

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert M. Koczera

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 bill:

An Act to require producer responsibility for collection and recycling of discarded electronic products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert M. Koczera	11th Bristol
Cleon H. Turner	1st Barnstable

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19 *Whereas*, the Massachusetts *Beyond 2000 Solid Waste Master Plan* adopted December 20, 2000, commits the
20 Executive Office of Environmental Affairs to develop a Product Stewardship Policy that will encourage or require
21 producers to take greater responsibility for the costs of disposing of their discarded products, but this needed state
22 policy has not yet been adopted; and

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24 *Whereas*, producer responsibility requirements, also known as “producer take back” programs, which have
25 been adopted in many countries across the world, will shift the burden of the costs for collecting and recycling
26 discarded electronic products from local taxpayers back to the producers, therefore requiring the producers to
27 internalize these costs and give them a market incentive to design products that are durable, less toxic and more
28 recyclable;

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30 *Therefore*, the Massachusetts General Court finds and determines that the financial responsibility for the
31 collection and environmentally safe recycling of discarded electronic products should be taken off the backs of the
32 cities and towns and should be placed on the producers of such products through the adoption of this legislation.

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34 **SECTION 2.** The General Laws are hereby amended by inserting the following new chapter
35 16A:

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CHAPTER 16A

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PRODUCER RESPONSIBILITY FOR DISCARDED ELECTRONIC PRODUCTS

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40 Section 1. Definitions. For the purposes of this chapter the following words shall have the following meanings:

41 “Cathode ray tube” or “CRT” means a vacuum tube or picture tube used to convert an electronic signal into
42 a visual image.

43 “Collection system” means the system for the collection, packaging, transportation, and recycling of
44 products discarded by consumers.

45 “Computer monitor” means a cathode ray tube or flat panel display primarily intended to display
46 information from a central processing unit, network, or the internet.

47 “Consolidation facility” means a facility where discarded electronic products are consolidated and
48 temporarily stored while awaiting shipment to a recycling, treatment or disposal facility and includes a transport
49 vehicle owned or leased by a recycling and dismantling facility used to collect covered electronic products at
50 municipal collection sites in this state.

51 "Covered electronic product" means a cathode ray tube, a product containing a cathode ray tube, a Liquid
52 Crystal Display (LCD) or other flat panel television or computer monitor or similar video display product, and a
53 computer central processing unit that contains one or more circuit boards and includes a desktop computer or a
54 laptop computer, and computer peripherals including but not limited to keyboards, mice and other pointing
55 devices, printers, scanners, and card readers, but does not include an automobile, a household appliance, a large
56 piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray
57 tube, a cathode ray tube product, a flat panel display or similar video display device that is contained within, and is
58 not separate from, the larger piece of equipment, or other medical products as that term is defined under the
59 Federal Food, Drug, and Cosmetic Act.

60 "Department" means the department of environmental protection.

61 "Environmentally sound recycling" means collection and recycling which meets the standards established by
62 the department.

63 "Hazardous electronic waste" includes circuit boards, CRTs, computers, computer monitors, peripherals,
64 and other electronic products containing circuit boards and/or CRTs, mercury and PCB containing components,
65 lamps and devices. The definition of "hazardous electronic waste" does not include non-hazardous wastes such as
66 copper unless it is contaminated with a hazardous waste such as lead, cadmium, PCBs, mercury. The definition of
67 "hazardous electronic waste" includes non-working materials exported for repair unless assurances exist that
68 hazardous components such as CRTs or circuit boards)will not be disposed of in the importing country as a result.
69 The definition of "hazardous electronic waste" does not include working equipment and parts that are certified as
70 working, that are not intended for disposal or recycling, but for re-use and resale.

71 "Historic waste" means a covered electronic product which was discarded prior to the effective date of this
72 chapter.

73 "Municipal collection site" means a municipally owned solid waste transfer station or recycling center,
74 including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or
75 consortium of municipalities to provide solid waste management services.

76 "Orphan waste" means a covered electronic product, the producer of which can not be identified or is no
77 longer in business and has no successor in interest and which was discarded prior to the effective date of this
78 chapter.

79 "Producer" means a person or company, irrespective of sales technique or channels used to sell their
80 products, including mail order, internet, or other means of distance communication, that:

81 ☐ manufactures and sells electronic products under its own brand; or

82 ☐ resells under its own brand a product produced by others, a reseller not being regarded as a the
83 producer of the brand if the brand of the actual producer appears on the product; or

84 ☐ imports electronic products for first sale in the state; or

85 ☐ manufactures and sells electronic products without affixing a brand.

86 "Recycling and dismantling facility" means a business that processes covered electronic products for reuse
87 and recycling.

88 "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new
89 products, but not for energy recovery or energy generation by means of combustion.

90 "Retailer" includes, but is not limited to, a producer of a covered electronic product who sells directly to a
91 consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs
92 or the internet, or any similar electronic means, but not including wholesale transactions with a distributor or
93 other retailer.

94 "Return share" means a percentage of all covered electronic products collected calculated by return weight
95 differentiated by type of product; each producer shall have the return share represented by the brands it sells
96 among the type of products it manufactures.

97 "Reuse" means any operation by which discarded electronic products or components thereof are used for
98 the same purpose for which they were conceived, including the continued use of the equipment or components
99 thereof which are delivered for donation or sale to reuse vendors, computer refurbishers, schools, government
100 agencies, nonprofits, consolidation facilities, recyclers, or producers.

101 "Television" means a covered electronic product that is a cathode ray tube or flat panel display primarily
102 intended to receive video programming via broadcast, cable or satellite transmission or video from surveillance or
103 other similar cameras.

104 Section 2. Producer individual financial responsibility. On the effective date of this chapter, producers have
105 individual financial responsibility for the collection and recycling of their covered electronic products and historic
106 waste which have been discarded in the Commonwealth, including their return share of orphan waste.

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108 Section 3. Sales prohibition. As of January 1, 2008, the following sales prohibitions
109 shall apply to producers and retailers of covered electronic products:

110 (a) A producer not in compliance with this chapter is prohibited from offering a covered electronic product
111 for sale in the Commonwealth and shall provide the necessary support to retailers to ensure the producer's
112 covered electronic products are not offered for sale in the state.

113 (b) A retailer may not offer for sale in this state a covered electronic product of a producer that is not in
114 compliance with sections this chapter.

115 (c) A producer may not offer for sale a covered electronic product unless a visible, permanent label clearly
116 identifying the producer of that product is affixed to it.

117 Section 4. Study of Reuse Market. The department shall study the existing infrastructure in Massachusetts
118 for the donation of covered electronic equipment for reuse and of the existing markets for repair and
119 refurbishment of covered electronic equipment and for computer reuse and shall submit the findings of the study
120 in a report no later than March 1, 2007 to the Joint Committee on Natural Resources and Agriculture with
121 recommendations on what requirements should be imposed on the plans approved pursuant to this chapter to
122 ensure that the implementation of such plans do not reduce the ability of Massachusetts consumers to donate
123 computers for reuse and that the implementation of this chapter does not adversely affect the existing
124 infrastructure in Massachusetts for local businesses to accept used computers to be repaired and made available
125 for reuse.

126 Section 5. Producer financed collection and recycling plans. A producer shall prepare a proposed collection
127 and recycling plan for covered electronic products and submit the plan to the department for approval.

128 (a) On or before June 1, 2007, a producer of covered electronic products shall prepare and submit to the
129 department a plan for the collection and recycling or reuse of covered electronic products produced by the
130 producer and discarded in this state.

131 (b) No later than September 1, 2007, the department shall approve or disapprove all plans submitted. A
132 producer whose plan is disapproved may reapply at any time; the department shall review and approve or
133 disapprove such plans no later than 120 days following the date the plan was submitted.

134 (c) No later than January 1, 2008, a producer of covered electronic products shall implement and finance
135 the implementation of this plan for the collection and recycling and reuse of all their covered electronic products
136 discarded in this state.

137 (d) Notwithstanding subsections (a) and (b), a producer may satisfy requirements of this chapter by
138 agreeing to participate in a cooperative recovery and recycling or reuse plan with one or more other producers.
139 The cooperative plan must meet the same standards and requirements of the plans submitted by individual
140 producers.

141 (e) A producer may satisfy the requirements of this chapter by participating in any national collection and
142 recycling program for covered electronic products that complies with all the applicable requirements, performance
143 standards, and environmentally sound recycling requirements pursuant to this chapter.

144 (f) Producer collection and recycling plans may provide consumers with one or more means for returning
145 discarded covered electronic products for collection including but not limited to the following:

146 ☐ Collection of covered electronic products at municipal collection centers, for any municipality which
147 agrees to operate such collection centers where the costs are reimbursed by the producers; and/or

148 ☐ Collection of covered electronic products at consolidation centers, for any municipality which agrees to
149 operate such collection centers and deliver the discards to the consolidation centers where the costs of
150 the collection centers and delivery to the consolidation centers are reimbursed by the producers; and/or

151 ☐ Collection at retail stores who agrees to participate in a business relationship with the producer; where
152 consumers can drop off their discarded covered electronic products for collection by the producers or
153 their agents; and/or

154 ☐ Collection through delivery by the United Postal Service or private delivery service from the consumer
155 directly to the producer or their recycling facility;

156 ☐ Collection from consumers at their households or place of business; and/or

157 ☐ Any other means approved by the department.

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159 (g) The plan submitted by the producer and approved by the department must include at a minimum:

- 160 1. Provisions to ensure that the producer will take complete financial responsibility for its products
161 when discarded or upon receipt at municipal recycling facilities or at consolidation facilities in the
162 state.
- 163 2. A description of the collection system, including the methods of convenient collection;
- 164 3. A public education campaign to inform the public about the collection system, including details
165 about meeting all consumer notification and labeling requirements;
- 166 4. Specific provisions detailing how the producer will inform consumers of where they may donate
167 their used covered electronic product to nonprofit corporations, schools, public agencies, or to
168 companies that refurbish and repair used electronics for reuse and how the plan will not impede the
169 ability of consumers to donate computers for reuse.
- 170 5. Details for implementing and financing the handling of covered electronic products, historic waste,
171 and orphan waste covered electronic products that are discarded in the Commonwealth;
- 172 6. Details for the method of reimbursing consolidation facilities, if used in the plan, for the costs of
173 handling and recycling the covered electronic products;
- 174 7. Documentation of the willingness of all necessary parties to implement the plan, including the
175 parties that will participate in the consolidation, treatment, recovery, reuse and recycling of the
176 covered electronic products;
- 177 8. Assurances that all necessary parties will cooperate in the plan and will operate in compliance with
178 local, state and federal waste management laws, rules and regulations;
- 179 9. Descriptions of the performance measures that will be used and reported by the producer to
180 report recovery and recycling rates for covered electronic products at the end of their useful life;
- 181 10. Descriptions of additional or alternative actions that will be taken to improve recovery and recycling
182 rates, if needed; and
- 183 11. Description of how the producer will be responsible for all costs associated with the development
184 and implementation of the plan.
- 185 12. Certification showing how the plan will comply with the environmentally sound recycling
186 requirements established by the department pursuant to this chapter.

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188 (h) The department shall not approve any plan that includes:

189 ☐ any fee imposed at the sale of the product; or

190 ☐ a fee at the time the discarded product is delivered by the consumer to a collection point or is
191 collected from the consumer; or

192 ☐ any so-called Advanced Disposal Fee (ADF) or Advanced Recovery Fee (ARF) where a fee
193 imposed at the time of sale or collection is collected from the consumer and used to pay for a
194 collection program implemented by any municipal or state government agency; or

195 ☐ any cost to be imposed on a city, town, county, regional entity, or other subdivision of the state
196 unless said cost is agreed to by the city, town, county, regional entity, or other subdivision of the
197 state.

198 Section 6. Consolidation facilities system. Municipalities may agree to share responsibility for the collection
199 and recycling of covered electronic products with the producers in a system of consolidation facilities as provided
200 in this section.

201 A producer may provide for the collection of their discarded products at consolidation facilities throughout
202 the state, individually or in cooperation with other producers, with municipalities who agree to participate in
203 delivery of collected covered electronic products to the facility and who will be fully reimbursed by the producers
204 through the consolidation facilities for all costs. A producer shall ensure that consolidation facilities are
205 geographically located to conveniently serve all areas of the state as determined by the department.

206 Each municipality that agrees to participate in the consolidation facility system shall ensure that covered
207 electronic products discarded within that municipality's jurisdiction are delivered to a consolidation facility. A
208 municipality may meet this requirement through collection at and transportation from a local or regional solid
209 waste transfer station or recycling facility, by contracting with a disposal facility to accept discards directly from
210 the municipality's residents or through curbside pickup or other convenient collection and transportation system.

211 A producer shall pay the reasonable operational costs of any consolidation facility attributable to the
212 handling of all covered electronic products discarded in this state, the transportation costs from the consolidation
213 facility to a licensed recycling and dismantling facility, and the costs of recycling.

214 No later than January 1, 2009, a consolidation facility shall identify the producer of each discarded covered
215 electronic product delivered to the facility and identified as generated by a household in the Commonwealth and
216 shall maintain an accounting of the number of discarded covered electronic products by producer. No later than
217 March 1st each year beginning in 2009, a consolidation facility shall provide this accounting by producer to the
218 department. A consolidation facility may perform the producer identification accounting for the producer at the
219 consolidation facility or may contract for this identification and accounting service with the recycling and
220 dismantling facility to which the discard is shipped.

221 A consolidation facility shall work cooperatively with producers to ensure implementation of a practical and
222 feasible financing system. At a minimum, a consolidation facility shall invoice the producers for the handling,
223 transportation and recycling costs for which they are responsible under the provisions of this subsection and shall
224 reimburse the municipalities for their costs for collecting, storing, and transporting the discarded covered
225 electronic products. Within 90 days of receipt of an invoice, a producer shall reimburse a consolidation facility
226 for allowable costs incurred by that consolidation facility.

227 A consolidation facility shall transport discarded covered electronic products to a recycling and dismantling
228 facility that provides a sworn certification that its handling, processing, refurbishment and recycling of covered
229 electronic products meet guidelines for environmentally sound management promulgated by the department. A
230 consolidation facility shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling

231 and dismantling facility that receives covered electronic products from the consolidation facility and shall provide
232 the department with a copy of these records within 24 hours of request by the department.

233 **Section 7. Reporting.** No later than January 1, 2009, and annually thereafter, a producer that offers a
234 covered electronic product for sale in this state shall submit a report to the department that includes the
235 following: a description of the collection, consolidation and recycling services utilized to recover the producer's
236 products; substantiated estimates, on an annual basis for the preceding calendar year, of the quantities of covered
237 electronic products marketed in this state and collected for recovery in this state; the return rate for their covered
238 electronic products based on sales in this state; substantiated estimates of the percentage of collected materials
239 that are reused and recycled from its products; the identification of end markets including the amount re-used and
240 the amount recycled and the ultimate destination of recycled and reused products for the collected discards; and
241 any systems implemented by the producer to ensure environmentally sound management of its products.

242 No later than January 1, 2009 and annually thereafter, the department shall provide producers and
243 consolidation facilities with a listing of each producer's return share of orphan waste and historic waste covered
244 electronic products. The department shall determine each producer's return share based on the best available
245 information, including but not limited to data provided by producers and consolidators and data from electronic
246 waste collection programs in other jurisdictions within the United States.

247 The department may keep information submitted pursuant to this section confidential as provided by
248 section 10 of chapter 66 of the General Laws.

249 **Section 8. Environmentally sound recycling.** The department shall, by regulation, require environmental
250 and public health standards for the collection, treatment, and recycling of covered electronic products. These
251 standards shall:

- 252 1. Require that the reuse of discarded electronic products be maximized to increase their useful life as much
253 as possible.
- 254 2. Prohibit any hazardous electronic product from being sent to a solid waste (nonhazardous waste) landfill or
255 incinerator for disposal or energy recovery, either directly or through intermediaries.
- 256 3. Prohibit any person who collects, recovers, treats, processes, or recycles electronic waste from exporting
257 said waste to any country where the export of hazardous waste is prohibited by the Basel Ban Amendment
258 decision (Decision III/1) of the Basel Convention on the Control of Transboundary Movement of Hazardous
259 Waste and Their Disposal. All producers shall provide no later than January 1 each year to the department
260 written documentation, in a form and manner determined by the department, that their program has not
261 resulted in the overseas export of electronic waste to any country prohibited by this section.
- 262 4. Prohibit covered electronic products from being sent to prisons for recycling either directly or through
263 intermediaries.
- 264 5. Require that recycling facilities have a certified, or otherwise comprehensive and comparable
265 environmental management system in place which complies with industry best practices.
- 266 6. Require that the entire recycling chain, including downstream intermediaries and recovery operations such
267 as smelters, meet all applicable environmental and health regulations, and that only those facilities which
268 provide the most efficient and least polluting recovery services available globally are used.

269 7. Require visible tracking of hazardous covered electronic products throughout the product recycling chain.
270 The tracking information should show the final disposition of all hazardous waste materials. An independent
271 auditor acceptable to can be used to verify compliance if needed to protect trade secrets.

272 8. Require the provision of adequate assurance such as bonds or funds held in escrow to cover environmental
273 and other costs of the closure of recycling or processing facilities, and to provide liability insurance for
274 accidents and incidents involving wastes and to ensure due diligence throughout the product chain.

275 Section 9. Fees. The department shall assess a fee, pursuant to the provisions of section 18 of chapter 21A,
276 which shall be payable by the producer, which shall cover the full costs incurred by the department for the
277 preparation regulations, for the review of proposed plans for collection and recycling, for other related
278 compliance costs, and for all other costs incurred for implementation of this chapter.

279 Section 10. Regulations. The department is hereby authorized and directed to adopt rules, regulations,
280 procedures and standards as may be necessary for the implementation of this chapter.

281 **SECTION 3.** Section 2 shall take effect on January 1, 2010.

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