

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

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

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

An Act to reduce plastics.

PETITION OF:

NAME:

Rebecca L. Rausch

DISTRICT/ADDRESS:

Norfolk, Worcester and Middlesex

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

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

An Act to reduce plastics.

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

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 210 the
2 following chapter:-

3 CHAPTER 21P: MASSACHUSETTS PLASTICS REDUCTION ACT

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

6 “Biodegradable”, made entirely of organic materials, including wood, paper, bagasse and
7 cellulose.

8 “Carryout bag”, a bag provided to a customer to hold items purchased from or serviced
9 by a retail establishment. A carryout bag does not include a bag: (i) provided by a pharmacy to a
10 customer purchasing prescription medication; (ii) used to protect items from damaging or
11 contaminating other purchased items placed in a recycled paper bag or a reusable grocery bag;
12 (iii) provided to contain an unwrapped food item; (iv) used to protect articles of clothing on a

13 hanger; (v) used to prevent frozen food items from thawing; (vi) containing products or items
14 that are saturated, wet, prone to leak or need to be immersed in a liquid; (vii) containing products
15 or items that are granular, powdery, dirty or greasy; or (viii) used to protect small items from
16 loss.

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

20 “Department”, the department of environmental protection.

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

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

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

31 “Person”, an individual, partnership, trust, association, corporation, society, club,
32 institution, organization or other entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (g) Upon attestation to the department confirming satisfaction of the criteria set forth in
87 this subsection, this section shall not apply to retail establishments with not more than 3 store
88 locations under the same ownership; provided, however, that each location has not more than
89 4,000 square feet of retail selling space and not more than 15 employees; and provided further,
90 that the retail establishment provided fewer than 15,000 carryout bags in total during the
91 previous calendar year. Retail establishments exempt under this subsection shall not be
92 prohibited from offering carryout bags for sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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