific data or information. The data or information received by the independent entity may not be used for any other purpose. No person shall be required to provide data or information related to the statewide NA until the person has received a nondisclosure agreement executed by the independent entity. Any person aggrieved by a violation of the terms and conditions of a nondisclosure agreement may institute a civil action to recover damages.

(d) Within twelve months of contract award to the consultant, the Department shall provide the draft Needs Assessment to the Committee. The Committee shall provide written comments to the Department within 60 days of receipt of the NA. The Department's consultant shall include an assessment of comments received in the revised draft NA submitted to the

Department and shall provide a summary and an analysis of any issues raised by the Committee and significant changes suggested by any such comments, a statement of the reasons why any significant changes were not incorporated into the results of the study, and a description of any changes made to the results of the NA as a result of such comments. The NA shall be finalized by the Department within 60 days of receipt of comments by the Committee, and submitted to the Joint Committee on Environment and Natural Resources for legislative action.

(e) The needs assessment shall be published and publicly accessible on the department's website. A copy of the needs assessment shall be filed with the clerks of the senate of the house of representatives and the joint committee on environment, natural resources and agriculture.

Section 334. Producer plan. Within six (6) months of the promulgation of related regulations by the department pursuant to section 343 and the acceptance of the needs assessment, the packaging reduction PRO shall submit a plan for the establishment of the packaging reduction program to the department for approval. With the exception of paragraph (h), the plan shall have a duration of five (5) years. The plan must include, at a minimum:

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

(b) A detailed description of how the PRO intends to solicit and consider input from the advisory committee.

(c) A description of the funding mechanism covering the entire cost of the program, including how the PRO intends to establish and manage the packaging reduction fund consistent with the requirements of sections 336 and 338, including, but not limited to: staffing the PRO to manage the fund; a plan to ensure equity of access for financially or otherwise challenged municipal participants; technical support to producers and collectors regarding program requirements; administering and collecting payments to and reimbursements from the fund; and the financial mechanisms, including investment types if any, the PRO intends to use to manage monies within the fund.

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

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

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

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

(3) Provide recycling instructions that are, to the extent practicable, consistent statewide; easy to understand in each language spoken by 5% or more of the state's population; easily accessible; and in compliance with the annually published list of readily recyclable materials under paragraph (c) of section 343.

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

(f) A description of how, through the proposed expenditures under paragraph (e), the PRO intends to provide convenient and free consumer access to collection services or collection facilities for all covered entities in the commonwealth, and how the PRO intends to achieve and assist collectors and facilities in achieving a combined reduction from a specified baseline and recycling rate, based on regular audits of outbound tonnages of covered material from facilities as reported to the department pursuant to paragraph (f) of section 343, sufficient to meet the waste reduction goals for each covered material category consistent with the Solid Waste Master

Plan. Targets shall be set by the department in five-year increments beginning in 2030. The PRO shall also provide a description of how it intends to achieve and assist collectors and facilities in achieving performance standards for each covered material category as published annually by the department pursuant to paragraph (d) of section 343.

(g) A proposed schedule of minimum post-consumer recycled material content rate requirements for covered materials, including a description of how the PRO intends to meet the proposed minimum post-consumer recycled material content rates. The minimum post-consumer recycled material content rates shall include each covered material category, and shall not be less than ten (10) percent of all material in each covered material category, by weight by 2035.

(h) A description of how the PRO intends to use the materials cost differentiation system developed by the department and the annual schedule of adjustments under paragraphs (a) and (b) of section 343 to assess fees for producers of each type of covered materials, as defined by the department, in compliance with all applicable provisions of sections 330 to 346. The description must include a flat-rate fee schedule for producers generating between one (1) and fifteen (15) tons of covered materials annually. The PRO shall develop an evaluation system for the fee structure, and shall annually evaluate, revise and submit an updated assessment schedule along with the annual report submitted to the department pursuant to section 340.

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

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

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

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

(4) For waste disposal audits, at a minimum, a description of the types and weight of each covered material category in the disposal waste stream, and the percentage by weight of the disposal waste stream that is comprised of covered materials.

(5) For litter audits, to the maximum extent practicable, a description of the covered material type by weight, identified producer, and the general description of where the litter is accumulating in each of the five department regions in the state.

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

(k) Any additional information required by the department.

Section 335. Approval of plan; plan amendments; corrective actions, termination of plan. In accordance with the applicable provisions of sections 330 to 346, the department shall review the packaging reduction plan and amendments to such plan submitted by the PRO, and shall

require the implementation of corrective actions by the PRO to the packaging and paper products program within a specified timeframe. Following approval of the plan by the department under this section, the packaging reduction PRO shall immediately begin implementation of the plan.

(a) The department shall review the plan submitted by the PRO pursuant to section 334 and approve or deny the plan within ninety (90) days of receipt. The department shall approve the plan if the department determines that the plan meets the requirements of section 334 and is otherwise consistent with all applicable requirements of sections 330 to 346. If the department approves the plan, the department shall transmit written notice of that approval to the PRO. An approval under this section must terminate five (5) years from the date of that approval but may be extended for an additional five (5)-year period following the submission by the PRO of an updated plan consistent with section 334 that is approved by the department consistent with this section. The PRO must submit an updated plan no later than one hundred eighty (180) days prior to the date its current plan expires.

(b) If the department determines that a submitted plan fails to meet any applicable requirements of sections 330 to 346, the department shall provide written notice to the PRO describing the reasons for rejecting the plan. No later than forty-five (45) days after receiving written notice rejecting a submitted plan, the PRO shall make revisions which address all deficiencies noted by the department and resubmit the plan to the department. The department shall review the revised plan, decide whether to approve it and provide written notice of the department's decision within forty-five (45) days of receipt of the revised plan.

(c) The PRO may propose modifications to the approved plan during the time it is in effect, provided the PRO submits the proposed modifications to the department for review and

consults the advisory committee as required under paragraph (a)(ii) of section 332. Not later than forty-five (45) days following receipt of proposed modifications, the department shall approve the modifications if the department determines the revision is in accordance with sections 330 to 346. If the department determines the revision is not in accordance with sections 330 to 346, the department shall communicate the determination to the PRO, at which time the PRO shall resubmit proposed modifications to the department for approval. If the department does not make a determination under this paragraph within forty-five (45) days of the receipt of a proposed modification, the modification shall be considered to be approved.

(d) If, based on its review of a PRO's annual report required under section 340 or on a different basis, the department determines that the PRO is not operating the program in a manner consistent with its approved plan, or the provisions of this section, the department may require the PRO to implement amendments to the plan or corrective actions to the program. If the PRO fails to implement a department-required amendment to the plan or corrective action to the program within the time frame for implementation required by the department, the department may take enforcement actions pursuant to section 344.

Section 336. Producer payments. In accordance with the provisions of this section and the regulations promulgated by the department, within six (6) months of establishment of the PRO no later than thirty (30) days after the approval under section 332, and quarterly until the first producer report is submitted to the PRO, a producer shall make payments to the PRO to be deposited into the packaging reduction fund under section 338, based on the amount of each type of covered material sold, offered for sale or distributed for sale in or into the commonwealth by the producer and not managed under an approved alternative collection program. The department shall promulgate regulations under section 343 setting forth the manner in which

such payments must be calculated. Payments must include a producer's share of administrative, enforcement, education and infrastructure costs, and the per ton costs associated with collection, processing, transportation and recycling or disposal of covered materials; the costs associated with increasing access to reuse and recycling of covered materials; and other criteria as determined by paragraph (b) of section 343. In total, payments made by producers to the PRO shall be sufficient to cover all expenditures under section 338.

Section 337. Annual reporting by producers. Beginning no later than 180 days after the approval of the packaging reduction plan under section 335, and in conjunction with payments made pursuant to section 336, a producer shall annually report to the PRO the total tons of each type of covered material sold, offered for sale or distributed for sale in or into the commonwealth by the producer in the prior calendar year and the methods for determining the reported amounts; the characteristics of that covered material that are relevant to the fee adjustment criteria as determined by the department in accordance with paragraph (b), section 343; and a list of all of the producer's brands associated with that covered material. The department and advisory committee may (i) request additional data and information from the producer; and (ii) recommend amendments to the annual reporting requirements for producers.

Section 338. Packaging reduction fund; authorized expenditures. In accordance with the provisions of this section and the regulations promulgated by the department, the PRO shall establish and manage a packaging reduction fund. The PRO shall deposit into the fund all payments received from producers in accordance with section 336 and shall expend those funds for the following uses:

(a) To reimburse participating collectors in accordance with section 342.

(b) To fund the actual operating costs of the PRO, which may not exceed the estimated operating costs indicated in the plan approved by the department pursuant to section 342, and which must be verified through a third-party audit paid for by the PRO.

(c) To pay into the sustainable packaging trust all applicable fees required by the department under section 343(e).

(d) To invest in education and infrastructure that support the reduction, recycling and reuse of covered material in the commonwealth must be approved by the department prior to any such expenditures, and must incorporate input from the advisory committee. Of the expenditures from the fund for a fiscal year, the PRO shall ensure that not less than two (2) percent is used for education and not less than eight (8) percent is used for infrastructure described under this section and in compliance with the approved plan under section 335. These amounts may be adjusted with approval by the department based on progress toward the achievement of the reduction and recycling targets in section 334 paragraph (c).

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

(2) The department shall approve or deny a proposed expenditure under this paragraph within sixty days of receipt of the proposal.

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

(f) Expenditures from the fund shall be used only for the uses described in this section; and shall not be used to pay penalties imposed under section 343, any costs associated with litigation against the commonwealth, or any lobbying efforts.

(g) If for any reason sections 330 to 346 are repealed, or the PRO ceases operation, the entire fund balance shall be transferred by the PRO to the Commonwealth of Massachusetts to be deposited into the sustainable packaging trust.

Section 339. Alternative collection program. In accordance with the requirements of this section and the regulations promulgated by the department, a producer or group of producers may develop and operate an alternative collection program to collect and manage a type or types of covered material sold, offered for sale or distributed for sale in or into the commonwealth by the producer or producers. A producer that manages a type of covered material under an approved alternative collection program through reduction, reuse, recycling may wholly or partially offset the producer's payment obligations under the packaging and paper product program with respect to that same type of covered material only.

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

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

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

(2) To what extent the alternative collection program intends to manage those types of covered material to be collected under the program through reduction, reuse for an original purpose, recycling or disposal at an incineration facility. The department may not approve an alternative collection program that proposes management of a covered material type through disposal at an incineration facility unless that covered material is not readily recyclable as defined by the department pursuant to section 343 and the program proposes a process to begin reuse or recycling of that type of covered material within a period of 3 years or less. The program shall ensure that a combined reduction and recycling rate is achieved of no less than sixty-five (65) percent by weight by July 1, 2030, no less than eighty (80) percent by weight by July 1, 2035, and no less than ninety (90) percent by weight by July 1, 2040 of covered materials managed by the PRO.

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

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

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

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

(d) A producer or producers managing an approved alternative collection program shall report annually and concurrent with the reporting required by section 340 to the PRO and to the department the following information:

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

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

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

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

(5) Any additional information required by the department.

(e) No later than thirty (30) days after the approval of an alternative collection program under this section, and quarterly thereafter, a producer or producers participating in an approved alternative collection program shall make a payment into the sustainable packaging trust for the department's administrative costs of operating the program as determined by the department pursuant to section 343(f).

(f) If the department determines that an approved alternative collection program is not operating in a manner consistent with the proposal approved under this section or the provisions of this section, the department shall provide written notice to the producer or producers operating the alternative collection program regarding the nature of the deficiency, the actions necessary to correct the deficiency and the time by which such actions must be implemented. If the department determines that the producer or group of producers have failed to implement the actions described in the written notice within the required time frame, the department shall notify the producers or group of producers as well as the PRO in writing that the producer or group of producers are ineligible to offset payment obligations under the packaging and paper product program based on covered material managed under the alternative collection program. The department may also bring enforcement actions against the producer or group of producers under section 344.

Section 340. Annual reporting by packaging reduction PRO. The PRO shall submit an annual report to the department on a regular schedule determined by the department for the preceding calendar year the program was in operation, which shall include:

(a) Contact information for the PRO.

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

615 (c) The total amounts of each type of covered material sold, offered for sale or distributed
616 for sale in or into the commonwealth by each participating producer as reported in accordance
617 with section 337.

618 (d) As applicable, the total amount of each type of covered material collected and
619 managed by each producer participating in an alternative collection programs approved by the
620 department under section 339.

621 (e) A complete accounting of payments made to and by the PRO during the prior
622 calendar year, as determined by an independent financial audit performed by an independent
623 auditor, including information on how the PRO determined the amount of such payments in
624 conformance with regulations promulgated in accordance with section 343.

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

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

628 (h) A description of education and infrastructure investments made by the PRO in prior
629 calendar years and how those expenditures quantifiably increased access to recycling and reuse
630 of covered materials throughout the commonwealth.

631 (i) An updated assessment schedule, as required under paragraph (h) of section 334.

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

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

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

Section 341. Requirements for collector reimbursements. In accordance with the provisions of this section and the regulations promulgated by the department, a collector may elect to, but is not required to, participate in the program under sections 330 to 346.

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

The PRO shall reimburse participating collectors for incurred net costs associated with processing and recycling of covered materials from covered entities. The PRO shall ensure that, in the event no collector has elected to participate in the program in a given jurisdiction, convenient, equitable and free access to recycling services is available to all covered entities within that jurisdiction. Participating collectors shall not charge fees to covered entities for reimbursable costs.

(a) To be eligible for reimbursement of costs under sections 342 as a participating collector, a collector must provide for the collection and recycling of covered materials that are generated by all covered entities using its service and that are readily recyclable as listed regularly by the department and that are not collected by an alternative collection program in

653 accordance with section 339, and must quarterly report to the PRO all information necessary for
654 the PRO, on a form provided by or approved by the department, to determine the collector's
655 incurred net costs associated with processing and recycling of covered materials from covered
656 entities, including the number of tons delivered..

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

661 (c) The PRO shall reimburse collectors for qualifying costs within thirty (30) days of
662 submission.

663 Section 342. Disbursement of collector reimbursements. In accordance with the
664 provisions of this section, section 341, and regulations promulgated by the department, the PRO
665 shall make reimbursement payments from the fund to participating collectors for incurred costs
666 associated with municipal transfer station operation, processing and recycling of covered
667 materials from all covered entities.

668 (a) In accordance with the regulations promulgated by the department pursuant to section
669 343, the PRO shall determine the amount of reimbursements to participating collectors under this
670 section based on the following information:

671 (1) Information provided by participating collectors to the PRO or coordinating body in
672 accordance with section 341 regarding the incurred net costs associated with processing and
673 recycling of covered materials from covered entities.

(2) Any other information specified by the department by rule.

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

Section 343. Administration and enforcement; rulemaking; fees; additional department responsibilities. The department shall administer and enforce this section and shall promulgate regulations as necessary to implement, administer and enforce sections 331-346. All regulations developed under these sections shall be promulgated no later than twelve (12) months after the passage of this act.

(a) No later than three (3) months from enactment, the department shall establish an advisory committee that represents a range of interested and engaged persons, including the commissioner of the department of environmental protection or a designee, one member who shall be appointed by the attorney general and who shall have expertise in consumer protection, and one individual each representing producers, retailers, private waste haulers that do not operate material recovery facilities, material recovery facility operators, municipalities, environmental PROs, recycling advocacy organizations, health care facilities, colleges and universities, entertainment venues, freshwater and marine litter programs, reuse organizations,,

and environmental and human health scientists. Each individual serving on the advisory committee may represent only one (1) member of each category listed under this paragraph, and the organization shall ensure that no category has a disproportionate representation on an advisory committee. The department may select a third-party facilitator for the advisory committee.

(b) The department shall hold an advisory meeting at least quarterly; request and consider comments from the advisory committee prior to developing regulations pertaining to the plan, approval of the plan and modifications to the first plan, and proposals by the PRO for infrastructure and education investments; and include a summary of advisory committee engagement and input in the report under section 340.

(c) The department shall develop a material cost differentiation system with which the PRO will calculate material category-specific per-ton producer payments. The system shall be based on the net cost of municipal transfer station operation, processing cost for each covered material category, management cost of non-readily recyclable covered materials, and any other cost factors as determined by the department. Cost calculations shall take into consideration revenue generated from recyclable materials and must incentivize operational efficiency and contamination reduction.

(d) The department shall regularly publish a schedule of adjustments to be used by the PRO in determining the amount of producer payments required under section 336. The schedule of adjustments shall apply to both readily and non-readily recyclable covered materials as defined in paragraph (c), and shall be used to individually adjust the fees assessed for each category of covered material as defined in paragraph (d). To minimize the extraction,

718 manufacture, use, and end-of-life-management impacts of covered materials, the schedule of
719 adjustments must be structured to incent:

720 (1) Waste reduction.

721 (2) Reuse and lifespan extension of packaging.

722 (3) Minimal life cycle impact of covered materials.

723 (4) The use of the minimum quantity of packaging necessary to effectively deliver a
724 product without damage or spoilage.

725 (5) Use of readily recyclable materials to manufacture covered materials.

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

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

730 (8) Reduced use of toxic substances in covered materials, which raise the lifecycle
731 environmental and societal costs of packaging.

732 (9) Domestic processing of covered materials.

733 (e) The department shall regularly publish a list of readily recyclable materials,
734 developed through coordination with the PRO and material recovery facilities or other entities
735 managing covered materials. The department shall provide for a transitional period between the
736 time that a type of covered material is determined to be readily recyclable or to not be readily
737 recyclable and the time that such determinations will be effective for the purposes of determining

producer payments and collector reimbursements in accordance with secs. 330 to 346. The department may amend the list of readily recyclable materials as needed.

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

(g) Beginning at the time that the PRO is formed, the department shall submit to the PRO, and quarterly thereafter, all costs incurred in the administration of the packaging and paper products program, including oversight, issuance of any regulations, conducting the needs assessment, any third-party facilitators hired for the advisory committee, planning, plan review, including proposed modifications to the plan under section 335, compliance, enforcement, and sufficient staff positions to administer the program. All funds shall be deposited in the sustainable packaging trust.

(h) Beginning at the time that a producer or producers begin an approved alternative collection program pursuant to section 339(a), the department shall submit to the producer or producers, and quarterly thereafter, all costs incurred in the administration of the alternative collection program, including oversight, issuance of any regulations, planning, plan review, including proposed modifications to the plan under section 339, compliance, enforcement, and

759 sufficient staff positions to administer the program. All funds shall be deposited in the
760 sustainable packaging trust.

761 (i) Beginning one (1) year after passage of secs. 330 to 346, the department shall
762 establish a toxic substance list, and may reference existing toxic or hazardous substances lists
763 created by other state agencies and the Interstate Chemicals Clearinghouse. Any person may
764 petition the department to add a chemical or chemical class substance to the list based on
765 scientific evidence. The department shall review and update the list of toxic substances at least
766 every three years.

767 (j) Upon request by the department, the PRO shall provide a list of producers that are
768 participating in the program and are compliant with the program's requirements and, if known to
769 the PRO, a list of producers that are not participating in the program and are not compliant with
770 the program's requirements.

771 (k) Based on the information provided to the department under paragraph (g) and any
772 other information considered by the department, the department shall make available on its
773 publicly accessible website a regularly updated list of producers that the department has
774 determined are compliant with all applicable requirements of this section and a list of producers
775 and, where applicable, specific producers or products that the department has determined are not
776 compliant with all applicable requirements of this section. The department shall conduct
777 outreach to retailers to ensure that retailers are aware of the information made available under
778 this paragraph and any changes to that information.

779 Section 344. Enforcement. Within thirty (30) days of approval of the plan, no producer,
780 distributor, retailer, or other responsible party for a covered material shall sell, offer for sale, use,

or distribute any covered material to any person in the commonwealth if the producer of such materials is not in compliance with sections 330 to 346. No collector may provide collection for disposal unless they are in compliance with section 341.

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

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

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

(d) the department may engage the services of a multistate clearinghouse for this purpose, and join multi-state civil actions.

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

Section 345. Antitrust laws. A producer or PRO, including a producer's or PRO's officers, members, employees and agents that organize a packaging and paper product program or an alternative collection program under sections 330 to 346, is immune from liability for the producer's or PRO's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and

801 implement the producer's or PRO's packaging and paper product program or alternative
802 collection program consistent with the provisions of sections 330 to 346.

803 Section 346. Proprietary information. Proprietary information submitted to the
804 department pursuant to the requirements of section 330 to 346 or the rules adopted pursuant to
805 sections 330 to 346 that is identified by the submitter as proprietary information shall be kept
806 confidential.

807 SECTION 2. Chapter 10 of the General Laws is hereby amended by inserting after
808 section 35SSS the following section:

809 Section 35TTT. Sustainable packaging trust. There shall be established an expendable
810 trust to be known as the sustainable packaging trust. Amounts deposited in the trust shall be used
811 for department administration of the packaging and paper product program or an alternative
812 collection program developed under section. 330 to 346 of chapter 94 of the Massachusetts
813 General Laws, and for other uses described in this section. Proceeds of the trust shall be invested
814 by the treasurer and shall be under the care and custody of the commissioner of the department
815 of environmental protection, in consultation with the committee established in paragraph (c) of
816 section 332 of Chapter 94 of the Massachusetts General Laws. Interest earnings on funds
817 deposited in said trust shall be credited to and become part of the trust. Proceeds from the trust
818 shall be expended by said commissioner without further appropriation to cover administrative
819 costs for the implementation and enforcement of this section, including oversight, issuance of
820 any regulations, planning, plan review, review of proposed modifications to a plan developed
821 under sections 335 or 339 of Chapter 94 of the Massachusetts General Laws, compliance,
822 enforcement, and adequate staff positions to administer the packaging and paper products

823 program or an alternative collection program. Adequate department staff positions shall include
824 but not be limited to five (5) FTE positions: one managerial position, three compliance and
825 enforcement positions, and one administrative position.

826 (a) Any funds collected under section 344 of chapter 94 of the Massachusetts General
827 Laws in an action in which the Attorney General has prevailed shall be deposited in the trust, and
828 shall be used to administer grants and loans to businesses, non-profits and collectors, as defined
829 in section 330 of chapter 94 of the Massachusetts General Laws, to reduce environmental
830 impacts related to the collection and recycling of the covered material category for which the
831 penalty was exacted.

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