

**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

### 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:-

#### CHAPTER 21N.

#### PRODUCER RESPONSIBILITY FOR RECYCLING DISCARDED ELECTRONIC PRODUCTS.

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

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

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

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

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

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

26 “Department”, the department of environmental protection.

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

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

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

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

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

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

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

59 “Producer”, any person who: (a) has a physical presence and legal assets in the United  
60 States of America and (1) manufactures or manufactured a covered electronic product under its  
61 own brand or label; (2) sells or sold under its own brand or label a covered electronic product  
62 produced by other suppliers; or (3) owns a brand that it licenses or licensed to another person for

63 use on a covered electronic product; or (b) imports or imported a covered electronic product into  
64 the United States that was manufactured by a person without a presence in the United States of  
65 America; or (c) sells at retail a covered electronic product acquired from an importer that is the  
66 manufacturer as described in subsection (b) and elects to register in lieu of the importer.

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

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

73 “Retailer”, shall include, but shall not be limited to, a person or a producer that sells new  
74 covered electronic products directly to a consumer through any means including, without limitation,  
75 transactions conducted through sales outlets and catalogs, but not including wholesale transactions with a  
76 distributor or other retailer.

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

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

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

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

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

92 Section 3. (a) Every producer seeking to engage in business in the commonwealth shall file an  
93 application, accompanied by the appropriate fee, with the department requesting registration as a  
94 producer. Said application shall be made on a form to be furnished by the department, and shall  
95 include, without limitation, the following information:-(1) the name and contact information of  
96 the applicant; (2) the applicant's brand names of covered electronic products, including all brand  
97 names sold in the commonwealth in the past, all brand names currently being sold in the  
98 commonwealth, and all brand names for which the applicant is legally responsible; (3) the  
99 method or methods of sale used in the commonwealth; (4) a statement disclosing whether: (i)  
100 any video display devices sold to households exceed the maximum concentration values  
101 established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and  
102 polybrominated diphenyl ethers under the RoHS Directive 2002/95/EC of the European  
103 Parliament and Council and any amendments thereto; or (ii) the material used in the product has

104 received an exemption from one or more of those maximum concentration values under the  
105 RoHS Directive that has been approved and published by the European Commission; (5) a  
106 baseline or a set of baselines that describe any efforts to design covered electronic products for  
107 recycling and goals and plans for further increasing design for recycling; and (6) a description of  
108 any collection, consolidation and recycling services utilized to recover the applicant's products.  
109 The department shall, within 21 days, review the application for registration. If said application  
110 satisfies the requirements of this section, the department shall register said applicant as a  
111 producer and shall forthwith mail to him a certificate to that effect. If said application fails to  
112 satisfy the requirements of this section the producer shall, within 30 days, file with the  
113 department a revised application addressing the requirements noted by the department.

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

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

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

137 (b) A producer establishing an independent recycling program either individually or in  
138 cooperation with other producers shall recover 1 or more electronic products. A producer  
139 establishing an independent recycling program either individually or in cooperation with other  
140 producers shall ensure that the program is accessible and convenient to all consumers in the  
141 Commonwealth. A producer establishing an independent recycling program either individually

142 or in cooperation with other producers shall provide information specified by the department  
143 describing the locations for the collection or return of the producer's product, including  
144 information on opportunities and locations for donation of the product for reuse via, without  
145 limitation: (1) a toll-free telephone number; (2) a website; (3) information included in or on the  
146 packaging; or (4) written information provided at the point of sale.

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

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

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

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

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

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

181 Section 8. The department shall annually mail every registered collector a blank application for  
182 renewal of said registration. Such blanks properly filled out shall be returned to the department  
183 by the date specified by the department together with a renewal fee as shall be established by the  
184 department. After verification of the facts stated on the renewal blanks, the board shall issue a  
185 registration, which shall expire the following year. Any holder of a registration who fails to file a  
186 renewal application within 60 days after notification by the department that his registration has

187 expired shall, prior to engaging in business as a collector within the commonwealth, be required  
188 to register anew and pay a late fee in addition to said renewal fee.

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

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

201 (b) A processor shall: (1) be responsible for sorting all covered electronic products  
202 received from a participating collector with whom the processor has a contract; (2) weigh the  
203 total amount of covered electronic products received from a participating collector and reimburse  
204 said collector; provided, however, that said collector reimbursement shall be due within 30 days  
205 of pick-up; (3) sort, by producer, and weigh all covered electronic products other than televisions  
206 received from collectors; (4) weigh all televisions received from collectors; (5) either recycle on-  
207 site or ship covered electronic products offsite for recycling in accordance with the minimum  
208 performance requirements established by the department; (6) demonstrate compliance with the  
209 department rules and regulations and the United States Environmental Protection Agency's Plug-  
210 In to eCycling Guidelines for Materials Management as issued and available on the United States  
211 Environmental Protection Agency's Internet website in addition to any other requirements  
212 mandated by federal or state law; (7) submit an invoice for producer reimbursement to each  
213 producers whose waste the processor has handled; and (8) annually submit a report to the  
214 department which shall include without limitation: (i) the total aggregate weight of covered  
215 electronic products processed pursuant to this chapter in the previous program year; (ii) the  
216 weight, differentiated by producer, of covered electronic products processed pursuant to this  
217 chapter in the previous program year; (c) the total amount of orphan waste processed pursuant to  
218 this chapter in the previous program year; and (d) any other information to help track, monitor  
219 and evaluate the management of covered electronic products, as determined by the department.

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

223 Section 11. The department shall annually mail every registered processor a blank application for  
224 renewal of said registration. Such blanks properly filled out shall be returned to the department  
225 by the date specified by the department together with a renewal fee as shall be established by the  
226 department. After verification of the facts stated on the renewal blanks, the board shall issue a  
227 registration, which shall expire the following year. Any holder of a registration who fails to file a  
228 renewal application within 60 days after notification by the department that his registration has



229 expired shall, prior to engaging in business as a processor within the commonwealth, be required  
230 to register anew and pay a late fee in addition to said renewal fee.

231 Section 12. The fee for a collector registration, a processor registration and a producer  
232 registration, or for any annual renewal thereof, shall be determined annually by the department.  
233 Section 13. (a) The department shall annually: (1) determine the return share for each program  
234 year for each producer of electronic products other than televisions by dividing the weight of  
235 covered electronic products identified for each producer by the total weight of covered electronic  
236 products identified for all producers; provided further, that said calculation shall be based on the  
237 reports generated by processors of covered electronic products in the commonwealth; provided  
238 further, that for the first program year, the return share of covered electronic products identified  
239 for each producer shall be based on the best available public return share data from the United  
240 States, including data from other states, for covered electronic products from consumers;  
241 provided further, that for the second and subsequent program years, the return share of covered  
242 electronic products identified for each producer shall be based on the previous year's reported  
243 data as described herein; and provided further, that the department shall use the return share for  
244 each producer to allocate financial responsibility for orphan waste; (2) determine, based on each  
245 producer's return share, each producer's share of responsibility for the orphan waste collected in  
246 the commonwealth; provided, however, that each producer's return share of orphan waste shall  
247 be equivalent to their percentage of return share for non-orphan covered electronic products,  
248 multiplied by the total amount of orphan waste collected in the program year; and provided  
249 further, that the department, in determining the producer's orphan waste share, may take into  
250 account electronic products, including orphan waste, voluntarily collected by the producer; and  
251 (3) determine the market share allocation for each television producer by determining the total  
252 weight of televisions recycled in the previous year, multiplied by the market share for that  
253 producer; provided, however, that in the first program year, the market share identified for each  
254 television producer shall be based on the best available data regarding the total number of  
255 televisions sold in the commonwealth for the previous calendar year. (4) maintain a list of  
256 producers registered pursuant to this chapter, delineating those producers meeting their  
257 obligations through an independent recycling program. (5) conduct periodic audits of processors  
258 at a frequency determined by the department, to assure accuracy of reporting and billing.

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

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

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

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

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

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

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

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

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

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

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