

HOUSE No. 767

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 793 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO REQUIRE PRODUCER RESPONSIBILITY FOR COLLECTION AND RECYCLING OF 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 **SECTION 1.** *Whereas*, discarded electronic products, including computer monitors, televisions, computers
2 and peripherals, are an increasing financial problem for Massachusetts cities & towns, who have to deal with more
3 than 75,000 tons of discarded electronic products each year; and

4 *Whereas*, discarded electronic products contain lead, cadmium, mercury, hexavalent chromium, polyvinyl
5 chloride, brominated flame retardant and other toxic materials that can pose hazards to human health and the
6 environment when landfilled or incinerated; and

7 *Whereas*, the Commonwealth of Massachusetts, on April 1, 2000, because of their toxicity, prohibited the disposal
8 of discarded cathode ray tubes (CRT's), such as those found in televisions and computer monitors, in municipal
9 landfills or incinerators, which has increased local government costs for recycling discarded CRT's and computer
10 products; and,

11 *Whereas*, the costs incurred by Massachusetts cities and towns for discarded electronic products are in effect
12 unfunded mandates imposed by the producers of such products on local taxpayers; which takes funds away from
13 other needed local government programs, such as schools, fire protection, emergency services, and police; and

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

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

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

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

28 **CHAPTER 16A**

29 **PRODUCER RESPONSIBILITY FOR DISCARDED ELECTRONIC PRODUCTS**

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

31 "Cathode ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a
32 visual image.

33 "Collection system" means the system for the collection, packaging, transportation, and recycling of
34 products discarded by consumers.

35 "Computer monitor" means a cathode ray tube or flat panel display primarily intended to display information
36 from a central processing unit, network, or the internet.

37 "Consolidation facility" means a facility where discarded electronic products are consolidated and
38 temporarily stored while awaiting shipment to a recycling, treatment or disposal facility and includes a transport
39 vehicle owned or leased by a recycling and dismantling facility used to collect covered electronic products at
40 municipal collection sites in this state.

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

50 "Department" means the department of environmental protection.

51 "Environmentally sound recycling" means collection and recycling which meets the standards established by
52 the department.

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

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

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

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

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

- 71 manufactures and sells electronic products under its own brand; or
- 72 resells under its own brand a product produced by others, a reseller not being regarded as a the producer
73 of the brand if the brand of the actual producer appears on the product; or
- 74 imports electronic products for first sale in the state; or
- 75 manufactures and sells electronic products without affixing a brand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 135 □ Collection of covered electronic products at consolidation centers, for any municipality which agrees to
136 operate such collection centers and deliver the discards to the consolidation centers where the costs of the
137 collection centers and delivery to the consolidation centers are reimbursed by the producers; and/or
- 138 □ Collection at retail stores who agrees to participate in a business relationship with the producer; where
139 consumers can drop off their discarded covered electronic products for collection by the producers or their
140 agents; and/or
- 141 □ Collection through delivery by the United Postal Service or private delivery service from the consumer
142 directly to the producer or their recycling facility;
- 143 □ Collection from consumers at their households or place of business; and/or
- 144 □ Any other means approved by the department.
- 145 (g) The plan submitted by the producer and approved by the department must include at a minimum:
- 146 1. Provisions to ensure that the producer will take complete financial responsibility for its products
147 when discarded or upon receipt at municipal recycling facilities or at consolidation facilities in the
148 state.
- 149 2. A description of the collection system, including the methods of convenient collection;
- 150 3. A public education campaign to inform the public about the collection system, including details
151 about meeting all consumer notification and labeling requirements;
- 152 4. Specific provisions detailing how the producer will inform consumers of where they may donate
153 their used covered electronic product to nonprofit corporations, schools, public agencies, or to
154 companies that refurbish and repair used electronics for reuse and how the plan will not impede the
155 ability of consumers to donate computers for reuse.
- 156 5. Details for implementing and financing the handling of covered electronic products, historic waste,
157 and orphan waste covered electronic products that are discarded in the Commonwealth;
- 158 6. Details for the method of reimbursing consolidation facilities, if used in the plan, for the costs of
159 handling and recycling the covered electronic products;
- 160 7. Documentation of the willingness of all necessary parties to implement the plan, including the
161 parties that will participate in the consolidation, treatment, recovery, reuse and recycling of the
162 covered electronic products;
- 163 8. Assurances that all necessary parties will cooperate in the plan and will operate in compliance with
164 local, state and federal waste management laws, rules and regulations;
- 165 9. Descriptions of the performance measures that will be used and reported by the producer to report
166 recovery and recycling rates for covered electronic products at the end of their useful life;
- 167 10. Descriptions of additional or alternative actions that will be taken to improve recovery and recycling
168 rates, if needed; and
- 169 11. Description of how the producer will be responsible for all costs associated with the development and
170 implementation of the plan.

171 12. Certification showing how the plan will comply with the environmentally sound recycling
172 requirements established by the department pursuant to this chapter.

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

174 any fee imposed at the sale of the product; or

175 a fee at the time the discarded product is delivered by the consumer to a collection point or is
176 collected from the consumer; or

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

180 any cost to be imposed on a city, town, county, regional entity, or other subdivision of the state
181 unless said cost is agreed to by the city, town, county, regional entity, or other subdivision of the
182 state.

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

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

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

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

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

206 A consolidation facility shall work cooperatively with producers to ensure implementation of a practical and
207 feasible financing system. At a minimum, a consolidation facility shall invoice the producers for the handling,
208 transportation and recycling costs for which they are responsible under the provisions of this subsection and shall
209 reimburse the municipalities for their costs for collecting, storing, and transporting the discarded covered electronic

210 products. Within 90 days of receipt of an invoice, a producer shall reimburse a consolidation facility for
211 allowable costs incurred by that consolidation facility.

212 A consolidation facility shall transport discarded covered electronic products to a recycling and dismantling
213 facility that provides a sworn certification that its handling, processing, refurbishment and recycling of covered
214 electronic products meet guidelines for environmentally sound management promulgated by the department. A
215 consolidation facility shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling
216 and dismantling facility that receives covered electronic products from the consolidation facility and shall provide
217 the department with a copy of these records within 24 hours of request by the department.

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

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

232 The department may keep information submitted pursuant to this section confidential as provided by section
233 10 of chapter 66 of the General Laws.

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

- 237 1. Require that the reuse of discarded electronic products be maximized to increase their useful life as much as
238 possible.
- 239 2. Prohibit any hazardous electronic product from being sent to a solid waste (nonhazardous waste) landfill or
240 incinerator for disposal or energy recovery, either directly or through intermediaries.
- 241 3. Prohibit any person who collects, recovers, treats, processes, or recycles electronic waste from exporting
242 said waste to any country where the export of hazardous waste is prohibited by the Basel Ban Amendment
243 decision (Decision III/1) of the Basel Convention on the Control of Transboundary Movement of Hazardous
244 Waste and Their Disposal. All producers shall provide no later than January 1 each year to the department
245 written documentation, in a form and manner determined by the department, that their program has not
246 resulted in the overseas export of electronic waste to any country prohibited by this section.
- 247 4. Prohibit covered electronic products from being sent to prisons for recycling either directly or through
248 intermediaries.
- 249 5. Require that recycling facilities have a certified, or otherwise comprehensive and comparable environmental
250 management system in place which complies with industry best practices.

- 251 6. Require that the entire recycling chain, including downstream intermediaries and recovery operations such
252 as smelters, meet all applicable environmental and health regulations, and that only those facilities which
253 provide the most efficient and least polluting recovery services available globally are used.
- 254 7. Require visible tracking of hazardous covered electronic products throughout the product recycling chain.
255 The tracking information should show the final disposition of all hazardous waste materials. An independent
256 auditor acceptable to can be used to verify compliance if needed to protect trade secrets.
- 257 8. Require the provision of adequate assurance such as bonds or funds held in escrow to cover environmental
258 and other costs of the closure of recycling or processing facilities, and to provide liability insurance for
259 accidents and incidents involving wastes and to ensure due diligence throughout the product chain.

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

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

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