SENATE DOCKET, NO. 109 FILED ON: 1/11/2013

# SENATE . . . . . No. 346

The Commonwealth of Massachusetts

PRESENTED BY:

***Harriette L. Chandler***

*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 passage of the accompanying:

An Act to create a framework to re-allocate responsibility for discarded products.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Harriette L. Chandler* | *First Worcester* |
| *Gale D. Candaras* | *First Hampden and Hampshire* |
| *Sal N. DiDomenico* | *Middlesex and Suffolk* |

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# SENATE . . . . . No. 346

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 346) of Harriette L. Chandler, Gale D. Candaras and Sal N. DiDomenico for legislation to create a framework to re-allocate responsibility for discarded products. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *341* OF 2011-2012.]

## The Commonwealth of Massachusetts

An Act to create a framework to re-allocate responsibility for discarded products.

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 21N the following chapter:-

CHAPTER 21O.

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

"Brand", a name, symbol, word or mark that identifies a product and attributes the product to the owner of the brand as the producer.

"Covered entity", any person with a discarded product covered by sections 1 to 15 of this act.

"Department", the Department of Environmental Protection.

"Discarded product", a product no longer wanted by its owner that is discarded or is intended to be discarded.

"Disposition rate", quantitative measures that establish on an annual basis the percentage of discarded products that are recycled, reused or properly disposed of, including energy

15 recovery, relative to the total amount collected or total amount collected per capita in a product
16 stewardship program.

17 “Environmentally sound management practices”, policies as defined by rules adopted
18 pursuant to section 7 of this act that are implemented by a producer or a stewardship organization
19 to ensure compliance with applicable laws and that address issues such as adequate record
20 keeping, tracking and documenting the fate of materials within this commonwealth and beyond,
21 on-site operations, security of facilities and materials, worker health and safety requirements,
22 environmental protection, closure plans, adequate insurance and financial assurances.

23 “Historical product”, any product that is not currently marketed or sold by the producer.

24 “Orphan product”, a product that lacks a brand, for which the producer is no
25 longer in business and has no successor in interest or for which the Department of Environmental
26 Protection cannot identify a producer.

27 “Performance goal”, a metric established by a producer or the Department of
28 Environmental Protection to measure on an annual basis the performance of a product
29 stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or
30 health impacts related to a product.

31 “Person”, the United States, this commonwealth, a public or private corporation, a local
32 government unit, a public agency, an individual, a partnership, an association, a firm, a trust, an
33 estate or another legal entity.

34 “Producer” a person:

35 (a) Who manufactures a product and who sells, offers for sale or distributes that product
36 in Massachusetts under the manufacturer’s own name or brand;

37 (b) If paragraph (a) of this subsection does not apply, who is not the manufacturer of the
38 product but is the owner or licensee of a trademark or brand under which a product is sold or
39 distributed in Massachusetts, whether or not the trademark is registered; or

40 (c) If paragraphs (a) and (b) of this subsection do not apply, who imports the product into
41 Massachusetts for sale or distribution.

42 “Product”:

43 (a) A single item or group of similar items specified in section 3 of this act; and

44 (b) Historical products and orphan products of the same type as the items described in
45 paragraph (a) of this subsection.

46 “Product goal”, any change in the design and manufacture of a product that reduces or
47 has the potential to reduce environmental or health impacts.

48 “Product stewardship plan”, a statewide plan that describes a program for the collection,
49 transportation, recycling, reuse and disposal of discarded products and any related performance
50 goals and product goals and that is developed and provided for by a producer or group of
51 producers.

52 “Product stewardship program”, a statewide program financed and managed by a
53 producer or group of producers that is based on an approved product stewardship plan and that
54 addresses the environmental or health impacts of a product over the entire life cycle of that
55 product.

56 “Recycling”, (a) any process by which discarded products, components and
57 byproducts are transformed into new, usable or marketable materials in a manner in which the
58 original products may lose their identity, and (b) does not include energy recovery or energy
59 generation by means of combusting discarded products, components and by-products with or
60 without other waste products.

61 “Retailer”, any person that offers new products for sale at retail through any
62 means, including but not limited to remote offerings such as sales outlets, catalogs or the
63 Internet.

64 “Reuse”, the return of a product into the economic stream for use in the same kind
65 of application as originally intended, without a change in the product’s form or function.

66 “Sell” or “sale”, any transfer of title for consideration, including but not limited to
67 remote sales conducted through sales outlets, catalogs or the Internet or any similar electronic
68 means, but excluding lease arrangements.

69 “Statewide product stewardship system”, the statewide system of product stewardship
70 programs established and managed by producers or stewardship organizations that are overseen
71 by the Department of Environmental Protection.

72 “Stewardship organization”, a corporation, nonprofit or other legal entity appointed by a
73 producer or group of producers to act as an agent on behalf of the producer to administer a
74 product stewardship program.

75 Section 2. The department may adopt rules as necessary to implement sections 1 to 15 of
76 this act.

77 Section 3. (1) Every two years, after consultation with the advisory committee established
78 pursuant to subsection (6)(a) of this section, the department may identify a list of potential
79 products that may be appropriate for a product stewardship program. The department must hold

80 at least one public meeting where interested persons can provide comment regarding the listing
81 of potential products.

82 (2) Upon review of any public comment and any relevant information and after
83 consultation with the advisory committee, the department may select from the list developed
84 pursuant to subsection (4) of this section products for further evaluation. The department may
85 consider whether a product's packaging should be included in this evaluation. These products
86 shall be evaluated based on the factors in subsection (3) of this section.

87 (3) In evaluating a product, the department shall consider the following factors:

88 (a) Potential to reduce waste, toxicity, greenhouse gas emissions or other
89 environmental or health impacts;

90 (b) Potential to encourage product design or manufacture that reduces environmental
91 or health impacts;

92 (c) Current or potential contribution of the product to the weight, volume or toxicity
93 of the solid waste stream;

94 (d) Public demand or need for improved recycling, reuse or disposal opportunities;

95 (e) Producer ability to manage the product through a product stewardship program;

96 (f) Fiscal impacts to local governments, producers, retailers, consumers and other
97 affected parties of using a product stewardship program to address the management of a product
98 after the product is discarded; and

99 (g) Any other consideration relevant to the management of a product under a product
100 stewardship program.

101 (4) Based on the evaluation provided in subsections (2) and (3) of this section and after
102 consultation with the advisory committee, the department may determine products to be covered
103 under the Product Stewardship program. Prior to making this determination, the department must
104 hold at least one public meeting and post recommendations on its website for 30 days to allow
105 for public comments.

106 (5) The department may not add more than two products in a two-year period unless it
107 determines that:

108 (a) The threat to the environment or public health warrants the recommendation of
109 additional products; or

110 (b) The products are of a similar class or type.

111 (6)(a) Prior to undertaking the process described in this section, the department shall
112 appoint and convene a standing advisory committee to provide technical information and advice
113 regarding the identification, evaluation and recommendation of products. The committee must
114 have at least 11 members and, at a minimum, one member must represent each of the following
115 groups:

116 (A) Producers;

117 (B) Local governments;

118 (C) Environmental groups;

119 (D) The solid waste industry; and

120 (E) The retail industry.

121 (b) To encourage coordination with other states, the department may invite
122 representatives from other states to participate in the committee proceedings as nonmembers.

123 Section 4. The products approved by the department identified in section 3 are covered
124 by the provisions of sections 1 to 15 of this Act.

125 Section 5. (1) The department shall adopt product-specific rules to address the
126 implementation of product stewardship programs for the products specified in section 6 of this
127 act.

128 (2)(a) Prior to adopting product-specific rules, the department shall appoint an advisory
129 committee to advise on the development of product-specific rules.

130 The committee shall have at least nine members and, at a minimum, one member must
131 represent each of the following groups:

132 (A) Producers;

133 (B) Local governments;

134 (C) Environmental groups;

135 (D) The solid waste industry;

136 (E) The retail industry; and

137 (F) Consumers or covered entities.

138 (b) To encourage coordination with other states, the department may invite
139 representatives from other states to participate in the committee proceedings as nonmembers.

140 (3) Any product-specific rules developed and adopted pursuant to this section shall
141 address the following:

142 (a) Definition of covered entities;

143 (b) Environmentally sound management practices;

144 (c) Performance goals and product goals as provided in section 11 of this act;

145 (d) The disposal ban as provided in 310 CMR 19.017;

146 (e) Implementation date for the product stewardship program;

147 (f) Department's administrative fees; and

148 (g) Any other requirement relevant to the management of a product under a product
149 stewardship program.

150 Section 6. (1) Producers of products specified in section 3 of this act for which rules are
151 adopted pursuant to section 5 of this act shall establish product stewardship programs for the
152 products. Every producer shall:

153 (a) Operate, either individually or collectively with other producers, a product
154 stewardship program; or

155 (b) Enter into an agreement with one or more stewardship organizations to operate,
156 on the producer's behalf, a product stewardship program.

157 (2) Product stewardship programs must be provided free of charge to covered entities
158 when a product is sold or when the discarded products are delivered or collected for reuse,
159 recycling or disposal throughout the calendar year. All discarded products collected for a
160 program must be reused or recycled unless the applicable product-specific rule provides that
161 such products must be properly disposed of. A program must meet or exceed the requirements
162 for the collection of products set forth in the product stewardship plan required by section 7 of
163 this act.

164 (3) Producers must pay all administrative, operational and capital costs associated with
165 the product stewardship programs, including costs of collection, transportation, recycling, reuse
166 and disposal of the products and their components. Producers must provide adequate insurance
167 and financial assurances for operation of the product stewardship programs.

168 (4) Product stewardship programs must meet or exceed the environmentally sound
169 management practices provided in the applicable product-specific rules as well as any other
170 applicable federal, state or local requirements regarding the management of the collected
171 products.

172 (5) A producer may not sell or offer for sale in Massachusetts any product unless the
173 product or, where appropriate, the product package or container, is labeled with a brand that is
174 permanently affixed and readily visible and the brand is included in an approved product
175 stewardship plan.

176 (6) All product stewardship programs shall operate in accordance with:

177 (a) The product stewardship plan as approved by the department; and

178 (b) Sections 1 to 15 of this act and any applicable rules adopted pursuant to sections 1
179 to 15 of this act.

180 (7) Product stewardship programs shall include an education and outreach component to
181 promote the use of the program and to inform covered entities of available collection options.

182 This information must be provided to covered entities, retailers and other interested
183 parties.

184 Section 7. (1) Producers must submit a product stewardship plan to the department that
185 addresses the following:

186 (a) Information about participating producers, including but not limited to:

187 (A) Contact information for producers;

188 (B) Contact information for the individual or entity submitting the plan;

189 (C) A description of any stewardship organization that operates the product stewardship
190 program; and

191 (D) Producers' products and associated brands covered by the product stewardship
192 program and product stewardship plan.

193 (b) Information on performance goals and product goals, including but not limited to:

194 (A) A description of annual performance goals and, if applicable, product goals; and

195 (B) Compliance with annual performance goals and, if applicable, product goals.

196 (c) Collection system information, including but not limited to:

197 (A) How the product stewardship program will be available, convenient, accessible and
198 free of charge for all covered entities in urban and rural areas statewide; and

199 (B) How discarded products will be collected in all counties in the commonwealth and all
200 cities with populations of at least 10,000.

201 (d) Implementation of environmentally sound management practices for the
202 collection, transportation, recycling, reuse and disposal of discarded products.

203 (e) Management of collected products, including but not limited to:

204 (A) How the collected products will be recycled, reused or, where required by the
205 product-specific rules, properly disposed of; and

206 (B) How all residuals that cannot be recycled or reused will be properly managed.

207 (f) Financial information, including but not limited to:

208 (A) How the product stewardship program will be financed;

209 (B) The mechanism for securing and disbursing funds to cover administrative,
210 operational and capital costs; and

211 (C) Demonstration of adequate insurance and financial assurances for collection,
212 transportation, recycling, reuse or disposal operations.

213 (g) Outreach and education to covered entities including, but not limited to:

214 (A) How to use and access the product stewardship program; and

215 (B) How this information will be provided to collectors, retailers and other interested
216 parties.

217 (h) Public and stakeholder consultation, including but not limited to:

218 (A) Opportunities for the public and other stakeholders to comment on the product
219 stewardship plan prior to submission; and

220 (B) Opportunities for the public and other stakeholders to comment on the
221 implementation and operation of the product stewardship program.

222 (2) If the department determines that a proposed product stewardship plan complies with
223 sections 1 to 15 of this act and any applicable rules and is in the public interest, the department
224 shall approve the product stewardship plan.

225 (3) All product stewardship plans submitted and approved by the department must be
226 available to the general public through the website of the producer or the stewardship
227 organization.

228 (4) The department shall maintain a website listing of producers and brands covered by
229 approved product stewardship plans and product stewardship programs, updated by the first day
230 of each month.

231 Section 8. (1) All product stewardship plans must be submitted to the department no later
232 than 120 days following the adoption of the applicable product-specific rules, or no later than
233 120 days prior to the sale or offer for sale of a product in Massachusetts.

234 (2) The department shall approve or reject the product stewardship plan within 60 days of
235 receiving the plan unless the department requests additional information regarding the plan.

236 (3) If a product stewardship plan is rejected and the producer wishes to submit a revised
237 plan, the producer must do so within 60 days of the date of the letter of rejection.

238 (4) Product stewardship plans must be updated and submitted to the department for
239 review at least once every four years from the date on which the plan is first approved or more
240 frequently as needed to ensure compliance with this act.

241 (5) If a producer joins an approved product stewardship plan, the producer must notify
242 the department prior to selling or offering for sale any products in Massachusetts.

243 Section 9. (1) As of the implementation date established by the applicable product
244 specific rule, a producer, retailer or other person may not sell the product or offer the product for
245 sale to any person in this commonwealth unless the producer is participating in an approved
246 product stewardship program.

247 (2) A retailer or other person complies with the requirements of this section if, on the date
248 the product is ordered from the producer or its agent, the website of the department lists the
249 producer, along with the product brand, as operating or participating in an approved product
250 stewardship program.

251 (3) At the time of sale to a consumer, a producer, retailer or other person selling a product
252 or offering a product for sale must provide the consumer with information on where and how to
253 recycle or dispose of the product through a product stewardship program.

254 Section 10. (1) A producer must annually prepare and submit to the department a written
255 report that describes how the product stewardship program was implemented in accordance with
256 sections 1 to 15 of this act and any applicable rules.

257 (2) The department may request that additional information be submitted in order to
258 verify any reported accomplishments under the program.

259 Section 11. (1)(a) A producer shall establish annual performance goals for discarded
260 products collected in a product stewardship program. A producer shall establish reasonable
261 annual performance goals for the first two years of the program's operation, provided that the
262 goals include the following:

263 (A) Total amount collected or total amount collected per capita;

264 (B) Collection rate; and

265 (C) Disposition rate.

266 (b) The department shall establish the appropriate metric to use in measuring annual
267 performance goals in the product-specific rule.

268 (2) Annual performance goals established by a producer for the first two years of the
269 operation of the product stewardship program are not enforceable. However, a producer must
270 establish, measure and report on the goal. By the third year of the operation of the product
271 stewardship program for a product, the department shall establish an enforceable annual
272 performance goal. A producer must meet or exceed this goal. Producers must continue to fully
273 implement a product stewardship program even after an enforceable annual performance goal is
274 achieved.

275 (3) A producer may establish product goals for products covered by a product
276 stewardship program. These goals must be specific to the product and intended to achieve
277 changes that result in a reduction in environmental or health impacts. The department shall
278 consider and make appropriate adjustments for any product goal adopted and successfully
279 implemented that affects the ability of a producer to meet an enforceable annual performance
280 goal.

281 Section 12. The department may establish a schedule of fees to be paid by producers.
282 Fees may be established in amounts to recover, but not exceed, costs incurred by the department
283 in providing plan review, approval, program development, oversight and compliance for the
284 products for which a producer is responsible. Fees collected by the department under this section
285 shall be deposited in the State Treasury to the credit of the Product Stewardship Fund established
286 under section 13 of this act.

287 Section 13. The Product Stewardship Fund is established, separate and distinct from

288 the General Fund. Interest earned by the Product Stewardship Fund shall be credited to
289 the fund. Moneys in the fund are continuously appropriated to the department and may be used
290 only to pay the costs of implementing sections 1 to 15 of this 2011 Act.

291 Section 14. No person shall knowingly dispose of any product specified in section 3 of
292 this act except to handle, recycle or compost the material in accordance with a plan submitted
293 and approved by the department.

294 PENALTIES

295 Section 15. The department shall be charged with the enforcement of sections 1 to 14,
296 inclusive. If any person refuses to obey a decision of the department the attorney general shall,
297 upon request of the department, file a petition for the enforcement of such decision in equity in

298 the superior court for Suffolk County or for the county in which the defendant resides or has a
299 place of business. After due hearing, the court shall order the enforcement of such decision or
300 any part thereof, if legally and properly made by the department.

301 Section 16. Whoever violates any provisions of sections 1 to 14, inclusive, shall be
302 punished by a fine of not less than $2,500 and not more than $25,000.00 for each day the
303 violation remains outstanding.

304 Section 17. The department shall annually, not later than December 31, submit an annual
305 report of its activities pursuant to this chapter. The report shall include: (1) an update on the
306 implementation of this chapter and current state of compliance by collectors, processors,
307 producers and retailers; (2) recommendations to the general court and the governor regarding
308 proposed changes to this chapter, or any other chapter of the General Laws, or any regulations
309 promulgated pursuant thereto; and (3) any other information the department deems appropriate.
310 The report shall be submitted to the governor, the president of the senate, the speaker of the
311 house, the house and senate chairs of the committee on ways and means, the house and senate
312 chairs of the joint committee on environment, natural resources and agriculture, the clerk of the
313 senate and the clerk of the house.

314 Section 18. The department shall evaluate any federal law that establishes a national
315 program to manage any products specified in section 3 of this Act through a product stewardship
316 approach. If the department determines that the federal law substantially meets or exceeds the
317 requirements and intent of sections 1 to 15 of this act, the department shall include information
318 on the federal law in the next annual report.

319 Section 19. The department may adopt rules before the operative date specified or take
320 any action before that date that is necessary to carry out the provisions of this chapter.

321 Section 20. No later than December 31, 2012 the department shall develop and
322 implement the statewide product stewardship system described in this chapter.

323 Section 21. The department may participate in the establishment of a regional multistate
324 organization or compact to assist in carrying out the requirements of this chapter.

325 Section 22. Notwithstanding any general or special law to the contrary and unless
326 otherwise specified herein, this act shall take effect upon passage.