

HOUSE No. 893

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

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 relative to enhancing circularity in recycling.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>1/20/2023</i>

HOUSE No. 893

By Representative Roy of Franklin, a petition (accompanied by bill, House, No. 893) of Jeffrey N. Roy relative to enhancing circularity in recycling. Environment and Natural Resources.

The Commonwealth of Massachusetts

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

An Act relative to enhancing circularity in recycling.

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

1 The General Laws are hereby amended by inserting after Chapter 94I the following
2 chapter:-

3 CHAPTER 94J.

4 ENHANCING CIRCULARITY IN RECYCLING.

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

7 "Beverage", any ready to drink liquid for human consumption. Beverage shall not
8 include infant formula, medical food, fortified oral nutritional supplements used for persons who
9 require supplemental or sole source nutritional needs due to special dietary needs directly related
10 to cancer, chronic kidney disease, diabetes or other medical conditions as determined by the
11 department.

12 "Covered product", an item in 1 of the following categories subject to minimum post-
13 consumer recycled content requirements: (i) plastic trash bags; (ii) plastic carry-out bags; (iii)
14 plastic beverage containers; (iv) rigid plastic containers, including food containers and household
15 cleaning and personal care product packaging. Covered product shall not include any type of
16 container or bag for which the commonwealth is preempted from regulating content of the
17 container material or bag material under federal law.

18 "Department", department of environmental protection.

19 "Food", articles used for food or drink for consumption by humans or other animals, and
20 articles used for components of any such article.

21 "Glass container", a container made of glass that is filled with a food or beverage.

22 "Hot fill process", a process to sterilize both a food product and its container during the
23 food packaging process, in which the food product is heated to a temperature between 194 and
24 203 degrees Fahrenheit and then injected into the container.

25 "Paper carryout bag", a bag made of paper that is sold or provided by a store to a
26 customer for the purpose of containing, carrying, and transporting food, beverages or retail
27 goods.

28 "Person", an individual, corporation, company, association, society, firm, partnership or
29 joint stock company.

30 "Plastic", a synthetic material made from linking monomers through a chemical reaction
31 to create an organic polymer chain that can be molded or extruded at high heat into various solid
32 forms retaining their defined shapes during the life cycle and after disposal. Plastic shall not

33 include material that is designed to be composted in a municipal or industrial aerobic composting
34 facility and that is certified by a recognized third-party independent verification body as meeting
35 the standards therefor established by the American Society for Testing and Materials in ASTM
36 D6400 or ASTM D6868.

37 "Plastic beverage container", an individual, sealable, separate bottle, can, jar, carton or
38 other container made of plastic that is intended to contain a beverage up to 2 gallons in capacity.
39 Plastic beverage container does not include: (i) refillable beverage containers, such as containers
40 that are sufficiently durable for multiple rotations of their original or similar purpose and are
41 intended to function in a system of reuse; (ii) rigid plastic containers or plastic bottles that are or
42 are used for medical devices, medical products that are required to be sterile, nonprescription and
43 prescription drugs or dietary supplements; (iii) liners, bladders, caps, corks, closures, labels and
44 other items added but otherwise separate from the structure of the bottle or container; and (iv)
45 containers certified as industrial compostable pursuant to ASTM D6400 or D6868.

46 "Plastic carryout bag", a bag made of plastic, of any thickness, whether woven or
47 nonwoven, that is sold or provided by a store to a customer for the purpose of containing,
48 carrying and transporting food, beverages or retail goods.

49 "Plastic trash bag", a bag that is made of plastic, is at least 0.70 mils thick, and is
50 designed and manufactured for use as a container to hold, store, or transport materials to be
51 discarded, composted or recycled, and includes, but is not limited to, a garbage bag, lawn or leaf
52 bag, can-liner bag, kitchen bag or compactor bag.

53 "Postconsumer material", a material or product that has completed its intended end use
54 and product life cycle, and which has been separated from the solid waste stream for the

55 purposes of collection and recycling. Postconsumer material shall not include pre-consumer or
56 post-industrial secondary waste material or materials and by-products generated from, and
57 commonly used within, an original manufacturing and fabrication process.

58 "Producer". the following person responsible, including a manufacturer, for compliance
59 with minimum post-consumer recycled content requirements for a covered product sold, offered
60 for sale or distributed in or into the commonwealth: (i) ff the covered product is sold under the
61 producer’s own brand or lacks identification of a brand, the producer is the person who
62 manufactures the covered product; (ii) if the covered product is manufactured by a person other
63 than the brand owner, the producer is the person who is the licensee of a brand or trademark
64 under which a covered product is sold, offered for sale or distributed in or into the
65 commonwealth, whether or not the trademark is registered in the commonwealth, unless the
66 manufacturer or brand owner of the covered product has agreed to accept responsibility under
67 this chapter; or (iii) if there is no person described in this chapter over whom the commonwealth
68 can constitutionally exercise jurisdiction, the producer is the person who imports or distributes
69 the covered product in or into the commonwealth. Producer shall not include: (a) government
70 agencies, municipalities or other political subdivisions of the commonwealth; (b) registered
71 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations.

72 "Rigid plastic container", a container made of plastic that has a relatively inflexible finite
73 shape or form, has a minimum capacity of 8 fluid ounces or its equivalent volume and a
74 maximum capacity of 5 fluid gallons or its equivalent volume, and is capable of maintaining its
75 shape while empty or while holding other products.

76 Section 2. (1) Rigid plastic containers sold or offered for sale in the commonwealth shall
77 comply with the minimum post-consumer recycled content requirements under this section.

78 (2) Beginning 2 years after the effective date of this chapter, all rigid plastic containers
79 sold, offered for sale, or used in association with the sale or offer for sale of a product in the
80 commonwealth by a producer shall contain, on average and in aggregate, at least 10 per cent
81 postconsumer recycled content.

82 (3) Beginning 5 years after the effective date of this chapter, and every 3 years thereafter,
83 the percentage of postconsumer recycled content required on average and in aggregate for rigid
84 plastic containers pursuant to this section shall increase by 10 per cent, until reaching 50 per
85 cent.

86 (4) A rigid plastic container shall be exempt from the postconsumer recycled content
87 requirements of this section if it: (i) is associated with a product produced in or brought into the
88 commonwealth that is destined for shipment to a destination outside the commonwealth, and that
89 remains with the product upon shipment; (ii) contains drugs, dietary supplements, medical
90 devices, or cosmetics as those terms are defined in the Federal Food, Drug, and Cosmetic Act, 21
91 U.S.C. sec.301 et seq.; (iii) contains toxic or hazardous products regulated under the "Federal
92 Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. sec.136 et seq.; (iv) is manufactured for
93 use in the shipment of hazardous materials and is: (a) prohibited from being manufactured with
94 used material by federal packaging material specifications set forth in 49 C.F.R. sec.178.509 and
95 49 C.F.R. sec.178.522, (b) is subject to the testing standards set forth in 49 C.F.R. sec.178.600
96 through 49 C.F.R. sec.178.609, or (c) is subject to the recommendations of the United Nations on
97 the transport of dangerous goods; or (iv) is a refillable container or a reusable container. For the

98 purposes of this paragraph, "refillable container" means a rigid plastic container that is routinely
99 returned to and refilled by the producer with the same product packaged by the container; and
100 "reusable container" means a rigid plastic container that is routinely reused by consumers to store
101 the original product packaged by the container.

102 Section 3. (1) Plastic beverage containers sold or offered for sale in the commonwealth
103 shall comply with the minimum post-consumer recycled content requirements under this section.

104 (2) Beginning 2 years after the effective date of this chapter, all plastic beverage
105 containers shall contain, on average and in aggregate, at least 15 per cent post-consumer recycled
106 content.

107

108 (3) Beginning 5 years after the effective date of this chapter, and every 3 years thereafter,
109 the amount of postconsumer recycled content required on average and in aggregate for plastic
110 beverage containers pursuant to this section shall increase by 5 per cent, until reaching 50 per
111 cent; except the postconsumer recycled content requirement for producers who utilize a hot fill
112 process shall not exceed 30 per cent.

113 (4) The provisions of this section shall not apply to a refillable beverage container. For
114 the purposes of this section, "refillable beverage container" shall mean a beverage container that
115 holds 150 fluid ounces or less of beverage, and which is routinely returned to the producer to be
116 refilled and resold.

117 Section 4. (1) Glass containers sold or offered for sale in the commonwealth shall comply
118 with the minimum post-consumer recycled content requirements under this section.

119 (2) Beginning 2 years after the effective date of this chapter, all glass containers shall
120 contain, on average, and in aggregate, at least 35 per cent postconsumer recycled content; except
121 that, if a producer certifies to the department that its use of postconsumer recycled content is
122 made up of at least 50 per cent mixed-color cullet, then the glass containers shall only be
123 required to contain, on average, at least 25 per cent postconsumer recycled content. As used in
124 this section, "mixed-color cullet" means cullet that does not meet the American Society for
125 Testing and Materials (ASTM) standard specifications for the color mix of color-sorted, post-
126 filled glass as a raw material for the manufacture of glass containers.

127 Section 5. (1) Paper carryout bags sold or offered for sale in the commonwealth shall
128 comply with the minimum post-consumer recycled content requirements under this section.

129 (2) Beginning 2 years after the effective date of this section, all paper carryout bags shall
130 contain, on average and in aggregate, at least 40 per cent postconsumer recycled content; except
131 that a paper carryout bag that holds 8 pounds or less shall only be required to contain, on
132 average, at least 20 per cent postconsumer recycled content.

133 Section 6. (1) Plastic carryout bags sold or offered for sale in the commonwealth shall
134 comply with the minimum post-consumer recycled content requirements under this section.

135 (2) Beginning 2 years after the effective date of this chapter, plastic carryout bags shall
136 contain, on average and in aggregate, at least 20 per cent postconsumer recycled content.

137 (3) Beginning 5 years after the effective date of this chapter, plastic carryout bags shall
138 contain, on average and in aggregate, at least 40 per cent postconsumer recycled content.

139 Section 7. (1) Plastic trash bags sold or offered for sale in the commonwealth shall
140 comply with the minimum post-consumer recycled content requirements under this section.

141 (2) Beginning 2 years after the effective date of this chapter, plastic trash bags shall
142 contain on average and in aggregate the following proportion of postconsumer recycled content:

143 (i) for plastic trash bags greater than 0.70 mils thick but less than 0.80 mils thick, at least five
144 percent; (ii) for plastic trash bags greater than 0.80 mils thick but less than 1.00 mils thick, at
145 least 10 percent; and (iii) for plastic trash bags equal to or greater than 1.00 mils thick, at least 20
146 per cent.

147 (3) Beginning 5 years after the effective date of this chapter, plastic trash bags shall
148 contain on average and in aggregate the following proportion of postconsumer recycled content:

149 (i) for plastic trash bags greater than 0.70 mils thick but less than 0.80 mils thick, at least 10 per
150 cent; (ii) for plastic trash bags greater than 0.80 mils thick but less than 1.00 mils thick, at least
151 20 per cent; and (iii) for plastic trash bags equal to or greater than 1.00 mils thick, at least 40 per
152 cent.

153 (4) This section shall not apply to a plastic trash bag that is designed and manufactured
154 to hold, store or transport hazardous waste or regulated medical waste. For the purposes of this
155 paragraph, "hazardous waste" and "regulated medical waste" shall meet the definition established
156 by the department; provided however, that producers are encouraged to utilize post consumer
157 recycled content (PCR) unless expressly prohibited.

158 Section 8. (1) A package or container that contains milk products, plant-based products
159 with names that include the names of dairy foods such as "milk," medical food, food for special

160 dietary use, or infant formula shall be exempt from the postconsumer recycled content
161 requirements of this chapter.

162 (2) As used in this section the following terms shall, unless the context clearly requires
163 otherwise, have the following meanings:

164 "Food for special dietary use", means the same as the term is defined in 21 U.S.C. sec.
165 350. "Medical food" and

166 "Infant formula", means the same as that term is defined in the Federal Food, Drug, and
167 Cosmetic Act, 21 U.S.C. sec. 301 et seq.

168 "Medical food", means the same as that term is defined in the Federal Food, Drug, and
169 Cosmetic Act, 21 U.S.C. sec. 301 et seq.

170 "Milk product", means the same as that term is defined by the United States Food and
171 Drug Administration.

172 Section 9. (1) A package or container that contains food shall be exempt from the
173 postconsumer recycled content requirements of this chapter for a period of 5 years beginning on
174 the effective date of this chapter, except that the exemption provided in this subsection shall not
175 apply to a plastic beverage container or a glass container filled with a beverage.

176 (2) The department may, in its discretion, extend the 5-year exemption. Upon expiration
177 of the exemption, a producer shall be subject to the applicable postconsumer recycled content
178 requirements in effect at the time of the expiration.

179 Section 10. (1) Products or materials sold or offered for sale in the commonwealth may
180 be waived from the minimum post-consumer recycled content requirements as follows: (i) in

181 order to qualify, a producer shall submit to the department documentation from a federal or state
182 agency or certified third-party expert, demonstrating that the producer cannot comply with the
183 postconsumer recycled content requirements for the following reason: that the producer cannot
184 maintain compliance with applicable rules and regulations adopted by the United States Food
185 and Drug Administration, or other applicable state or federal law, rule, or regulation and comply
186 with the postconsumer recycled content requirements.

187 (2) The department may grant a waiver for a period of up to 2 years. The department
188 shall publish any determinations to grant waivers on its website.

189 Section 11. (1) For the purposes of determining a producer’s compliance with the
190 post-consumer recycled content requirement, the producer may: (i) determine compliance for the
191 total quantity of each category of covered materials, by weight, that are sold in the
192 commonwealth. Compliance shall be determined for each category on average and in aggregate
193 across the category and shall not be construed as requiring compliance with the requirements for
194 each individual covered product sold; and (ii) rely on state-specific data regarding covered
195 product sales and material use, if available, or may alternatively rely on the same type of regional
196 or national data.

197 (2) If a producer elects to rely on data derived from applicable data that is regional or
198 national rather than state-specific as provided in clause (ii) of paragraph (1), they shall: (i)
199 prorate the regional or national data to determine the state-specific figures based on market share
200 or population in a manner that ensures that the percentage of post-consumer recycled plastic
201 calculated for covered products sold in the commonwealth is the same percentage as calculated

202 for that larger region or territory; and (ii) document the methodology used to determine those
203 state-specific figures calculated under said clause (ii) of said paragraph (1) in the annual report.

204 Section 12. The department shall establish and maintain regulations allowing for a
205 producer to discharge its obligations under this chapter by making an alternative compliance
206 payment in an amount established by the department; provided however, that the department
207 shall set post-consumer recycled content requirement alternative compliance payment rates at
208 levels that shall stimulate the development of a post-consumer recycled content market. The
209 department shall establish and maintain regulations outlining procedures by which each
210 producer, shall annually submit for the department's review a filing illustrating the
211 producer's compliance with the requirements of this section and the producer's
212 efforts made toward achieving compliance where commercially feasible.

213 Section 13. (a) The department shall impose penalties on a producer that is in violation of
214 this chapter. The department may enforce the provisions of this chapter by any of the following:

215 (i) issue an order requiring the person to comply;

216 (ii) bring a civil action;

217 (iii) levy a civil administrative penalty, which the department shall set at an amount that
218 is higher than the alternative compliance payment that the producer would have paid in carrying
219 out its obligations under this chapter;

220 (iv) bring an action for a civil penalty;

221 (v) require a producer to submit a corrective action plan; or

222 (vi) notify the public of a producer which, at any time during a reporting period, was not
223 in compliance with the requirements of this chapter.

224 (b) The exercise of any of the remedies provided in this section shall not preclude
225 recourse to any other remedy so provided.

226 (c) All penalties shall be placed into a special, non-lapsing account to be known as the
227 Recycling Enhancement Fund. which shall be credited with all penalties collected. Moneys in the
228 account may be utilized by the department for administrative expenses incurred in connection
229 with this chapter for recycling public education and to stimulate the development of a post-
230 consumer recycled content market.

231 Section 14. (a) Annually, on April 1, following 2 years after the effective date of this
232 chapter, a producer that offers for sale, sells or distributes covered products into the
233 commonwealth shall register with the department individually or through a third-party
234 representative registering on behalf of a group of producers, in a form and manner as
235 prescribed by the department, and pay an annual registration fee of \$5,000. A producer that fails
236 to register with the department pursuant to this section shall first receive a written warning. A
237 producer that receives a written warning shall register with the department no later than 90 days
238 after receipt of the warning. A producer that receives a written warning and that fails to register
239 with the department within 90 days of receipt of the warning shall be subject to the penalties set
240 forth in section 13 of this chapter.

241 (b) All registration fees shall be placed into a special, non-lapsing account to be known as
242 the Recycling Enhancement Fund. Moneys in the account may be utilized by the department for

243 administrative expenses incurred in connection with this chapter, for recycling public education
244 and to stimulate the development of a post-consumer recycled content market.

245 Section 15. (1) Annually, on October 1, following 3 years and 6 months after the
246 effective date of this chapter, each producer shall submit a report certifying, in writing, to the
247 department the extent to which it is in compliance with the postconsumer recycled content
248 requirements of this chapter, are otherwise exempt or have been approved for a waiver from the
249 requirements.

250 (2) The producer shall set forth the specific basis for any exemptions that are claimed,
251 and submit such proof as the Department determines necessary.

252 (3) The certification shall be signed by an authorized representative of the producer. A
253 producer shall submit the certification, in the form and manner determined by the department,
254 under penalty of perjury. The certification shall include: (i) the amount, in pounds, of not post-
255 consumer, glass or paper; and (ii) the amount, in pounds, of post-consumer recycled material
256 used by the producer for any products subject to the requirements of this chapter, and any other
257 information as the department deems necessary.

258 (4) The department may allow independent, third-party verification organizations to
259 verify producers' compliance with the requirements of this chapter.

260 Section 16. Each producer shall maintain records, in a form prescribed by the department,
261 that demonstrate whether, how and to what extent the producer has complied with the
262 postconsumer recycled content requirements, or whether the producer qualifies for an exemption
263 or waiver from the postconsumer recycled content requirements. The department may adopt
264 specific requirements for the records required to be maintained pursuant to this section and may

265 request the records from a producer at any time. A producer shall submit records to the
266 department no later than 30 days after receipt of a request, unless the department extends that
267 timeframe.

268 Section 17. The department may audit or investigate a producer, at any time, to assess the
269 producer’s compliance with the requirements of this chapter. Each year, the department
270 may audit, or cause to be audited, a random sample of producers in order to determine
271 compliance with this chapter. A producer shall cooperate fully with any audit or investigation
272 conducted pursuant to this section. The department may require a producer to pay the costs of an
273 audit conducted pursuant to this section.

274 Section 18. The department shall annually publish a list of registered producers, their
275 compliance status and other information the department deems appropriate on the
276 department’s website.

277 Section 19. Not later than 2 years after the effective date of this chapter, the department
278 shall adopt rules and regulations necessary for the implementation of this chapter. Prior to the
279 adoption of rules and regulations, and as necessary thereafter, the department may develop
280 guidance as necessary for the implementation of this chapter. The department shall publish any
281 such guidance on its website.

282 Section 20. Not later than 5 years after the effective date of this chapter, the department
283 shall prepare and submit an assessment to the governor and the general court evaluating this
284 chapter’s effectiveness in stimulating the recycling markets in the commonwealth and
285 making any recommendations for legislative or administrative actions necessary to further the

286 purposes of this chapter, including recommendations for whether and how the commonwealth
287 should encourage, require or support other uses of recycled material.

288 Section 21. Any proprietary information or trade secrets included in any registration,
289 certification, alternative compliance plan, corrective action plan, or any other record submitted to
290 the department shall not be made available to the general public.