

**HOUSE . . . . . No. 00232**

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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:
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>

# HOUSE . . . . . No. 00232

By Mr. Robert M. Koczera of New Bedford, petition (accompanied by bill, House, No. 00232) of Carolyn C. Dykema and others for legislation to require producer responsibility for collection and recycling of discarded electronic products. Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 767 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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,  
2 televisions, computers and peripherals, are an increasing financial problem for Massachusetts  
3 cities & towns, who have to deal with more than 75,000 tons of discarded electronic products  
4 each year; and

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

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

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

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

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

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

29 SECTION 2. The General Laws are hereby amended by inserting the following new chapter  
30 16A:

31 CHAPTER 16A

32 PRODUCER RESPONSIBILTY FOR DISCARDED ELECTRONIC PRODUCTS

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

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

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

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

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

45 "Covered electronic product" means a cathode ray tube, a product containing a cathode  
46 ray tube, a Liquid Crystal Display (LCD) or other flat panel television or computer monitor or  
47 similar video display product, and a computer central processing unit that contains one or more  
48 circuit boards and includes a desktop computer or a laptop computer, and computer peripherals  
49 including but not limited to keyboards, mice and other pointing devices, printers, scanners, and

50 card readers, but does not include an automobile, a household appliance, a large piece of  
51 commercial or industrial equipment, such as commercial medical equipment, that contains a  
52 cathode ray tube, a cathode ray tube product, a flat panel display or similar video display device  
53 that is contained within, and is not separate from, the larger piece of equipment, or other medical  
54 products as that term is defined under the Federal Food, Drug, and Cosmetic Act.

55 "Department" means the department of environmental protection.

56 "Environmentally sound recycling" means collection and recycling which meets the  
57 standards established by the department.

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

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

70 "Municipal collection site" means a municipally owned solid waste transfer station or  
71 recycling center, including a facility owned by a consortium of municipalities or a facility that is

72 under contract with a municipality or consortium of municipalities to provide solid waste  
73 management services.

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

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

80 · manufactures and sells electronic products under its own brand; or

81 · resells under its own brand a product produced by others, a reseller not being regarded as a  
82 the producer of the brand if the brand of the actual producer appears on the product; or

83 · imports electronic products for first sale in the state; or

84 · manufactures and sells electronic products without affixing a brand.

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

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

90 "Retailer" includes, but is not limited to, a producer of a covered electronic product who  
91 sells directly to a consumer through any means, including, but not limited to, transactions

92 conducted through sales outlets, catalogs or the internet, or any similar electronic means, but not  
93 including wholesale transactions with a distributor or other retailer.

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

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

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

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

109 § Section 3. Sales prohibition. As of January 1, 2008, the following sales prohibitions shall  
110 apply to producers and retailers of covered electronic products:

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

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

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

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

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

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

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

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

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

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

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

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

155 · Collection of covered electronic products at consolidation centers, for any municipality  
156 which agrees to operate such collection centers and deliver the discards to the consolidation  
157 centers where the costs of the collection centers and delivery to the consolidation centers are  
158 reimbursed by the producers; and/or

159 · Collection at retail stores who agrees to participate in a business relationship with the  
160 producer; where consumers can drop off their discarded covered electronic products for  
161 collection by the producers or their agents; and/or

162 · Collection through delivery by the United Postal Service or private delivery service from the  
163 consumer directly to the producer or their recycling facility;

164 · Collection from consumers at their households or place of business; and/or

165 · Any other means approved by the department.

166 (g) The plan submitted by the producer and approved by the department must include at a  
167 minimum:

168 1. Provisions to ensure that the producer will take complete financial responsibility for its  
169 products when discarded or upon receipt at municipal recycling facilities or at consolidation  
170 facilities in the state.

171 2. A description of the collection system, including the methods of convenient collection;

172 3. A public education campaign to inform the public about the collection system, including  
173 details about meeting all consumer notification and labeling requirements;

174 4. Specific provisions detailing how the producer will inform consumers of where they may  
175 donate their used covered electronic product to nonprofit corporations, schools, public agencies,  
176 or to companies that refurbish and repair used electronics for reuse and how the plan will not  
177 impede the ability of consumers to donate computers for reuse.

178 5. Details for implementing and financing the handling of covered electronic products,  
179 historic waste, and orphan waste covered electronic products that are discarded in the  
180 Commonwealth;

181 6. Details for the method of reimbursing consolidation facilities, if used in the plan, for the  
182 costs of handling and recycling the covered electronic products;

183 7. Documentation of the willingness of all necessary parties to implement the plan,  
184 including the parties that will participate in the consolidation, treatment, recovery, reuse and  
185 recycling of the covered electronic products;

186 8. Assurances that all necessary parties will cooperate in the plan and will operate in  
187 compliance with local, state and federal waste management laws, rules and regulations;

188 9. Descriptions of the performance measures that will be used and reported by the producer  
189 to report recovery and recycling rates for covered electronic products at the end of their useful  
190 life;

191 10. Descriptions of additional or alternative actions that will be taken to improve recovery and  
192 recycling rates, if needed; and

193 11. Description of how the producer will be responsible for all costs associated with the  
194 development and implementation of the plan.

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

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

198 · any fee imposed at the sale of the product; or

199 · a fee at the time the discarded product is delivered by the consumer to a collection point or  
200 is collected from the consumer; or

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

204 · any cost to be imposed on a city, town, county, regional entity, or other subdivision of the  
205 state unless said cost is agreed to by the city, town, county, regional entity, or other subdivision  
206 of the state.

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

210 A producer may provide for the collection of their discarded products at consolidation  
211 facilities throughout the state, individually or in cooperation with other producers, with  
212 municipalities who agree to participate in delivery of collected covered electronic products to the  
213 facility and who will be fully reimbursed by the producers through the consolidation facilities for

214 all costs. A producer shall ensure that consolidation facilities are geographically located to  
215 conveniently serve all areas of the state as determined by the department.

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

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

226 No later than January 1, 2009, a consolidation facility shall identify the producer of each  
227 discarded covered electronic product delivered to the facility and identified as generated by a  
228 household in the Commonwealth and shall maintain an accounting of the number of discarded  
229 covered electronic products by producer. No later than March 1st each year beginning in 2009, a  
230 consolidation facility shall provide this accounting by producer to the department. A  
231 consolidation facility may perform the producer identification accounting for the producer at the  
232 consolidation facility or may contract for this identification and accounting service with the  
233 recycling and dismantling facility to which the discard is shipped.

234 A consolidation facility shall work cooperatively with producers to ensure  
235 implementation of a practical and feasible financing system. At a minimum, a consolidation

236 facility shall invoice the producers for the handling, transportation and recycling costs for which  
237 they are responsible under the provisions of this subsection and shall reimburse the  
238 municipalities for their costs for collecting, storing, and transporting the discarded covered  
239 electronic products. Within 90 days of receipt of an invoice, a producer shall reimburse a  
240 consolidation facility for allowable costs incurred by that consolidation facility.

241 A consolidation facility shall transport discarded covered electronic products to a  
242 recycling and dismantling facility that provides a sworn certification that its handling,  
243 processing, refurbishment and recycling of covered electronic products meet guidelines for  
244 environmentally sound management promulgated by the department. A consolidation facility  
245 shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling  
246 and dismantling facility that receives covered electronic products from the consolidation facility  
247 and shall provide the department with a copy of these records within 24 hours of request by the  
248 department.

249 Section 7. Reporting. No later than January 1, 2009, and annually thereafter, a producer  
250 that offers a covered electronic product for sale in this state shall submit a report to the  
251 department that includes the following: a description of the collection, consolidation and  
252 recycling services utilized to recover the producer's products; substantiated estimates, on an  
253 annual basis for the preceding calendar year, of the quantities of covered electronic products  
254 marketed in this state and collected for recovery in this state; the return rate for their covered  
255 electronic products based on sales in this state; substantiated estimates of the percentage of  
256 collected materials that are reused and recycled from its products; the identification of end  
257 markets including the amount re-used and the amount recycled and the ultimate destination of

258 recycled and reused products for the collected discards; and any systems implemented by the  
259 producer to ensure environmentally sound management of its products.

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

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

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

271 1. Require that the reuse of discarded electronic products be maximized to increase their  
272 useful life as much as possible.

273 2. Prohibit any hazardous electronic product from being sent to a solid waste (nonhazardous  
274 waste) landfill or incinerator for disposal or energy recovery, either directly or through  
275 intermediaries.

276 3. Prohibit any person who collects, recovers, treats, processes, or recycles electronic waste  
277 from exporting said waste to any country where the export of hazardous waste is prohibited by  
278 the Basel Ban Amendment decision (Decision III/1) of the Basel Convention on the Control of

279 Transboundary Movement of Hazardous Waste and Their Disposal. All producers shall provide  
280 no later than January 1 each year to the department written documentation, in a form and manner  
281 determined by the department, that their program has not resulted in the overseas export of  
282 electronic waste to any country prohibited by this section.

283 4. Prohibit covered electronic products from being sent to prisons for recycling either directly  
284 or through intermediaries.

285 5. Require that recycling facilities have a certified, or otherwise comprehensive and  
286 comparable environmental management system in place which complies with industry best  
287 practices.

288 6. Require that the entire recycling chain, including downstream intermediaries and recovery  
289 operations such as smelters, meet all applicable environmental and health regulations, and that  
290 only those facilities which provide the most efficient and least polluting recovery services  
291 available globally are used.

292 7. Require visible tracking of hazardous covered electronic products throughout the product  
293 recycling chain. The tracking information should show the final disposition of all hazardous  
294 waste materials. An independent auditor acceptable to can be used to verify compliance if  
295 needed to protect trade secrets.

296 8. Require the provision of adequate assurance such as bonds or funds held in escrow to cover  
297 environmental and other costs of the closure of recycling or processing facilities, and to provide  
298 liability insurance for accidents and incidents involving wastes and to ensure due diligence  
299 throughout the product chain.

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

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

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