

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 information technology producer responsibility model state legislation.

PETITION OF:

NAME:

Marc R. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00268 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT INFORMATION TECHNOLOGY PRODUCER RESPONSIBILITY MODEL STATE
LEGISLATION.

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

1 **SECTION 1. FINDINGS AND PURPOSES.**

2 The Legislature makes the following findings and states the following purposes for this Act:

- 3 a. Consumer electronics products are critical elements to the strength and growth of this state's
4 economic prosperity and our quality of life. Developing and implementing an appropriate state
5 electronics recycling and recovery system is important to our state's resource conservation, worker
6 health and safety, and economic prosperity goals. In order to accomplish this goal, it is important to be
7 mindful of the differences between products and ensure appropriate treatment given those differences.
8 While some computers and computer monitors may be refurbished and reused and other consumer
9 electronics products contain valuable materials, some older and bulkier consumer electronic products
10 do not contain any valuable product but must be recycled, like televisions. For the products covered by
11 this legislation, differences in product life expectancy, market economics, residual value, and product

12 portability necessitate a different approach to recycling as reflected in this legislation.

13

14 i. Televisions have an average useful life of 15 to 17 years and have been on the market
15 since the late 1920s, while computers have an average life expectancy of at least 10 years less than
16 the average television and have been in the market since only the 1980s.

17

18 ii. A computer's residual value is greater than the typical cathode ray tube television.
19 Computers contain metals and other valuable and easily recycled or reused materials.

20

21 iii. Computers are lighter and easier to handle than televisions, thus making computer
22 collection and recycling easier than for televisions.

23

24 b. The purpose of this Act is to establish a comprehensive and convenient electronics recycling
25 and/or reuse program based on manufacturer responsibility and shared responsibility among all
26 stakeholders, including manufacturers, consumers, retailers, and government. The purposes of this
27 recovery system are to ensure that end-of-life consumer electronics products are responsibly retired or
28 recycled to promote resource conservation through the development of an effective and efficient
29 system for collecting and recycling such products, and to require manufacturers to offer such service to
30 consumers with convenience and at no recycling charge.

31 **SECTION 2. DEFINITIONS.**

32 a. "Brand" means symbols, words, or marks that identify a Covered Device, rather than any of
33 its components.

34 b. "Collect" or "collection" means to collect a covered device, including, but not limited to,
35 collection through a mail-back program, collection site or collection event.

36 c. "Consumer" means any occupant of a single detached dwelling unit or a single unit of a
37 multiple dwelling unit (a household) who has used a Covered Device primarily for personal or home
38 business use.

39 d. "Covered Computer Device" means a desktop or notebook computer, or computer monitor,
40 marketed and intended for use by a Consumer, but does not include a Covered Television Device.

41 e. "Covered Television Device" means any electronic device that contains a tuner that locks on
42 to a selected carrier frequency and is capable of receiving and displaying television or video
43 programming via broadcast, cable, or satellite, including, without limitation, any direct view or
44 projection television with a viewable screen of 9 inches or larger whose display technology is based on
45 cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon
46 (LCOS), silicon crystal reflective display (SXR), light emitting diode (LED), or similar technology
47 marketed and intended for use by a Consumer primarily for personal purposes. The term does not
48 include a Covered Computer Device.

49 f. "Covered Devices" means a Covered Computer Device and a Covered Television Device
50 marketed and intended for use by a Consumer. "Covered electronic device," "Covered Computer
51 Device", and "Covered Television Device" do not include any of the following:

52 (i) A covered electronic device that is a part of a motor vehicle or any component

53 part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including
54 replacement parts for use in a motor vehicle.

55 (ii) A covered electronic device that is functionally or physically a part of, or
56 connected to, or integrated within equipment or a system designed and intended for use in an
57 industrial, governmental, commercial, research and development, or medical setting, including but not
58 limited to diagnostic, monitoring, control or medical products (as defined under the Federal Food, Drug,
59 and Cosmetic Act), or equipment used for security, sensing, monitoring, anti-terrorism, emergency
60 services purposes or equipment designed and intended primarily for use by professional users.

61 (iii) A covered electronic device that is contained within a clothes washer, clothes
62 dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher,
63 room air conditioner, dehumidifier, air purifier, or exercise equipment.

64 (iv) Telephones of any type (including mobile).

65 (v) A personal digital assistant (PDA).

66 (vi) global positioning systems (GPS).

67 g. "Department" means the state department of environmental protection.

68 h. "Computer Manufacturer" means any existing person: (i) who manufactures or
69 manufactured Computer Covered devices under a brand that it owns or owned or is or was licensed to
70 use, other than a license to manufacture covered devices for delivery exclusively to or at the order of
71 the licensor; (ii) who sells or sold covered devices manufactured by others under a brand that the seller
72 owns or owned or is or was licensed to use, other than a license to manufacture covered devices for
73 delivery exclusively to or at the order of the licensor; or (iii) for whose account covered devices,

74 manufactured outside the United States, are or were imported into the United States, provided,
75 however, if at the time such covered devices are or were imported into the United States, another
76 person has offered to collect such covered devices under a recovery plan pursuant to subsection c of
77 section 5, then this clause (iii) shall not apply. A Computer Manufacturer does not include a party who
78 owns and licenses the brand appearing on the Covered Computer Device and does not also manufacture
79 or sell the Covered Computer Device.

80 i. "Market share" means a Television Manufacturer's obligation to recycle discarded televisions.
81 A Television Manufacturer's market share is the television manufacturer's prior year's sales of
82 Televisions (by weight) as calculated by the Department divided by all manufacturers' prior year's sales
83 for all televisions (by weight) as calculated by the Department. Market share may be expressed as a
84 percentage, a fraction, or a decimal fraction.

85 j. "Manufacturers" means Television Manufacturers and Computer Manufacturers.

86 k. "Person" means any individual, business entity, partnership, limited liability company,
87 corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or
88 public authority.

89 l. "Program year" means a full calendar year beginning on or after January 1, 200_.

90 m. "Recover" means to reuse or recycle; and "recoverer" means a person or entity that reuses
91 or recycles.

92 n. "Recycle" means processing (including disassembling, dismantling, and shredding) covered
93 electronic devices or their components to recover a useable product. "Recycling" does not include any
94 process defined as incineration under applicable laws and regulations.

95

96 o. "Retailer" means a person who owns or operates a business that sells covered devices
97 directly to a consumer, including through sales outlets, catalogs or the Internet, whether or not the
98 seller has a physical presence in this state.

99 p. "Sell," "Offer for Sale", or "Sale" means any transfer for consideration of title including, but
100 not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other
101 similar electronic means, but does not mean financing or leasing.

102 q. "Television" means any electronic device that contains a tuner that locks on to a selected
103 carrier frequency and is capable of receiving and displaying of television or video programming via
104 broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a
105 viewable screen of 9 inches or larger whose display technology is based on cathode ray tube (CRT),
106 plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal
107 reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use
108 by a consumer primarily for personal purposes. The term does not include Covered Computer Device.

109

110 r. "Television Manufacturer" means a person who: (i) manufactures Covered Television Devices
111 under a brand that it licenses or owns, for sale in this state; (ii) manufactures Covered Television Devices
112 without affixing a brand for sale in this state; (iii) resells into this state a Covered Television Device under
113 a brand it owns or licenses produced by other suppliers, this includes retail establishments that sell
114 Covered Television Devices under a brand the retailer owns or licenses; (iv) imports into the United
115 States or exports from the United States a Covered Television Devices for sale in this state; (v) sells at
116 retail a Covered Television Device acquired from an importer that is the manufacturer as described in
117 subparagraph (iv) of this subdivision, and elects to register in lieu of the importer as the manufacturer
118 for those products; (vi) manufactures Covered Television Devices, supplies them to any person or

119 persons within a distribution network that includes wholesalers or retailers in this state, and benefits
120 from the sale in this state of those Covered Television Devices through such distribution network; or (vii)
121 assumes the responsibilities and obligations of a Television Manufacturer under this Bill. In the event
122 the Television Manufacturer is one who manufactures, sells, or resells under a brand it licenses, the
123 licensor or brand owner of such brand shall not be included in the definition of Television Manufacturer
124 under subsection (i) or (iii) above.

125

126 **SECTION 3. APPLICABILITY.**

127 The collection and recovery provisions of this Act apply to Covered Devices used and returned by
128 Consumers in this state.

129 **SECTION 4. COMPUTER MANUFACTURERS.**

130 a. *Sale Prohibition.* No Computer Manufacturer shall sell or offer for sale a Covered Computer
131 Device in this state unless the Computer Manufacturer includes the Computer Manufacturer's name and
132 Brand—whether owned or licensed—by the Computer Manufacturer.

133 b. *Annual Report and Registration Fee.* By January 1, 200_, each Computer Manufacturer shall
134 pay to the Department a registration fee of two thousand five dollars (\$2,500) to be used to cover any
135 administrative costs associated with implementing this Bill and report the list of all of the brands the
136 Computer Manufacturer is using on its Covered Computer Devices (regardless of whether it owns or
137 licenses the brand) and shall be effective upon receipt by the department.

138 c. *Recovery Plan.* No Computer Manufacturer shall sell or offer for sale any Covered Computer
139 Device in this state unless the Computer Manufacturer has adopted and is implementing a recovery plan
140 under which the Computer Manufacturer offers to collect from a consumer and recover each Covered

141 Computer Device that is labeled with the Computer Manufacturer’s brand at no charge to the consumer.

142 d. *Collection for Covered Computer Devices.*

143 (i) The Computer Manufacturer’s recovery plan must offer Covered Computer
144 Device collection services that are reasonably convenient and available and designed to meet the
145 collection needs of consumers in the state.

146 (ii) The following is a nonexclusive list of systems that can be used, alone or
147 together, to meet the convenience requirements of this section:

148 (1) Mail-back systems: the Computer Manufacturer or its designee offers a
149 system in which the consumer can return an end of life Covered Computer Device through the mail or
150 common-carrier shipment;

151 (2) Physical collection sites: the Computer Manufacturer or its designee
152 keeps open and staffed physical collection site(s) at which consumers may return end of life Covered
153 Computer Devices; or;

154 (3) Collection events: the Computer Manufacturer or its designee holds collection
155 event(s) at which consumers may return end of life Covered Computer Devices.

156 (iii) Collection services may use existing collection infrastructure for handling
157 Covered Devices and may include electronic recyclers and repair shops, municipal or local government
158 transfer stations, recyclers of other commodities, reuse organizations, not-for-profit corporations,
159 retailers, recyclers, or other suitable operations.

160 e. *Cost.* Computer Manufacturers must offer collection under their recovery plan at no charge
161 to the consumer.

162 f. *Education.* Each Computer Manufacturer shall, as part of its recovery plan, inform consumers
163 in this state about where and how to return and recover Covered Computer Devices. Each Computer
164 Manufacturer shall include collection and recovery information on its website, shall provide such
165 information to the department, and may also include such information in the covered device's
166 packaging or accompanying the sale of the covered device.

167 g. *Annual Report and Renewal.* Each Computer Manufacturer shall annually report to the
168 Department on or before February 28, beginning the second program year, the weight of Covered
169 Computer Devices collected and recovered in this state during the previous program year. The report
170 also shall include documentation verifying proper collection and recovery of such material compliant
171 with the sound environmental management provisions under Section 11. At the same time, each
172 Computer Manufacturer shall pay to the Department a registration fee of two thousand five dollars
173 (\$2,500) to be used to cover any administrative costs associated with implementing this Bill.

174 h. *Data Security.* Computer Manufacturers and their licensors shall not be liable in any way for
175 data or other information that a Consumer may leave on a Covered Device that is collected or
176 recovered.

177 i. *Multiple Computer Manufacturers.* Where more than one person is within the definition of
178 Computer Manufacturer of a Brand of a Covered Computer Device under subsection f of section 3, any
179 one or more such persons may assume responsibility for and satisfy the obligations of a manufacturer
180 under this Act with respect to covered devices bearing that brand. In the event that no person assumes
181 responsibility for and satisfies the obligations of a Manufacturer under this Act with respect to covered
182 devices bearing that Brand, the department may consider any one or more persons within such
183 definition to be the Manufacturer of that brand.

184 j. *Liability under applicable law.* Nothing in this Act is intended to exempt any person from
185 liability he or she would otherwise have under applicable law.

186 k. *Exemption.* This section does not apply to a Manufacturer solely of Covered Devices that the
187 Department determines are of such a character that the Covered Devices would not be used by a
188 Consumer. If, however, such a Manufacturers also Manufacturers one or more Covered Devices that are
189 of such character as to be used by a Consumer, then the provisions of this section nevertheless apply to
190 the Manufacturer for those Covered Devices.

191 **SECTION 5. TELEVISION MANUFACTURERS.**

192 a. *Sale Prohibition.* No Television Manufacturer shall sell or offer for sale a Covered Television
193 Device in this state unless the Television Manufacturer includes the Television Manufacturer's name and
194 brand—whether owned or licensed—on the Covered Television Device.

195 b. *Annual Report and Registration Fee.* By January 1, 20--, each Television Manufacturer, before
196 selling or offering for sale Covered Television Devices in the State, shall register with the Department
197 and, at the time of registration, shall pay an initial registration fee of two thousand five hundred dollars
198 (\$2,500) to the Department. Thereafter, if a Television Manufacturer has not previously registered, the
199 Television Manufacturer shall register with the Department prior to any offer for sale for delivery in this
200 State of the Television Manufacturer's new Covered Television Device. A Television Manufacturer that
201 has registered shall pay an annual renewal registration fee of two thousand five hundred dollars
202 (\$2,500) to the Department by January 1 of each year. The registration and each renewal shall include
203 the following :

204 i. List of all of the Television Manufacturer is using on its Covered Television Devices
205 (regardless of whether it owns or licenses the brand) and shall be effective on the

206 second day of the succeeding month after receipt by the Department of the
207 registration or renewal;

208 ii. Contact information for the Television Manufacturer's designated agent or
209 employee whom the Department may contact for information related to the
210 Television Manufacturer's compliance with the requirements of this section.

211 d. *Recycling Obligation.* The obligation to recycle Covered Television Devices shall be
212 allocated to each Television Manufacturer based on the Television Manufacturer's Market Share
213 multiplied by the total pounds of Televisions recycled by all Television Manufacturers during the
214 previous program year. Beginning in program year 20__, a Television Manufacturer must
215 annually recycle or arrange for the recycling of its Market Share of Covered Television Devices
216 pursuant to this Section.

217 e. A Television Manufacturer may fulfill the requirements of this Section either
218 individually or in participation with other Television Manufacturers.

219 f. A Television Manufacturer shall report to the Department by March 31, 2012, and annually
220 thereafter, the total weight of Covered Television Devices the Television Manufacturer collected in the
221 State and recycled during the previous year.

222 **SECTION 6. RETAILERS.**

223 a. *Sale Prohibition.* No retailer shall sell or offer for sale a Covered Device in this state unless the
224 Covered Device has a proper manufacturer label, including the Manufacturer's Brand and name and
225 such device's Manufacturer is included on the state list of Manufacturers with recovery plans.

226 b. *Data Security.* Retailers shall not be liable in any way for data or other information that a

227 consumer may leave on a Covered Device that is collected or recovered.

228 **SECTION 7. DEPARTMENT.**

229 a. *Education.* The Department shall educate consumers about collection and recovery of
230 Covered Devices.

231 b. *Website.* The Department shall host, or designate another person to host, a website about
232 Covered Device recovery for Consumers, with information about and links to Manufacturers' collection
233 and recovery information, including their recovery plans, and information about and links to information
234 about collection events, collection sites, and community recycling programs for Covered Devices.
235 Inclusion on the state's website is not a determination by the state that the manufacturer's recovery
236 plan or actual recovery are in compliance with this Act or other laws.

237 c. *Calculation of Market Share.* The Department shall use State-specific television sales
238 data or national television sales data available from commercially available analytical sources to
239 determine each Television Manufacturer's recovery responsibilities for televisions based on the
240 Television Manufacturer's Market Share. If the Department uses national sales data, the
241 Department shall extrapolate data for the State from national data on the basis of the State's
242 share of national population. The Department shall seek to establish the most accurate
243 determination of each Television Manufacturer's Market Share and may rely on supplemental
244 sources of information to achieve this goal.

245 d. *Notify Television Manufacturer of Market Share.* By May 1, 20__ and annually
246 thereafter, the Department shall notify each Television Manufacturer of its non-binding recycling
247 obligation. Each Television Manufacturer's obligation will be based on that Television

248 Manufacturer's Market Share from the previous year multiplied by the total pounds of
249 Televisions collected by all Television Manufacturers during the previous program year.

250 *c. Enforcement.*

251 (i) The department may conduct audits and inspections to determine compliance
252 under this Act. The department and the state attorney general, as appropriate, shall enforce the
253 provisions of this Act and take enforcement action against any Covered Manufacturer, Retailer, or
254 recoverer for failure to comply with any provisions of this Act.

255 (ii) Any Covered Manufacturer who fails to label its Covered Devices as required by
256 subsection d of section 5, or section 6, or adopt and implement a recovery plan as required by section 5
257 or section 6, may be assessed a penalty of up to ten thousand dollars for the first violation and up to
258 twenty-five thousand dollars for the second and each subsequent violation, in addition to being
259 responsible for any penalties required by or imposed pursuant to this Act.

260 (iii) Except as provided in subsection (ii) directly above, any person who violates any
261 requirement of this Act may be assessed a penalty of up to one thousand dollars for the first violation
262 and up to two thousand dollars for the second and each subsequent violation, in addition to being
263 responsible for any penalties required by or imposed pursuant to this Act.

264 (iv) The department shall determine the appropriate penalties, as provided in this
265 subsection, based on adverse impact to the environment, unfair competitive advantage, and other
266 considerations as the department deems appropriate.

267 (v) Penalties shall be paid to the department.

268 (vi) Any violation of the sales prohibitions of this Act may be enjoined in an action,

269 in the name of the state, brought by the attorney general.

270 (vii) Beginning with the second Program Year, if a Covered Television Manufacturer
271 fails to recycle its market share allocation, the Department shall impose a penalty on the Covered
272 Television Manufacturer a penalty of \$0.50 per pound for each pound not met.

273 d. *Financial and Proprietary Information.* Financial or proprietary information submitted to the
274 department under this Act is exempt from public disclosure, in accordance with state law.

275 e. *Annual Report.* The department shall compile the information from Covered Manufacturers
276 and issue a report to the Legislature by April 1 each year, beginning the second program year.

277 f. *Rules.* The department may adopt such rules and regulations as are necessary to implement
278 the provisions of this Act.

279 g. *Use of Penalty Funds.* The department shall use any money received from penalties or failure
280 of Covered Television Manufacturers to meet recovery obligations to offset costs associated with
281 administering the program and to provide grants to local governments collecting Covered Devices.

282 h. *No Fees.* The department does not have the authority to assess any fees, including an
283 advanced recycling fee, registration fee, or other fee, on Consumers, Manufacturers, Retailers, or
284 recoverers for collection or recovery of Covered Devices except those noted in Sections 5, 6, and 8(c).

285 **SECTION 8. CONSUMERS.**

286 a. *Data Security.* Consumers remain responsible for any data or other information that may be
287 on a Covered Device that is collected or recovered.

288 b. *Education.* Consumers also are encouraged to learn about proper recovery of their end-of-life

289 covered devices by visiting the department's and Manufacturers' websites.

290 **SECTION 9. SOUND ENVIRONMENTAL MANAGEMENT.**

291 a. *Compliance.* All covered devices collected pursuant to this Act shall be recovered in a
292 manner that is in compliance with all applicable federal, state, and local laws and requirements.

293 b. *The Department shall adopt by reference the EPA's Plug-in Guidelines as requirements.*

294 **SECTION 10. STATE PROCUREMENT.**

295 a. *Compliance.*

296 (i) Any person who submits a bid for a contract with a state agency for the
297 purchase or lease of Covered Devices must show that the brand of the Covered Device is in compliance
298 with this Act.

299 (ii) A state agency that purchases or leases Covered Devices shall require each
300 prospective bidder to certify compliance with this Act. Failure to provide such certification shall render
301 the prospective bidder ineligible to bid on the procurement of covered devices.

302 b. *State Purchasing Preferences.* In considering bids for state contracts for covered devices, in
303 addition to any other preferences provided elsewhere under state law, the state shall give special
304 preference to Covered Computer Manufacturers that have programs to recover other Manufacturers'
305 Covered Computer Devices, including but not limited to collection events, recycling grants, and
306 manufacturer initiatives to take back any covered device brand with purchase.

307 c. *Rulemaking.* The state's procurement agency shall adopt rules to implement this section's
308 provisions.

309 **SECTION 11. FEDERAL PREEMPTION.**

310 This Act shall be deemed repealed if a federal law or a combination of federal laws takes effect that
311 establishes a national program for the collection and recycling of Covered Devices that substantially
312 meets the intent of this Act.