

HOUSE No. 833

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:

NAME:	DISTRICT/ADDRESS:
Frank I. Smizik	15th Norfolk
Geraldo Alicea	6th Worcester
Bill Bowles	2nd Bristol
William N. Brownsberger	24th Middlesex
Geraldine Creedon	11th Plymouth
Steven J. D'Amico	4th Bristol
Paul J. Donato	35th Middlesex
William C. Galvin	6th Norfolk
Patricia A. Haddad	5th Bristol
Louis L. Kafka	8th Norfolk
Jay R. Kaufman	15th Middlesex
John D. Keenan	7th Essex
Peter v. Kocot	1st Hampshire
Stephen Kulik	1st Franklin
David P. Linsky	5th Middlesex
Elizabeth A. Malia	11th Suffolk
James M. Murphy	4th Norfolk
Matthew C. Patrick	3rd Barnstable
Sarah K. Peake	4th Barnstable
Denise Provost	27th Middlesex
Michael F. Rush	10th Suffolk
Tom Sannicandro	7th Middlesex
Joyce A. Spiliotis	12th Essex
Cleon H. Turner	1st Barnstable
Mary E. Grant	6th Essex
Jonathan Hecht	29th Middlesex
Thomas M. Stanley	9th Middlesex
Robert M. Koczera	11th Bristol
Alice K. Wolf	25th Middlesex

Jennifer M. Callahan	18th Worcester
Richard J. Ross	9th Norfolk
Lori Ehrlich	8th Essex
William G. Greene, Jr.	22nd Middlesex
Ellen Story	3rd Hampshire
Katherine Clark	32nd Middlesex
Marc R. Pacheco	First Plymouth and Bristol
Mark V. Falzone	9th Essex
James B. Eldridge	Middlesex and Worcester
Sonia Chang-Díaz	Second Suffolk
Barbara A. L'Italien	18th Essex
John W. Scibak	2nd Hampshire
Robert P. Spellane	13th Worcester
David B. Sullivan	6th Bristol

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

The Commonwealth of Massachusetts

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

The General Laws are hereby amended by inserting after chapter 21M the following chapter:-

CHAPTER 21N. PRODUCER RESPONSIBILITY FOR RECYCLING DISCARDED ELECTRONIC PRODUCTS.

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

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

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

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

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

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

“Department”, the department of environmental protection.

“Electronic product” a cathode ray tube, a video display device that incorporates a tuner for the receiving of television signals, a product containing a cathode ray tube, a liquid crystal

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

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

“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 limitation,

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

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

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

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

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

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

Section 3. (a) Every producer seeking to engage in business in the commonwealth shall file an application, accompanied by the appropriate fee, with the department requesting registration as a producer. Said application shall be made on a form to be furnished by the department, and shall include, without limitation, the following information:-(1) the name and contact information of the applicant; (2) the applicant's brand names of covered electronic products, including all brand names sold in the commonwealth in the past, all brand names currently being sold in the commonwealth, and all brand names for which the applicant is legally responsible; (3) the method or methods of sale used in the commonwealth; (4) a statement disclosing whether: (i) any video display devices sold to households exceed the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers under the RoHS Directive 2002/95/EC of the European Parliament and Council and any amendments thereto; or (ii) the material used in the product has received an exemption from one or more of those maximum concentration values under the RoHS Directive that has been approved and published by the European Commission; (5) a baseline or a set of baselines that describe any efforts to design covered electronic products for recycling and goals and plans for further increasing design for recycling; and (6) a description of any collection, consolidation and recycling services utilized to recover the applicant's products. The department shall, within 21 days, review the application for registration. If said application satisfies the requirements of this section, the department shall register said applicant as a producer and shall forthwith mail to him a certificate to that effect. If said application fails to satisfy the requirements of this section the producer shall, within 30 days, file with the department a revised application addressing the requirements noted by the department.

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

Section 4. The department shall annually notify every registered producer a blank application for renewal of said registration. Such blanks properly filled out shall be returned to the department

by the date specified by the department together with a renewal fee as shall be established by the department. After verification of the facts stated on the renewal blanks, the board shall issue a registration, which shall expire the following year. Any holder of a registration who fails to file a renewal application within 60 days after notification by the department that his registration has expired shall, prior to engaging in business as a producer within the commonwealth, be required to register anew and pay a late fee in addition to said renewal fee.

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

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

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

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

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

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

(b) A collector shall: (1) contract with a registered processor or processors to receive the covered electronic products collected by the collector; (2) make information available to the public that describes where and how to return, recycle, and dispose of covered electronic products; (3) accept all covered electronic products and ensure that said products are transported by or delivered to a registered processor; and (4) demonstrate compliance with the department rules and regulations and the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or state law. A collector may limit the number of covered electronic products delivered at a given time by any customer to no more than 5.

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

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

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

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

(b) A processor shall: (1) be responsible for sorting all covered electronic products received from a participating collector with whom the processor has a contract; (2) weigh the total amount of covered electronic products received from a participating collector and reimburse said collector; provided, however, that said collector reimbursement shall be due within 30 days of pick-up; (3) sort, by producer, and weigh all covered electronic products other than televisions received from collectors; (4) weigh all televisions received from collectors; (5) either recycle on-site or ship covered electronic products offsite for recycling in accordance with the minimum performance requirements established by the department; (6) demonstrate compliance with the department rules and regulations and the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or state law; (7) submit an invoice for producer reimbursement to each producers whose waste the processor has handled; and (8) annually submit a report to the

department which shall include without limitation: (i) the total aggregate weight of covered electronic products processed pursuant to this chapter in the previous program year; (ii) the weight, differentiated by producer, of covered electronic products processed pursuant to this chapter in the previous program year; (c) the total amount of orphan waste processed pursuant to this chapter in the previous program year; and (d) any other information to help track, monitor and evaluate the management of covered electronic products, as determined by the department.

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

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

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

Section 13. (a) The department shall annually: (1) determine the return share for each program year for each producer of electronic products other than televisions by dividing the weight of covered electronic products identified for each producer by the total weight of covered electronic products identified for all producers; provided further, that said calculation shall be based on the reports generated by processors of covered electronic products in the commonwealth; provided further, that for the first program year, the return share of covered electronic products identified for each producer shall be based on the best available public return share data from the United States, including data from other states, for covered electronic products from consumers; provided further, that for the second and subsequent program years, the return share of covered electronic products identified for each producer shall be based on the previous year's reported data as described herein; and provided further, that the department shall use the return share for each producer to allocate financial responsibility for orphan waste; (2) determine, based on each producer's return share, each producer's share of responsibility for the orphan waste collected in the commonwealth; provided, however, that each producer's return share of orphan waste shall be equivalent to their percentage of return share for non-orphan covered electronic products, multiplied by the total amount of orphan waste collected in the program year; and provided further, that the department, in determining the producer's orphan waste share, may take into account electronic products, including orphan waste, voluntarily collected by the producer; and (3) determine the market share allocation for each television producer by determining the total weight of televisions recycled in the previous year, multiplied by the market share for that producer; provided, however, that in the first program year, the market share identified for each television producer shall be based on the best available data regarding the total number of televisions sold in the commonwealth for the previous calendar year. (4) maintain a list of producers registered pursuant to this chapter, delineating those producers meeting their obligations through an independent recycling program. (5) conduct periodic audits of processors at a frequency determined by the department, to assure accuracy of reporting and billing.

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

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

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

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

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

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

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

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

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

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

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