

HOUSE No. 4991

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 22, 2008.

The committee on Ways and Means, to whom was referred the Bill to require producer responsibility for collection and recycling of discarded electronic products (House, No. 4570), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4991).

For the committee,

ROBERT A. DELEO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

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. The General Laws are hereby amended by
2 inserting after chapter 21M the following chapter:—

3 **CHAPTER 21N.**
4 **PRODUCER RESPONSIBILITY FOR RECYCLING**
5 **DISCARDED ELECTRONIC PRODUCTS.**

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

9 “Collection”, the aggregation of covered electronic products
10 from households, municipalities and schools, including the accu-
11 mulation of covered electronic products at handling facilities,
12 transfer stations, and solid waste facilities, including all the activi-
13 ties up to the time the covered electronic products are delivered to
14 or collected by a processor.

15 “Collector”, a person accepting covered electronic products
16 from households, municipalities and schools, and who transports
17 or arranges for said electronic products to be transported to a
18 processor.

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

22 “Computer”, an electronic, magnetic, optical, electrochemical,
23 or other high speed data processing device performing logical,
24 arithmetic, or storage functions, including a laptop or a combined
25 computer central processing unit and monitor; provided, however,
26 that an automated typewriter or typesetter, a portable handheld

27 calculator, a portable digital assistant, or other similar device shall
28 not be considered a computer.

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

33 “Department”, the department of environmental protection.

34 “Electronic product” a cathode ray tube, a video display device
35 that incorporates a tuner for the receiving of television signals, a
36 product containing a cathode ray tube, a liquid crystal display or
37 other flat panel television or computer monitor larger than 9
38 inches measured diagonally, a computer central processing unit
39 that contains one or more circuit boards including, but not limited
40 to, a desktop computer or a notebook computer, printer, scanner,
41 or card reader; provided, however, that an electronic product shall
42 not include:—

43 (a) a video display device that is part of a motor vehicle or any
44 component part of a motor vehicle assembled by, or for, a vehicle
45 manufacturer or franchised dealer, including replacement parts for
46 use in a motor vehicle;

47 (b) a video display device, including a touch-screen display,
48 that is functionally or physically part of a larger piece of equip-
49 ment or is designed and intended for use in an industrial, commer-
50 cial, retail, library checkout, traffic control, kiosk, security, border
51 control, or medical setting including, but not limited to, diag-
52 nostic, monitoring, or control equipment;

53 (c) a video display device that is contained within a clothes
54 washer, clothes dryer, refrigerator, refrigerator and freezer,
55 microwave oven, conventional oven or range, dishwasher, home
56 automation, room air conditioner, dehumidifier, or air purifier;
57 and

58 (d) a telephone of any type unless it contains a video display
59 area greater than nine inches measured diagonally.

60 “Market share”, a television producer’s national sales of televi-
61 sions expressed as a percentage of the total of all television pro-
62 ducers’ national sales based on the best available public data.

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

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

68 “Person”, a natural person, corporation, association, partner-
69 ship, government body or other legal entity.

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

75 “Processor reimbursement”, the compensation paid by a pro-
76 ducer to a processor for the producer’s covered electronic prod-
77 ucts and the producer’s share of orphan waste as determined by
78 the department.

79 “Producer”, any person who:—

80 (a) has a physical presence and legal assets in the United States
81 of America and (1) manufactures or manufactured a covered elec-
82 tronic product under its own brand or label;

83 (2) sells or sold under its own brand or label a covered elec-
84 tronic product produced by other suppliers; or

85 (3) owns a brand that it licenses or licensed to another person
86 for use on a covered electronic product, imports or imported a
87 covered electronic product into the United States that was manu-
88 factured by a person without a presence in the United States of
89 America, or sells at retail a covered electronic product acquired
90 from an importer that is the manufacturer and elects to register in
91 lieu of the importer.

92 “Program year”, a full calendar year beginning on or after Jan-
93 uary 1, 2009.

94 “Recycling”, to recover materials or by-products which are:—

95 (a) reused;

96 (b) used as an ingredient or a feedstock in an industrial or man-
97 ufacturing process to make a marketable product; or

98 (c) used in a particular function or application as an effective
99 substitute for a commercial product or commodity; provided,
100 however, that recycle shall not mean to recover energy from the
101 combustion of a material.

102 “Retailer”, shall include, but shall not be limited to, a person or
103 a producer that sells new covered electronic products directly to a

104 consumer through any means including, without limitation, trans-
105 actions conducted through sales outlets and catalogs, but not
106 including wholesale transactions with a distributor or other
107 retailer.

108 “Return share”, a percentage of covered electronic products
109 other than televisions collected through processors as calculated
110 by dividing the total weight of covered electronic products other
111 than televisions of that producer’s brands by the total weight of
112 covered electronic products other than televisions for all pro-
113 ducers’ non-orphaned brands.

114 “Reuse”, any operation by which an electronic product or com-
115 ponent of an electronic product changes ownership and is used for
116 the same purpose for which it was originally purchased.

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

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

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

127 Section 3. (a) Every producer seeking to engage in business in
128 the Commonwealth shall file an application, accompanied by the
129 appropriate fee, with the department requesting registration as a
130 producer. Said application shall be made on a form to be furnished
131 by the department, and shall include, without limitation, the
132 following information:—

133 (1) the name and contact information of the applicant;

134 (2) the applicant’s brand names of covered electronic products,
135 including all brand names sold in the Commonwealth in the past,
136 all brand names currently being sold in the Commonwealth, and
137 all brand names for which the applicant is legally responsible;

138 (3) the method or methods of sale used in the Commonwealth;

139 (4) a statement disclosing whether:— (i) any video display
140 devices sold to households exceed the maximum concentration
141 values established for lead, mercury, cadmium, hexavalent
142 chromium, polybrominated biphenyls and polybrominated

143 diphenyl ethers under the RoHS Directive 2002/95/EC of the
144 European Parliament and Council and any amendments thereto; or
145 (ii) the material used in the product has received an exemption
146 from one or more of those maximum concentration values under
147 the RoHS Directive that has been approved and published by the
148 European Commission;

149 (5) a baseline or a set of baselines that describe any efforts to
150 design covered electronic products for recycling and goals and
151 plans for further increasing design for recycling; and

152 (6) a description of any collection, consolidation and recycling
153 services utilized to recover the applicant's products. The depart-
154 ment shall, within 21 days, review the application for registration.
155 If said application satisfies the requirements of this section, the
156 department shall register said applicant as a producer and shall
157 forthwith mail to him a certificate to that effect. If said application
158 fails to satisfy the requirements of this section the producer shall,
159 within 30 days, file with the department a revised application
160 addressing the requirements noted by the department.

161 (b) The department may keep information submitted pursuant
162 to this section confidential as provided by Section 10 of Chapter
163 66 of the General Laws; provided, however, that the department
164 shall disclose and make public the name and contact information
165 of the producer submitting the application, the producer's brand
166 names of covered electronic products, including all brand names
167 sold in the Commonwealth in the past, all brand names currently
168 being sold in the Commonwealth, and all brand names for which
169 the producer is legally responsible.

170 Section 4. The department shall annually mail every registered
171 producer a blank application for renewal of said registration. Such
172 blanks properly filled out shall be returned to the department by
173 the date specified by the department together with a renewal fee
174 as shall be established by the department. After verification of the
175 facts stated on the renewal blanks, the board shall issue a registra-
176 tion, which shall expire the following year. Any holder of a regis-
177 tration who fails to file a renewal application within 60 days after
178 notification by the department that his registration has expired
179 shall, prior to engaging in business as a producer within the Com-
180 monwealth, be required to register anew and pay a late fee in
181 addition to said renewal fee.

182 Section 5. (a) A producer who has sold or who sells covered
183 electronic products other than televisions in the Commonwealth
184 shall bear the financial responsibility for the collection, trans-
185 portation and recycling of said covered electronic products dis-
186 carded in the Commonwealth, including their return share of
187 orphan waste as determined by the department. A producer of
188 televisions shall have the financial responsibility for the collec-
189 tion, transportation and recycling of televisions discarded in the
190 Commonwealth, based on the television manufacturer's market
191 share. A producer may recycle their covered electronic products
192 by establishing a collection program, either individually or in
193 cooperation with other producers, to collect these products at their
194 end of life as established in this chapter.

195 (b) A producer establishing an independent recycling program
196 either individually or in cooperation with other producers shall
197 recover 1 or more electronic products. A producer establishing an
198 independent recycling program either individually or in coopera-
199 tion with other producers shall provide information specified by
200 the department describing the locations for the collection or return
201 of the producer's product, including information on opportunities
202 and locations for donation of the product for reuse via, without
203 limitation:—

- 204 (1) a toll-free telephone number;
- 205 (2) a website;
- 206 (3) information included in or on the packaging; or
- 207 (4) written information provided at the point of sale.

208 A producer establishing an independent recycling program
209 either individually or in cooperation with other producers shall
210 weigh the covered electronic products collected and shall annually
211 submit a statement certifying to the department the total weight of
212 electronic products received and the weight of orphan waste
213 received in the preceding program year. The department, in deter-
214 mining the producer's waste share, shall take into account elec-
215 tronic products voluntarily collected by the producer.

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

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

222 Section 7. (a) Every collector seeking to engage in business in
223 the Commonwealth shall file an application, accompanied by the
224 appropriate fee, with the department requesting registration as a
225 collector. Said application shall be made on a form to be furnished
226 by the department, and shall include, without limitation, the
227 following information:—

- 228 (1) the name;
- 229 (2) the address;
- 230 (3) the telephone number; and
- 231 (4) the location of the business.

232 The department shall, within 21 days, review the application
233 for registration. If said application satisfies the requirements of
234 this section, the department shall register said applicant as a pro-
235 ducer and shall forthwith mail to him a certificate to that effect. If
236 said application fails to satisfy the requirements of this section the
237 collector shall, within 30 days, file with the department a revised
238 application addressing the requirements noted by the department.

239 (b) A collector shall:—

- 240 (1) contract with a registered processor or processors to receive
241 the covered electronic products collected by the collector;
- 242 (2) make information available to the public that describes
243 where and how to return, recycle, and dispose of covered elec-
244 tronic products;
- 245 (3) accept all covered electronic products and ensure that said
246 products are transported by or delivered to a registered processor;
247 and
- 248 (4) demonstrate compliance with the department rules and reg-
249 ulations and the United States Environmental Protection Agency's
250 Plug-In to eCycling Guidelines for Materials Management as
251 issued and available on the United States Environmental Protec-
252 tion Agency's Internet website in addition to any other require-
253 ments mandated by federal or state law. A collector may limit the
254 number of covered electronic products delivered at a given time
255 by any customer to no more than 5.

256 (c) A collector shall not:—

- 257 (1) charge a fee to consumers for the transportation, collection
258 or recycling of covered electronic products; or

259 (2) knowingly accept covered electronic products imported into
260 the Commonwealth for the purpose of recycling or discard.

261 Section 8. The department shall annually mail every registered
262 collector a blank application for renewal of said registration. Such
263 blanks properly filled out shall be returned to the department by
264 the date specified by the department together with a renewal fee
265 as shall be established by the department. After verification of the
266 facts stated on the renewal blanks, the board shall issue a registra-
267 tion, which shall expire the following year. Any holder of a regis-
268 tration who fails to file a renewal application within 60 days after
269 notification by the department that his registration has expired
270 shall, prior to engaging in business as a collector within the Com-
271 monwealth, be required to register anew and pay a late fee in
272 addition to said renewal fee.

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

275 Section 10. (a) Every processor seeking to engage in business
276 in the Commonwealth shall file an application, accompanied by
277 the appropriate fee, with the department requesting registration as
278 a processor. Said application shall be made on a form to be fur-
279 nished by the department, and shall include, without limitation,
280 the following information:—

281 (1) the name;

282 (2) the address;

283 (3) the telephone number; and

284 (4) the location of the processor's business.

285 The department shall, within 21 days, review the application
286 for registration. If said application satisfies the requirements of
287 this section, the department shall register said applicant as a
288 processor and shall forthwith mail to him a certificate to that
289 effect. If said application fails to satisfy the requirements of this
290 section the processor shall, within 30 days, file with the depart-
291 ment a revised application addressing the requirements noted by
292 the department.

293 (b) A processor shall:—

294 (1) be responsible for sorting all covered electronic products
295 received from a participating collector with whom the processor
296 has a contract;

297 (2) weigh the total amount of covered electronic products
298 received from a participating collector and reimburse said col-
299 lector; provided, however, that said collector reimbursement shall
300 be due within 30 days of pick-up;

301 (3) sort, by producer, and weigh all covered electronic products
302 other than televisions received from collectors;

303 (4) weigh all televisions received from collectors;

304 (5) either recycle on-site or ship covered electronic products
305 offsite for recycling in accordance with the minimum performance
306 requirements established by the department;

307 (6) demonstrate compliance with the department rules and reg-
308 ulations and the United States Environmental Protection Agency's
309 Plug-In to eCycling Guidelines for Materials Management as
310 issued and available on the United States Environmental Protec-
311 tion Agency's Internet website in addition to any other require-
312 ments mandated by federal or state law;

313 (7) submit an invoice for producer reimbursement to each pro-
314 ducer whose waste the processor has handled; and

315 (8) annually submit a report to the department which shall
316 include without limitation:— (i) the total aggregate weight of cov-
317 ered electronic products processed pursuant to this chapter in the
318 previous program year; (ii) the weight, differentiated by producer,
319 of covered electronic products processed pursuant to this chapter
320 in the previous program year; (iii) the total amount of orphan
321 waste processed pursuant to this chapter in the previous program
322 year; and (iv) any other information to help track, monitor and
323 evaluate the management of covered electronic products, as deter-
324 mined by the department.

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

329 Section 11. The department shall annually mail every registered
330 processor a blank application for renewal of said registration.
331 Such blanks properly filled out shall be returned to the department
332 by the date specified by the department together with a renewal
333 fee as shall be established by the department. After verification of
334 the facts stated on the renewal blanks, the board shall issue a reg-
335 istration, which shall expire the following year. Any holder of a

336 registration who fails to file a renewal application within 60 days
337 after notification by the department that his registration has
338 expired shall, prior to engaging in business as a processor within
339 the Commonwealth, be required to register anew and pay a late
340 fee in addition to said renewal fee.

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

344 Section 13. (a) The department shall annually:—

345 (1) determine the return share for each program year for each
346 producer of electronic products other than televisions by dividing
347 the weight of covered electronic products identified for each pro-
348 ducer by the total weight of covered electronic products identified
349 for all producers; provided further, that said calculation shall be
350 based on the reports generated by processors of covered electronic
351 products in the Commonwealth; provided further, that for the first
352 program year, the return share of covered electronic products
353 identified for each producer shall be based on the best available
354 public return share data from the United States, including data
355 from other states, for covered electronic products from con-
356 sumers; provided further, that for the second and subsequent pro-
357 gram years, the return share of covered electronic products
358 identified for each producer shall be based on the previous year's
359 reported data as described herein; and provided further, that the
360 department shall use the return share for each producer to allocate
361 financial responsibility for orphan waste;

362 (2) determine, based on each producer's return share, each pro-
363 ducer's share of responsibility for the orphan waste collected in
364 the Commonwealth; provided, however, that each producer's
365 return share of orphan waste shall be equivalent to their per-
366 centage of return share for non-orphan covered electronic prod-
367 ucts, multiplied by the total amount of orphan waste collected in
368 the program year; and provided further, that the department, in
369 determining the producer's orphan waste share, may take into
370 account electronic products, including orphan waste, voluntarily
371 collected by the producer; and

372 (3) determine the market share allocation for each television
373 producer by determining the total weight of televisions recycled in
374 the previous year, multiplied by the market share for that pro-

375 ducer; provided, however, that in the first program year, the
376 market share identified for each television producer shall be based
377 on the best available data regarding the total number of televisions
378 sold in the Commonwealth for the previous calendar year.

379 (b) The department shall promulgate rules and regulations for
380 the administration and enforcement of this chapter; provided,
381 however, that said regulations shall include minimum perfor-
382 mance requirements for collection and processing of covered elec-
383 tronic products.

384 Section 14. (a) No person shall sell covered electronic products
385 from producers not registered pursuant to this chapter. No person
386 shall offer for sale an electronic product unless a visible, perma-
387 nent label clearly identifying the producer of that product is
388 affixed to said electronic product. All retailers shall provide infor-
389 mation describing where and how to recycle an electronic product
390 provided by the producer pursuant to this act.

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

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

396 (d) No person shall import a covered electronic product into the
397 Commonwealth with the intent of recycling or discarding said
398 product; provided further, that any covered electronic product so
399 imported shall not be eligible for reimbursement under the provi-
400 sions of this chapter.

401 (e) Subsection (a) of this section shall not apply to used elec-
402 tronic products that are resold or reused.

403 Section 15. The department shall be charged with the enforce-
404 ment of Sections 1 to 14, inclusive. If any person refuses to obey a
405 decision of the department the attorney general shall, upon request
406 of the department, file a petition for the enforcement of such deci-
407 sion in equity in the superior court for Suffolk County or for the
408 county in which the defendant resides or has a place of business.
409 After due hearing, the court shall order the enforcement of such
410 decision or any part thereof, if legally and properly made by the
411 department.

412 Section 16. Whoever violates any provisions of Sections 1
413 to 14, inclusive, shall be punished by a fine of not less than
414 \$2,500 and not more than \$25,000.00 for each day the violation
415 remains outstanding.

416 Section 17. The department may participate in the establish-
417 ment of a regional multistate organization or compact to assist in
418 carrying out the requirements of this chapter.

419 Section 18. The department shall annually, not later than
420 December 31, submit a report of its activities pursuant to this
421 chapter. The report shall include:— (1) an update on the imple-
422 mentation of this chapter current state compliance by collectors,
423 processors, producers and retailers;

424 (2) recommendations to the general court and the governor
425 regarding proposed changes to this chapter, or any other chapter
426 of the General Laws, or any regulations promulgated pursuant
427 thereto; and

428 (3) any other information the department deems appropriate.
429 The report shall be submitted to the governor, the president of the
430 senate, the speaker of the house, the house and senate chairs of the
431 committees on ways and means, the house and senate chairs of the
432 joint committee on environment, natural resources and agricul-
433 ture, the clerk of the senate and the clerk of the house.

1 SECTION 2. This act shall take effect January 1, 2009.