

HOUSE No. 767

The Commonwealth of Massachusetts

In the Year Two Thousand 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,
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,
6 hexavalent chromium, polyvinyl chloride, brominated flame retardant and other toxic materials
7 that can pose 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
9 toxicity, 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
13 electronic products are in effect unfunded mandates imposed by the producers of such products

14 on local taxpayers; which takes funds away from other needed local government programs, such
15 as schools, fire protection, emergency services, and police; and

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

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

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

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

32 CHAPTER 16A

33 PRODUCER RESPONSIBILTY FOR DISCARDED ELECTRONIC PRODUCTS

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

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

38 “Collection system” means the system for the collection, packaging,
39 transportation, and recycling of products discarded by consumers.

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

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

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

55 or other medical products as that term is defined under the Federal Food, Drug, and Cosmetic
56 Act.

57 "Department" means the department of environmental protection.

58 "Environmentally sound recycling" means collection and recycling which meets
59 the standards established by the department.

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

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

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

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

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

- 82 manufactures and sells electronic products under its own brand; or
- 83 resells under its own brand a product produced by others, a reseller not being
84 regarded as a the producer of the brand if the brand of the actual producer appears on the
85 product; or
- 86 imports electronic products for first sale in the state; or
- 87 manufactures and sells electronic products without affixing a brand.

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

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

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

97 “Return share” means a percentage of all covered electronic products collected
98 calculated by return weight differentiated by type of product; each producer shall have the return
99 share represented by the brands it sells among the type of products it manufactures.

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

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

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

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

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

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

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

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

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

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

138 (b) No later than September 1, 2007, the department shall approve or disapprove all
139 plans submitted. A producer whose plan is disapproved may reapply at any time; the department

140 shall review and approve or disapprove such plans no later than 120 days following the date the
141 plan was submitted.

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

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

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

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

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

159 Collection of covered electronic products at consolidation centers, for any
160 municipality which agrees to operate such collection centers and deliver the discards to the

161 consolidation centers where the costs of the collection centers and delivery to the consolidation
162 centers are reimbursed by the producers; and/or

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

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

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

169 Any other means approved by the department.

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

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

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

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

179 4. Specific provisions detailing how the producer will inform consumers of where
180 they may donate their used covered electronic product to nonprofit corporations, schools, public

181 agencies, or to companies that refurbish and repair used electronics for reuse and how the plan
182 will not impede the ability of consumers to donate computers for reuse.

183 5. Details for implementing and financing the handling of covered electronic
184 products, historic waste, and orphan waste covered electronic products that are discarded in the
185 Commonwealth;

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

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

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

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

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

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

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

- 202 (h) The department shall not approve any plan that includes:
- 203 any fee imposed at the sale of the product; or
- 204 a fee at the time the discarded product is delivered by the consumer to a collection
205 point or is collected from the consumer; or
- 206 any so-called Advanced Disposal Fee (ADF) or Advanced Recovery Fee (ARF)
207 where a fee imposed at the time of sale or collection is collected from the consumer and used to
208 pay for a collection program implemented by any municipal or state government agency; or
- 209 any cost to be imposed on a city, town, county, regional entity, or other
210 subdivision of the state unless said cost is agreed to by the city, town, county, regional entity, or
211 other subdivision of the state.

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

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

221 Each municipality that agrees to participate in the consolidation facility system
222 shall ensure that covered electronic products discarded within that municipality's jurisdiction are

223 delivered to a consolidation facility. A municipality may meet this requirement through
224 collection at and transportation from a local or regional solid waste transfer station or recycling
225 facility, by contracting with a disposal facility to accept discards directly from the municipality's
226 residents or through curbside pickup or other convenient collection and transportation system.

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

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

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

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

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

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

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

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

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

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

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

281 3. Prohibit any person who collects, recovers, treats, processes, or recycles electronic
282 waste from exporting said waste to any country where the export of hazardous waste is
283 prohibited by the Basel Ban Amendment decision (Decision III/1) of the Basel Convention on
284 the Control of Transboundary Movement of Hazardous Waste and Their Disposal. All producers
285 shall provide no later than January 1 each year to the department written documentation, in a

286 form and manner determined by the department, that their program has not resulted in the
287 overseas export of electronic waste to any country prohibited by this section.

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

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

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

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

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

305 Section 9. Fees. The department shall assess a fee, pursuant to the provisions of
306 section 18 of chapter 21A, which shall be payable by the producer, which shall cover the full

307 costs incurred by the department for the preparation regulations, for the review of proposed plans
308 for collection and recycling, for other related compliance costs, and for all other costs incurred
309 for implementation of this chapter.

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

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