

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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 RELATIVE TO PRODUCER RESPONSIBILITY FOR DISCARDED ELECTRONIC PRODUCTS.

PETITION OF:

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4991 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

**AN ACT RELATIVE TO PRODUCER RESPONSIBILITY FOR DISCARDED
ELECTRONIC PRODUCTS.**

*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 21M the
2 following chapter:-

3
4 CHAPTER 21N.
5 PRODUCER RESPONSIBILTY FOR RECYCLING DISCARDED ELECTRONIC
6 PRODUCTS.
7

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

10
11 “Collection”, the aggregation of covered electronic products from households,
12 municipalities, the Commonwealth and any other political subdivision, and schools, including
13 the accumulation of covered electronic products at handling facilities, transfer stations, and solid
14 waste facilities, including all the activities up to the time the covered electronic products are
15 delivered to or collected by a processor.
16

17 “Collector”, a person accepting covered electronic products from households,
18 municipalities, the Commonwealth and any other political subdivision, and schools, and who
19 transports or arranges for said electronic products to be transported to a processor.
20

21 “Collector reimbursement”, the compensation paid by a processor to a collector for all
22 covered electronic products received.

23

24 “Computer”, an electronic, magnetic, optical, electrochemical, or other high speed data
25 processing device performing logical, arithmetic, or storage functions, including a laptop or a
26 combined computer central processing unit and monitor; provided, however, that an automated
27 typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other
28 similar device shall not be considered a computer.

29

30 “Covered electronic product”, an electronic product collected and recycled by collectors
31 and processors eligible for collector reimbursement and processor reimbursement through the
32 producer reimbursement system.

33

34 “Department”, the department of environmental protection.

35

36 “Electronic product” a cathode ray tube, a video display device that incorporates a tuner
37 for the receiving of television signals, a product containing a cathode ray tube, a liquid crystal
38 display or other flat panel television or computer monitor larger than 9 inches measured
39 diagonally, a computer central processing unit that contains one or more circuit boards
40 including, but not limited to, a desktop computer or a notebook computer, printer, scanner, or
41 card reader; provided, however, that an electronic product shall not include: (a) a video display
42 device that is part of a motor vehicle or any component part of a motor vehicle assembled by,
43 or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a
44 motor vehicle; (b) a video display device, including a touch-screen display, that is functionally or
45 physically part of a larger piece of equipment or is designed and intended for use in an
46 industrial, commercial, retail; library checkout, traffic control, kiosk, security, border control, or
47 medical setting including, but not limited to, diagnostic, monitoring, or control equipment; (c) a
48 video display device that is contained within a clothes washer, clothes dryer, refrigerator,
49 refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, home
50 automation, room air conditioner, dehumidifier, or air purifier; and (d) a telephone of any type
51 unless it contains a video display area greater than nine inches measured diagonally.

52

53 “Market share”, a television producer’s national sales of televisions expressed as a
54 percentage of the total of all television producers’ national sales based on the best available
55 public data.

56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93

“Monitor”, a video display device without a tuner that can display pictures and sound and is used with a computer.

“Orphan waste”, a covered electronic product, the producer of which cannot be identified or is no longer in business and has no successor in interest.

“Person”, a natural person, corporation, association, partnership, government body or other legal entity.

“Processor”, a person registered with the department to receive electronic products from collectors for the purpose of sorting, weighing and reusing or recycling or shipping offsite for reuse or recycling in accordance with minimum performance requirements established by the department.

“Processor reimbursement”, the compensation paid by a producer to a processor for the producer’s covered electronic products and the producer’s share of orphan waste as determined by the department.

“Producer”, any person who: (a) has a physical presence and legal assets in the United States of America and (1) manufactures or manufactured a covered electronic product under its own brand or label; (2) sells or sold under its own brand or label a covered electronic product produced by other suppliers; or (3) owns a brand that it licenses or licensed to another person for use on a covered electronic product; or (b) imports or imported a covered electronic product into the United States that was manufactured by a person without a presence in the United States of America; or (c) sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in subsection (b) and elects to register in lieu of the importer.

“Program year”, a full calendar year beginning on or after January 1, 2009.

“Recycling”, to recover materials or by-products which are: (a) reused; (b) used as an ingredient or a feedstock in an industrial or manufacturing process to make a marketable product; or (c) used in a particular function or application as an effective substitute for a commercial product or commodity; provided, however, that recycle shall not mean to recover energy from the combustion of a material.

“Retailer”, shall include, but shall not be limited to, a person or a producer that sells new covered electronic products directly to a consumer through any means including, without

94 limitation, transactions conducted through sales outlets and catalogs, but not including wholesale
95 transactions with a distributor or other retailer.

96
97 “Return share”, a percentage of covered electronic products other than televisions
98 collected through processors as calculated by dividing the total weight of covered electronic
99 products other than televisions of that producer’s brands by the total weight of covered electronic
100 products other than televisions for all producers’ non-orphaned brands.

101
102 “Reuse”, any operation by which an electronic product or component of an electronic
103 product changes ownership and is used for the same purpose for which it was originally
104 purchased.

105
106 “Sale” or “sell”, any transfer for valuable consideration of title including, but not limited
107 to, transactions conducted through sales outlets, or through catalogs, and excluding commercial
108 financing or leasing.

109
110 “Television”, any telecommunication system device that can broadcast or receive moving
111 pictures and sound over a distance and includes a television tuner or a display device peripheral
112 to a computer that contains a television tuner.

113
114 Section 2. No person shall engage in business as a producer unless he is registered with the
115 department pursuant to section 3.

116
117 Section 3. (a) Every producer seeking to engage in business in the commonwealth shall file an
118 application, accompanied by the appropriate fee, with the department requesting registration
119 as a producer. Said application shall be made on a form to be furnished by the department, and
120 shall include, without limitation, the following information:-(1) the name and contact
121 information of the applicant; (2) the applicant's brand names of covered electronic products,
122 including all brand names sold in the commonwealth in the past, all brand names currently
123 being sold in the commonwealth, and all brand names for which the applicant is legally
124 responsible; (3) the method or methods of sale used in the commonwealth; (4) a statement
125 disclosing whether: (i) any video display devices sold to households exceed the maximum
126 concentration values established for lead, mercury, cadmium, hexavalent chromium,
127 polybrominated biphenyls and polybrominated diphenyl ethers under the RoHS Directive
128 2002/95/EC of the European Parliament and Council and any amendments thereto; or (ii) the
129 material used in the product has received an exemption from one or more of those maximum
130 concentration values under the RoHS Directive that has been approved and published by the
131 European Commission; (5) a baseline or a set of baselines that describe any efforts to design
132 covered electronic products for recycling and goals and plans for further increasing design for
133 recycling; and (6) a description of any collection, consolidation and recycling services utilized to
134 recover the applicant's products. The department shall, within 21 days, review the application
135 for registration. If said application satisfies the requirements of this section, the department

136 shall register said applicant as a producer and shall forthwith mail to him a certificate to that
137 effect. If said application fails to satisfy the requirements of this section the producer shall,
138 within 30 days, file with the department a revised application addressing the requirements
139 noted by the department.

140

141 (b) The department may keep information submitted pursuant to this section
142 confidential as provided by section 10 of chapter 66 of the General Laws; provided, however,
143 that the department shall disclose and make public the name and contact information of the
144 producer submitting the application; the producer's brand names of covered electronic
145 products, including all brand names sold in the commonwealth in the past, all brand names
146 currently being sold in the commonwealth, and all brand names for which the producer is
147 legally responsible..

148

149 Section 4. The department shall annually notify every registered producer a blank application
150 for renewal of said registration. Such blanks properly filled out shall be returned to the
151 department by the date specified by the department together with a renewal fee as shall be
152 established by the department. After verification of the facts stated on the renewal blanks, the
153 board shall issue a registration, which shall expire the following year. Any holder of a
154 registration who fails to file a renewal application within 60 days after notification by the
155 department that his registration has expired shall, prior to engaging in business as a producer
156 within the commonwealth, be required to register anew and pay a late fee in addition to said
157 renewal fee.

158

159 Section 5. (a) A producer who has sold or who sells covered electronic products other than
160 televisions in the commonwealth shall bear the financial responsibility for the collection,
161 transportation and recycling of said covered electronic products discarded in the
162 commonwealth, including their return share of orphan waste as determined by the
163 department. A producer of televisions shall have the financial responsibility for the collection,
164 transportation and recycling of televisions discarded in the commonwealth, based on the
165 television manufacturer's market share. A producer may recycle their covered electronic
166 products by establishing a collection program, either individually or in cooperation with other
167 producers, to collect these products at their end of life as established in this chapter.

168

169 (b) A producer establishing an independent recycling program either individually or in
170 cooperation with other producers shall recover 1 or more electronic products. A producer
171 establishing an independent recycling program either individually or in cooperation with other
172 producers shall ensure that the program is accessible and convenient to all consumers in the
173 Commonwealth. A producer establishing an independent recycling program either individually
174 or in cooperation with other producers shall provide information specified by the department
175 describing the locations for the collection or return of the producer's product, including
176 information on opportunities and locations for donation of the product for reuse via, without
177 limitation: (1) a toll-free telephone number; (2) a website; (3) information included in or on the
178 packaging; or (4) written information provided at the point of sale.

179

180 A producer establishing an independent recycling program either individually or in
181 cooperation with other producers shall weigh the covered electronic products collected and shall
182 annually submit a statement certifying to the department the total weight of electronic products
183 received and the weight of orphan waste received in the preceding program year. The
184 department, in determining the producer's waste share, shall take into account electronic
185 products voluntarily collected by the producer.

186

187 A producer establishing an independent recycling program either individually or in
188 cooperation with other producers shall not charge a fee for collecting, transporting or recycling
189 electronic products.

190

191 Section 6. No person shall engage in business as a collector unless he is registered with the
192 department pursuant to section 7.

193

194 Section 7. (a) Every collector seeking to engage in business in the commonwealth shall file an
195 application, accompanied by the appropriate fee, with the department requesting registration as a
196 collector. Said application shall be made on a form to be furnished by the department, and shall
197 include, without limitation, the following information: (1) the name; (2) the address; (3) the
198 telephone number; and (4) the location of the business. The department shall, within 21 days,
199 review the application for registration. If said application satisfies the requirements of this
200 section, the department shall register said applicant as a producer and shall forthwith mail to him
201 a certificate to that effect. If said application fails to satisfy the requirements of this section the
202 collector shall, within 30 days, file with the department a revised application addressing the
203 requirements noted by the department.

204

205 (b) A collector shall: (1) contract with a registered processor or processors to receive
206 the covered electronic products collected by the collector; (2) make information available to the
207 public that describes where and how to return, recycle, and dispose of covered electronic
208 products; (3) accept all covered electronic products and ensure that said products are transported
209 by or delivered to a registered processor; and (4) demonstrate compliance with the department
210 rules and regulations and the United States Environmental Protection Agency's Plug-In to

211 eCycling Guidelines for Materials Management as issued and available on the United States
212 Environmental Protection Agency's Internet website in addition to any other requirements
213 mandated by federal or state law. A collector may limit the number of covered electronic
214 products delivered at a given time by any customer to no more than 5.

215
216 (c) A collector shall not: (1) charge a fee to consumers for the transportation, collection
217 or recycling of covered electronic products; or (2) knowingly accept covered electronic products
218 imported into the commonwealth for the purpose of recycling or discard.

219
220 Section 8. The department shall annually mail every registered collector a blank application for
221 renewal of said registration. Such blanks properly filled out shall be returned to the department
222 by the date specified by the department together with a renewal fee as shall be established by the
223 department. After verification of the facts stated on the renewal blanks, the board shall issue a
224 registration, which shall expire the following year. Any holder of a registration who fails to file a
225 renewal application within 60 days after notification by the department that his registration has
226 expired shall, prior to engaging in business as a collector within the commonwealth, be required
227 to register anew and pay a late fee in addition to said renewal fee.

228
229 Section 9. No person shall engage in business as a processor unless he is registered with the
230 department pursuant to section 10.

231
232 Section 10. (a) Every processor seeking to engage in business in the commonwealth shall file an
233 application, accompanied by the appropriate fee, with the department requesting registration as a
234 processor. Said application shall be made on a form to be furnished by the department, and shall
235 include, without limitation, the following information: (1) the name; (2) the address; (3) the
236 telephone number; and (4) the location of the business of the processor's business. The
237 department shall, within 21 days, review the application for registration. If said application
238 satisfies the requirements of this section, the department shall register said applicant as a
239 processor and shall forthwith mail to him a certificate to that effect. If said application fails to
240 satisfy the requirements of this section the processor shall, within 30 days, file with the
241 department a revised application addressing the requirements noted by the department.

242
243 (b) A processor shall: (1) be responsible for sorting all covered electronic products
244 received from a participating collector with whom the processor has a contract; (2) weigh the
245 total amount of covered electronic products received from a participating collector and reimburse
246 said collector; provided, however, that said collector reimbursement shall be due within 30 days
247 of pick-up; (3) sort, by producer, and weigh all covered electronic products other than televisions
248 received from collectors; (4) weigh all televisions received from collectors; (5) either recycle on-
249 site or ship covered electronic products offsite for recycling in accordance with the minimum
250 performance requirements established by the department; (6) demonstrate compliance with the
251 department rules and regulations and the United States Environmental Protection Agency's Plug-
252 In to eCycling Guidelines for Materials Management as issued and available on the United States
253 Environmental Protection Agency's Internet website in addition to any other requirements
254 mandated by federal or state law; (7) submit an invoice for producer reimbursement to each
255 producers whose waste the processor has handled; and (8) annually submit a report to the
256 department which shall include without limitation: (i) the total aggregate weight of covered

257 electronic products processed pursuant to this chapter in the previous program year; (ii) the
258 weight, differentiated by producer, of covered electronic products processed pursuant to this
259 chapter in the previous program year; (c) the total amount of orphan waste processed pursuant to
260 this chapter in the previous program year; and (d) any other information to help track, monitor
261 and evaluate the management of covered electronic products, as determined by the department.
262

263 (c) A processor shall not charge a fee for accepting, sorting, weighing or recycling a
264 covered electronic product for which the processor receives compensation under the provisions
265 of this section.
266

267 Section 11. The department shall annually mail every registered processor a blank application for
268 renewal of said registration. Such blanks properly filled out shall be returned to the department
269 by the date specified by the department together with a renewal fee as shall be established by the
270 department. After verification of the facts stated on the renewal blanks, the board shall issue a
271 registration, which shall expire the following year. Any holder of a registration who fails to file a
272 renewal application within 60 days after notification by the department that his registration has
273 expired shall, prior to engaging in business as a processor within the commonwealth, be required
274 to register anew and pay a late fee in addition to said renewal fee.
275

276 Section 12. The fee for a collector registration, a processor registration and a producer
277 registration, or for any annual renewal thereof, shall be determined annually by the department.
278

279 Section 13. (a) The department shall annually: (1) determine the return share for each program
280 year for each producer of electronic products other than televisions by dividing the weight of
281 covered electronic products identified for each producer by the total weight of covered electronic
282 products identified for all producers; provided further, that said calculation shall be based on the
283 reports generated by processors of covered electronic products in the commonwealth; provided
284 further, that for the first program year, the return share of covered electronic products identified
285 for each producer shall be based on the best available public return share data from the United
286 States, including data from other states, for covered electronic products from consumers;
287 provided further, that for the second and subsequent program years, the return share of covered
288 electronic products identified for each producer shall be based on the previous year's reported
289 data as described herein; and provided further, that the department shall use the return share for
290 each producer to allocate financial responsibility for orphan waste; (2) determine, based on each
291 producer's return share, each producer's share of responsibility for the orphan waste collected in
292 the commonwealth; provided, however, that each producer's return share of orphan waste shall
293 be equivalent to their percentage of return share for non-orphan covered electronic products,
294 multiplied by the total amount of orphan waste collected in the program year; and provided
295 further, that the department, in determining the producer's orphan waste share, may take into
296 account electronic products, including orphan waste, voluntarily collected by the producer; and
297 (3) determine the market share allocation for each television producer by determining the total
298 weight of televisions recycled in the previous year, multiplied by the market share for that
299 producer; provided, however, that in the first program year, the market share identified for each
300 television producer shall be based on the best available data regarding the total number of
301 televisions sold in the commonwealth for the previous calendar year. (4) maintain a list of
302 producers registered pursuant to this chapter, delineating those producers meeting their

303 obligations through an independent recycling program. (5) conduct periodic audits of processors
304 at a frequency determined by the department, to assure accuracy of reporting and billing.

305
306

307 (b) The department shall promulgate rules and regulations for the administration and
308 enforcement of this chapter; provided, however, that said regulations shall include minimum
309 performance requirements for collection and processing of covered electronic products.

310

311 Section 14. (a) No person shall sell covered electronic products from producers not registered
312 pursuant to this chapter. No person shall offer for sale an electronic product unless a visible,
313 permanent label clearly identifying the producer of that product is affixed to said electronic
314 product. All retailers shall provide information describing where and how to recycle an
315 electronic product provided by the producer pursuant to this act.

316

317 (b) No person shall knowingly dispose of any electronic product except as provided in
318 this chapter.

319

320 (c) No person shall accept a covered electronic product except to handle, recycle or
321 compost the material in accordance with a plan submitted and approved by the department.

322

323 (d) No person shall import a covered electronic product into the commonwealth with
324 the intent of recycling or discarding said product; provided further, that any covered electronic
325 product so imported shall not be eligible for reimbursement under the provisions of this chapter.

326

327 (e) Subsection (a) of this section shall not apply to used electronic products that are
328 resold or reused.

329

330 Section 15. The department shall be charged with the enforcement of sections 1 to 14,
331 inclusive. If any person refuses to obey a decision of the department the attorney general shall,
332 upon request of the department, file a petition for the enforcement of such decision in equity
333 in the superior court for Suffolk County or for the county in which the defendant resides or has
334 a place of business. After due hearing, the court shall order the enforcement of such decision or
335 any part thereof, if legally and properly made by the department.

336

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

340

341 Section 17. The department may participate in the establishment of a regional multistate
342 organization or compact to assist in carrying out the requirements of this chapter.

343

344 Section 18. The department shall annually, not later than December 31, submit an annual
345 report of its activities pursuant to this chapter. The report shall include: (1) an update on the
346 implementation of this chapter current state compliance by collectors, processors, producers
347 and retailers; (2) recommendations to the general court and the governor regarding proposed
348 changes to this chapter, or any other chapter of the General Laws, or any regulations
349 promulgated pursuant thereto; and (3) any other information the department deems
350 appropriate. The report shall be submitted to the governor, the president of the senate, the
351 speaker of the house, the house and senate chairs of the committee on ways and means, the
352 house and senate chairs of the joint committee on environment, natural resources and
353 agriculture, the clerk of the senate and the clerk of the house.

354

355 **SECTION 2.** Notwithstanding any general or special law to the contrary and unless otherwise
356 specified herein, this act shall take effect January 1, 2010.