

HOUSE No. 766

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle L. Ciccolo

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 "Skip the Stuff" to reduce restaurant waste.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>1/20/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/1/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/1/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>3/1/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/8/2023</i>

HOUSE No. 766

By Representative Ciccolo of Lexington, a petition (accompanied by bill, House, No. 766) of Michelle L. Ciccolo and others relative to food and beverage packaging waste. Environment and Natural Resources.

The Commonwealth of Massachusetts

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

An Act to "Skip the Stuff" to reduce restaurant waste.

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

1 Whereas, in the Commonwealth of Massachusetts, food and beverage packaging
2 comprise most street litter and are significant contributors to the total amount of waste entering
3 the waste stream, and
4 local governments in the U.S. spend \$11.5 billion annually cleaning up litter, and
5 all disposable food-ware is un-recyclable, and
6 many types of disposable food-ware are not accepted in commercial compost facilities
7 because they cause contamination and lower the quality and value of compost, and
8 food packaging materials, including food contact papers and compostable paperboard-
9 containers and molded plastics, frequently contain harmful poly and perfluoroalkyl chemicals
10 that are linked to serious health impacts, and

11 many of the chemical additives used in packaging are known to migrate into food and
12 beverages. Hundreds of common packaging chemicals are known to be hazardous to human
13 health and in the environment, many are extremely persistent and bioaccumulative, therefore
14 the Commonwealth of Massachusetts sets forward this act to reduce restaurant packaging
15 waste.

16 Section 1: Definitions

17 In this Act, these words are defined as follows:

18 a. “Commissioner” means the commissioner of the Department of Environmental
19 Protection.

20 b. “Consumer” means a person purchasing prepared food, raw food, or beverages.

21 c. “Consumption on the Premises” means the consumption of prepared food within the
22 physical structure owned and operated by the restaurant.

23 d. “The Commonwealth” means the Commonwealth of Massachusetts.

24 e. “Department” means the Department of Environmental Protection.

25 f. “Food Service Provider” means any store, establishment, provider, government entity
26 non-profit vendor, or business, operating within the Commonwealth that sells or provides food or
27 beverages for human consumption to consumers directly or indirectly through a delivery or
28 takeout service, regardless of whether such food is consumed on or off the premises. “Food
29 service provider” includes, but is not limited to, restaurants, retail food establishments, caterers,

30 cafeterias, stores, shops, retail sales outlets, grocery stores, delicatessens serving the public,
31 mobile or temporary food providers, vehicles or carts, or roadside stands.

32 g. “Full-Service Restaurant” means an establishment or business where food may be
33 consumed on the premises, and where each of the following would typically occur when a
34 customer consumes food on the premises:

35 (1) The customer is escorted or directed to an assigned eating area either by an employee
36 of the restaurant or by the customer themselves;

37 (2) Except for food that is included in a buffet or salad bar, the customer’s food and
38 beverage order are delivered directly to the customer; and

39 (3) If a customer wants additional items with the customer’s food or beverage order, the
40 customer requests such items from a server or waitstaff.

41 h. “Prepared Food” means food that is serviced, cooked, packaged, or otherwise prepared
42 for individual customers or consumers. Prepared Food does not include raw eggs or raw,
43 butchered meats, fish, raw vegetables, fruit, and/or poultry sold from a butcher case, a
44 refrigerator case, or similar retail appliance.

45 i. “Reusable Food Serviceware” means food serviceware or beverage containers, such as
46 utensils, cups, plates, and bowls, that are designed and manufactured to maintain its shape and
47 structure, and be materially durable for repeated sanitizing washing, and reuse.

48 j. “Single-Use Food Serviceware” means all types of items provided by food service
49 providers in relation to the consumption and enjoyment of food or beverages, including, but not
50 limited to, forks, spoons, knives, napkins, straws, stirrers, cocktail sticks, splash sticks,

51 toothpicks, wet-wipes, cup lids, cup sleeves, beverage trays, and unfilled cups, plates, and take-
52 out containers that are designed for single-use.

53 k. “Single-Use Condiment” means relishes, spices, sauces, confections, or seasonings that
54 require no additional preparation and that are usually used on a food item after preparation,
55 including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and
56 sugar substitutes or others as determined by the Department that are designed for single-use.

57 l. “Single-Use” means a product that is designed to be used once and then discarded, and
58 not designed for repeated use and sanitizing.

59 m. “Third-Party Food Delivery Platform” means a business engaged in the service of
60 online food ordering and/or delivery of food or beverages from a food service provider to a
61 consumer.

62 Section 2: Food Serviceware Upon Request

63 a. Only upon request by a customer, may a food service provider provide single-use food
64 serviceware or single-use condiment.

65 b. Should a customer request single-use serviceware or single-use condiments, the
66 restaurant may charge a \$0.75 fee per transaction. 100% of this fee will be retained by the
67 restaurant.

68 c. Single-use food serviceware and single-use condiments provided by food service
69 providers for use by consumers shall not be bundled or packaged in a manner that prohibits a
70 consumer from taking only the type of single-use food serviceware or single-use condiment

71 desired without also having to take a different type of single-use food serviceware or single-use
72 condiment.

73 d. Food service providers may ask a drive-through consumer if the consumer wants
74 single-use food serviceware if the single-use food serviceware is necessary for the consumer to
75 consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

76 e. A food service provider that is located entirely within a public use airport, as defined in
77 Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through

78 consumer if the consumer wants a single-use food serviceware if it is necessary for the
79 consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat
80 food.

81 f. Nothing in this section shall be construed to prohibit a food service provider from
82 selling or providing food or beverages that are pre-packaged by the manufacturer in single-use
83 food serviceware.

84 Section 3: Requirements for Third-Party Delivery Platforms

85 a. A third-party food delivery platform shall provide consumers with the option to request
86 single-use food serviceware and single-use condiments from food service providers.

87 b. A third-party food delivery platform shall customize its menu with a list of available
88 single-use food serviceware and single-use condiments, and only those single-use food
89 serviceware and single-use condiments selected by the consumer shall be provided by the food
90 service provider or the third-party food delivery platform. If a consumer does not select any
91 single-use food serviceware or single-use condiments, no single-use food serviceware or single-

92 use condiments shall be provided by the food service provider or the third-party delivery
93 platform.

94 c. Should a customer request single-use serviceware or single-use condiments through a
95 third-party food delivery platform, the food delivery platform may charge a \$0.75 fee per
96 transaction. 100% of this fee will be remitted to the restaurant by the third party.

97 Section 4: Enforcement and Compliance

98 a. The Department is required to promulgate rules and regulations for the implementation
99 and enforcement of this act.

100 b. The Department is required to take actions reasonable and necessary to enforce this
101 article, including, but not limited to, receiving, and responding to complaints, investigating
102 violations, issuing fines, and entering the premise of any food service provider during business
103 hours to monitor compliance.

104 c. A food service provider and third-party food delivery platform shall be subject to the
105 following:

106 (1) A written notice for a first violation

107 (2) An administrative fine not to exceed \$50 for a second violation.

108 (3) An administrative fine of at least \$150 for each subsequent violation.

109 d. Each administrative fine shall be due and payable to the Department within 30
110 calendar days from the date the written notice of violation is served. Failure to timely pay the
111 fine will result in the assessment of a late fee. The Department may collect any unpaid fine,

112 including the late fee, by means of civil action, injunctive relief, and specific performance in
113 accordance with applicable law.

114 e. All fines and late fees collected under this act shall be used by the Department as part
115 of the Reduce, Reuse, Repair Micro-Grant program.

116 f. A food service provider or third-party deliver platform who receives a written notice of
117 violation pursuant to this article may request an administrative review of the accuracy of the
118 violation determination by filing a signed, written notice of appeal with the Department, no later
119 than 30 days from the date the notice of violation was served. The appeal must include all facts
120 supporting the appeal and any supporting documentation, including copies of all photos,
121 statements, and other documents that the appellant wishes to be considered in connection with
122 the appeal. The Department, may sustain, rescind, or modify the notice of violation and/or
123 administrative fine, as applicable.

124 Section 5: Prohibition on Permitting of New Food Service Establishments That Do Not
125 Provide Reusable Food Serviceware

126 a. New business licenses for full-service restaurants applied for after the effective date of
127 this act shall only be granted if the applicant can demonstrate that, for all on-premise dining, the
128 applicant will only serve food or beverages using reusable food serviceware, except that the
129 applicant may still provide single-use paper food wrappers, foil wrappers, napkins, straws, paper-
130 tray- and plate-liners. b. Nothing in this section is intended to prevent a full-service restaurant
131 from providing single-use food serviceware or single-use condiments to customers with take-out
132 food, or as a container for customers to transport uneaten food, if such single-use food
133 serviceware or single-use condiments otherwise comply with the requirements of this Chapter.

134 Section 6: Education and Outreach

135 a. The Department is required to conduct education and outreach to consumers, food
136 service providers, and third-party food delivery platforms regarding the requirements and
137 purpose of the law.

138 b. The education and outreach shall, at a minimum, include:

139 (1) Information regarding the environmental and public health harms associated with
140 single-use food serviceware;

141 (2) The environmental, economic, and social benefits of reusable food serviceware;

142 (3) Information regarding the environmental and public health concerns associated with
143 landfilling and incinerating waste;

144 (4) The requirements of this act; and

145 (5) How food service providers and third-party delivery platforms can comply with the
146 requirements of this act and the penalties for non-compliance;

147 c. The education and outreach conducted by the Department shall utilize multiple forms
148 of media, including, but not limited to print and web-based media to produce information
149 directly to consumers, food service providers, and third-party food delivery platforms, and shall
150 be provided in multiple languages.

151 d. The Department of Public Health is responsible for educating full-service restaurants
152 about the environmental benefits of reusable food serviceware, as well as the requirements of
153 section 5 of this act.

154 Section 7: Severability

155 a. If any provision of this article is found to be unconstitutional or otherwise invalid by
156 any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of
157 this article which can be implemented without the invalid provisions, and to this end, the
158 provisions of this article are declared to be severable.

159 Section 8: Preemption

160 a. Nothing in this act shall limit the ability of any city or county within the jurisdiction of
161 the Commonwealth of Massachusetts from passing more restricting laws, ordinances, or
162 regulations, governing the use of single-use food serviceware or single-use condiments, so long
163 as those laws, ordinances, or regulations do not violate the provisions of this act.

164 Section 9: Effective Date

165 a. Section 6 of this act shall take effect immediately upon enactment.

166 b. Section 5 of this act shall take effect one year after enactment.

167 c. The remainder of the act shall take effect one year after enactment.