

**SENATE . . . . . No. 203**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
\_\_\_\_\_

An Act information technology producer responsibility model state legislation..

*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. FINDINGS AND PURPOSES.

2 The Legislature makes the following findings and states the following purposes for this  
3 Act:

4 a. Consumer electronics products are critical elements to the strength and growth of this  
5 state’s economic prosperity and our quality of life. Developing and implementing an appropriate  
6 state electronics recycling and recovery system is important to our state’s resource conservation,  
7 worker health and safety, and economic prosperity goals. In order to accomplish this goal, it is  
8 important to be mindful of the differences between products and ensure appropriate treatment  
9 given those differences. While some computers and computer monitors may be refurbished and  
10 reused and other consumer electronics products contain valuable materials, some older and  
11 bulkier consumer electronic products do not contain any valuable product but must be recycled,  
12 like televisions. For the products covered by this legislation, differences in product life  
13 expectancy, market economics, residual value, and product portability necessitate a different  
14 approach to recycling as reflected in this legislation.

15           i.       Televisions have an average useful life of 15 to 17 years and have been on the  
16 market since the late 1920s, while computers have an average life expectancy of at least 10 years  
17 less than the average television and have been in the market since only the 1980s.

18           ii.       A computer’s residual value is greater than the typical cathode ray tube television.  
19 Computers contain metals and other valuable and easily recycled or reused materials.

20           iii.       Computers are lighter and easier to handle than televisions, thus making computer  
21 collection and recycling easier than for televisions.

22           b. The purpose of this Act is to establish a comprehensive and convenient electronics  
23 recycling and/or reuse program based on manufacturer responsibility and shared responsibility  
24 among all stakeholders, including manufacturers, consumers, retailers, and government. The  
25 purposes of this recovery system are to ensure that end-of-life consumer electronics products are  
26 responsibly retired or recycled to promote resource conservation through the development of an  
27 effective and efficient system for collecting and recycling such products, and to require  
28 manufacturers to offer such service to consumers with convenience and at no recycling charge.

29           SECTION 2. DEFINITIONS.

30           a. “Brand” means symbols, words, or marks that identify a Covered Device, rather than  
31 any of its components.

32           b. “Collect” or “collection” means to collect a covered device, including, but not limited  
33 to, collection through a mail-back program, collection site or collection event.

34 c. “Consumer” means any occupant of a single detached dwelling unit or a single unit of  
35 a multiple dwelling unit (a household) who has used a Covered Device primarily for personal or  
36 home business use.

37 d. “Covered Computer Device” means a desktop or notebook computer, or computer  
38 monitor, marketed and intended for use by a Consumer, but does not include a Covered  
39 Television Device.

40 e. “Covered Television Device” means any electronic device that contains a tuner that  
41 locks on to a selected carrier frequency and is capable of receiving and displaying television or  
42 video programming via broadcast, cable, or satellite, including, without limitation, any direct  
43 view or projection television with a viewable screen of 9 inches or larger whose display  
44 technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light  
45 processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD),  
46 light emitting diode (LED), or similar technology marketed and intended for use by a Consumer  
47 primarily for personal purposes. The term does not include a Covered Computer Device.

48 f. “Covered Devices” means a Covered Computer Device and a Covered Television  
49 Device marketed and intended for use by a Consumer. “Covered electronic device,” “Covered  
50 Computer Device”, and “Covered Television Device” do not include any of the following:

51 (i) A covered electronic device that is a part of a motor vehicle or any component  
52 part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer,  
53 including replacement parts for use in a motor vehicle.

54 (ii) A covered electronic device that is functionally or physically a part of, or  
55 connected to, or integrated within equipment or a system designed and intended for use in an

56 industrial, governmental, commercial, research and development, or medical setting, including  
57 but not limited to diagnostic, monitoring, control or medical products (as defined under the  
58 Federal Food, Drug, and Cosmetic Act), or equipment used for security, sensing, monitoring,  
59 anti-terrorism, emergency services purposes or equipment designed and intended primarily for  
60 use by professional users.

61 (iii) A covered electronic device that is contained within a clothes washer, clothes  
62 dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range,  
63 dishwasher, room air conditioner, dehumidifier, air purifier, or exercise equipment.

64 (iv) Telephones of any type (including mobile).

65 (v) A personal digital assistant (PDA).

66 (vi) global positioning systems (GPS).

67 g. "Department" means the state department of environmental protection.

68 h. "Computer Manufacturer" means any existing person: (i) who manufactures or  
69 manufactured Computer Covered devices under a brand that it owns or owned or is or was  
70 licensed to use, other than a license to manufacture covered devices for delivery exclusively to or  
71 at the order of the licensor; (ii) who sells or sold covered devices manufactured by others under a  
72 brand that the seller owns or owned or is or was licensed to use, other than a license to  
73 manufacture covered devices for delivery exclusively to or at the order of the licensor; or (iii) for  
74 whose account covered devices, manufactured outside the United States, are or were imported  
75 into the United States, provided, however, if at the time such covered devices are or were  
76 imported into the United States, another person has offered to collect such covered devices under

77 a recovery plan pursuant to subsection c of section 5, then this clause (iii) shall not apply. A  
78 Computer Manufacturer does not include a party who owns and licenses the brand appearing on  
79 the Covered Computer Device and does not also manufacture or sell the Covered Computer  
80 Device.

81 i. “Market share” means a Television Manufacturer's obligation to recycle discarded  
82 televisions. A Television Manufacturer’s market share is the television manufacturer's prior  
83 year's sales of Televisions (by weight) as calculated by the Department divided by all  
84 manufacturers' prior year's sales for all televisions (by weight) as calculated by the Department.  
85 Market share may be expressed as a percentage, a fraction, or a decimal fraction.

86 j. “Manufacturers” means Television Manufacturers and Computer Manufacturers.

87 k. “Person” means any individual, business entity, partnership, limited liability company,  
88 corporation, not-for-profit corporation, association, governmental entity, public benefit  
89 corporation or public authority.

90 l. “Program year” means a full calendar year beginning on or after January 1, 200\_.

91 m. “Recover” means to reuse or recycle; and “recoverer” means a person or entity that  
92 reuses or recycles.

93 n. “Recycle” means processing (including disassembling, dismantling, and shredding)  
94 covered electronic devices or their components to recover a useable product. “Recycling” does  
95 not include any process defined as incineration under applicable laws and regulations.

96 o. “Retailer” means a person who owns or operates a business that sells covered devices  
97 directly to a consumer, including through sales outlets, catalogs or the Internet, whether or not  
98 the seller has a physical presence in this state.

99 p. “Sell,” “Offer for Sale”, or “Sale” means any transfer for consideration of title  
100 including, but not limited to, transactions conducted through sales outlets, catalogs, or the  
101 Internet or any other similar electronic means, but does not mean financing or leasing.

102 q. “Television” means any electronic device that contains a tuner that locks on to a  
103 selected carrier frequency and is capable of receiving and displaying of television or video  
104 programming via broadcast, cable, or satellite, including, without limitation, any direct view or  
105 projection television with a viewable screen of 9 inches or larger whose display technology is  
106 based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP),  
107 liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode  
108 (LED), or similar technology marketed and intended for use by a consumer primarily for  
109 personal purposes. The term does not include Covered Computer Device.

110 r. “Television Manufacturer” means a person who: (i) manufactures Covered Television  
111 Devices under a brand that it licenses or owns, for sale in this state; (ii) manufactures Covered  
112 Television Devices without affixing a brand for sale in this state; (iii) resells into this state a  
113 Covered Television Device under a brand it owns or licenses produced by other suppliers, this  
114 includes retail establishments that sell Covered Television Devices under a brand the retailer  
115 owns or licenses; (iv) imports into the United States or exports from the United States a Covered  
116 Television Devices for sale in this state; (v) sells at retail a Covered Television Device acquired  
117 from an importer that is the manufacturer as described in subparagraph (iv) of this subdivision,

118 and elects to register in lieu of the importer as the manufacturer for those products; (vi)  
119 manufactures Covered Television Devices, supplies them to any person or persons within a  
120 distribution network that includes wholesalers or retailers in this state, and benefits from the sale  
121 in this state of those Covered Television Devices through such distribution network; or (vii)  
122 assumes the responsibilities and obligations of a Television Manufacturer under this Bill. In the  
123 event the Television Manufacturer is one who manufactures, sells, or resells under a brand it  
124 licenses, the licensor or brand owner of such brand shall not be included in the definition of  
125 Television Manufacturer under subsection (i) or (iii) above.

126 SECTION 3. APPLICABILITY.

127 The collection and recovery provisions of this Act apply to Covered Devices used and  
128 returned by Consumers in this state.

129 SECTION 4. COMPUTER MANUFACTURERS.

130 a. Sale Prohibition. No Computer Manufacturer shall sell or offer for sale a Covered  
131 Computer Device in this state unless the Computer Manufacturer includes the Computer  
132 Manufacturer's name and Brand—whether owned or licensed—by the Computer Manufacturer.

133 b. Annual Report and Registration Fee. By January 1, 200\_, each Computer  
134 Manufacturer shall pay to the Department a registration fee of two thousand five dollars (\$2,500)  
135 to be used to cover any administrative costs associated with implementing this Bill and report the  
136 list of all of the brands the Computer Manufacturer is using on its Covered Computer Devices  
137 (regardless of whether it owns or licenses the brand) and shall be effective upon receipt by the  
138 department.

139           c. Recovery Plan. No Computer Manufacturer shall sell or offer for sale any Covered  
140 Computer Device in this state unless the Computer Manufacturer has adopted and is  
141 implementing a recovery plan under which the Computer Manufacturer offers to collect from a  
142 consumer and recover each Covered Computer Device that is labeled with the Computer  
143 Manufacturer's brand at no charge to the consumer.

144           d. Collection for Covered Computer Devices.

145           (i)     The Computer Manufacturer's recovery plan must offer Covered Computer  
146 Device collection services that are reasonably convenient and available and designed to meet the  
147 collection needs of consumers in the state.

148           (ii)    The following is a nonexclusive list of systems that can be used, alone or together,  
149 to meet the convenience requirements of this section:

150           (1)     Mail-back systems: the Computer Manufacturer or its designee offers a system in  
151 which the consumer can return an end of life Covered Computer Device through the mail or  
152 common-carrier shipment;

153           (2)     Physical collection sites: the Computer Manufacturer or its designee keeps open  
154 and staffed physical collection site(s) at which consumers may return end of life Covered  
155 Computer Devices; or;

156           (3)     Collection events: the Computer Manufacturer or its designee holds collection  
157 event(s) at which consumers may return end of life Covered Computer Devices.

158           (iii)    Collection services may use existing collection infrastructure for handling  
159 Covered Devices and may include electronic recyclers and repair shops, municipal or local



160 government transfer stations, recyclers of other commodities, reuse organizations, not-for-profit  
161 corporations, retailers, recyclers, or other suitable operations.

162 e. Cost. Computer Manufacturers must offer collection under their recovery plan at no  
163 charge to the consumer.

164 f. Education. Each Computer Manufacturer shall, as part of its recovery plan, inform  
165 consumers in this state about where and how to return and recover Covered Computer Devices.  
166 Each Computer Manufacturer shall include collection and recovery information on its website,  
167 shall provide such information to the department, and may also include such information in the  
168 covered device's packaging or accompanying the sale of the covered device.

169 g. Annual Report and Renewal. Each Computer Manufacturer shall annually report to  
170 the Department on or before February 28, beginning the second program year, the weight of  
171 Covered Computer Devices collected and recovered in this state during the previous program  
172 year. The report also shall include documentation verifying proper collection and recovery of  
173 such material compliant with the sound environmental management provisions under Section 11.  
174 At the same time, each Computer Manufacturer shall pay to the Department a registration fee of  
175 two thousand five dollars (\$2,500) to be used to cover any administrative costs associated with  
176 implementing this Bill.

177 h. Data Security. Computer Manufacturers and their licensors shall not be liable in any  
178 way for data or other information that a Consumer may leave on a Covered Device that is  
179 collected or recovered.

180 i. Multiple Computer Manufacturers. Where more than one person is within the  
181 definition of Computer Manufacturer of a Brand of a Covered Computer Device under

182 subsection f of section 3, any one or more such persons may assume responsibility for and satisfy  
183 the obligations of a manufacturer under this Act with respect to covered devices bearing that  
184 brand. In the event that no person assumes responsibility for and satisfies the obligations of a  
185 Manufacturer under this Act with respect to covered devices bearing that Brand, the department  
186 may consider any one or more persons within such definition to be the Manufacturer of that  
187 brand.

188 j. Liability under applicable law. Nothing in this Act is intended to exempt any person  
189 from liability he or she would otherwise have under applicable law.

190 k. Exemption. This section does not apply to a Manufacturer solely of Covered Devices  
191 that the Department determines are of such a character that the Covered Devices would not be  
192 used by a Consumer. If, however, such a Manufacturers also Manufacturers one or more  
193 Covered Devices that are of such character as to be used by a Consumer, then the provisions of  
194 this section nevertheless apply to the Manufacturer for those Covered Devices.

## 195 SECTION 5. TELEVISION MANUFACTURERS.

196 a. Sale Prohibition. No Television Manufacturer shall sell or offer for sale a Covered  
197 Television Device in this state unless the Television Manufacturer includes the Television  
198 Manufacturer's name and brand—whether owned or licensed—on the Covered Television  
199 Device.

200 b. Annual Report and Registration Fee. By January 1, 20--, each Television  
201 Manufacturer, before selling or offering for sale Covered Television Devices in the State, shall  
202 register with the Department and, at the time of registration, shall pay an initial registration fee of  
203 two thousand five hundred dollars (\$2,500) to the Department. Thereafter, if a Television

204 Manufacturer has not previously registered, the Television Manufacturer shall register with the  
205 Department prior to any offer for sale for delivery in this State of the Television Manufacturer's  
206 new Covered Television Device. A Television Manufacturer that has registered shall pay an  
207 annual renewal registration fee of two thousand five hundred dollars (\$2,500) to the Department  
208 by January 1 of each year. The registration and each renewal shall include the following :

209 i. List of all of the Television Manufacturer is using on its Covered Television  
210 Devices (regardless of whether it owns or licenses the brand) and shall be effective on the second  
211 day of the succeeding month after receipt by the Department of the registration or renewal;

212 ii. Contact information for the Television Manufacturer's designated agent or  
213 employee whom the Department may contact for information related to the Television  
214 Manufacturer's compliance with the requirements of this section.

215 d. Recycling Obligation. The obligation to recycle Covered Television Devices shall be  
216 allocated to each Television Manufacturer based on the Television Manufacturer's Market Share  
217 multiplied by the total pounds of Televisions recycled by all Television Manufacturers during the  
218 previous program year. Beginning in program year 20\_\_, a Television Manufacturer must  
219 annually recycle or arrange for the recycling of its Market Share of Covered Television Devices  
220 pursuant to this Section.

221 e. A Television Manufacturer may fulfill the requirements of this Section either  
222 individually or in participation with other Television Manufacturers.

223 f. A Television Manufacturer shall report to the Department by March 31, 2012, and  
224 annually thereafter, the total weight of Covered Television Devices the Television Manufacturer  
225 collected in the State and recycled during the previous year.

226 SECTION 6. RETAILERS.

227 a. Sale Prohibition. No retailer shall sell or offer for sale a Covered Device in this state  
228 unless the Covered Device has a proper manufacturer label, including the Manufacturer's Brand  
229 and name and such device's Manufacturer is included on the state list of Manufacturers with  
230 recovery plans.

231 b. Data Security. Retailers shall not be liable in any way for data or other information that  
232 a consumer may leave on a Covered Device that is collected or recovered.

233 SECTION 7. DEPARTMENT.

234 a. Education. The Department shall educate consumers about collection and recovery of  
235 Covered Devices.

236 b. Website. The Department shall host, or designate another person to host, a website  
237 about Covered Device recovery for Consumers, with information about and links to  
238 Manufacturers' collection and recovery information, including their recovery plans, and  
239 information about and links to information about collection events, collection sites, and  
240 community recycling programs for Covered Devices. Inclusion on the state's website is not a  
241 determination by the state that the manufacturer's recovery plan or actual recovery are in  
242 compliance with this Act or other laws.

243 c. Calculation of Market Share. The Department shall use State-specific television sales  
244 data or national television sales data available from commercially available analytical sources to  
245 determine each Television Manufacturer's recovery responsibilities for televisions based on the  
246 Television Manufacturer's Market Share. If the Department uses national sales data, the

247 Department shall extrapolate data for the State from national data on the basis of the State's  
248 share of national population. The Department shall seek to establish the most accurate  
249 determination of each Television Manufacturer's Market Share and may rely on supplemental  
250 sources of information to achieve this goal.

251 d. Notify Television Manufacturer of Market Share. By May 1, 20\_\_ and annually  
252 thereafter, the Department shall notify each Television Manufacturer of its non-binding recycling  
253 obligation. Each Television Manufacturer's obligation will be based on that Television  
254 Manufacturer's Market Share from the previous year multiplied by the total pounds of  
255 Televisions collected by all Television Manufacturers during the previous program year.

256 c. Enforcement.

257 (i) The department may conduct audits and inspections to determine compliance  
258 under this Act. The department and the state attorney general, as appropriate, shall enforce the  
259 provisions of this Act and take enforcement action against any Covered Manufacturer, Retailer,  
260 or recoverer for failure to comply with any provisions of this Act.

261 (ii) Any Covered Manufacturer who fails to label its Covered Devices as required by  
262 subsection d of section 5, or section 6, or adopt and implement a recovery plan as required by  
263 section 5 or section 6, may be assessed a penalty of up to ten thousand dollars for the first  
264 violation and up to twenty-five thousand dollars for the second and each subsequent violation, in  
265 addition to being responsible for any penalties required by or imposed pursuant to this Act.

266 (iii) Except as provided in subsection (ii) directly above, any person who violates any  
267 requirement of this Act may be assessed a penalty of up to one thousand dollars for the first

268 violation and up to two thousand dollars for the second and each subsequent violation, in  
269 addition to being responsible for any penalties required by or imposed pursuant to this Act.

270 (iv) The department shall determine the appropriate penalties, as provided in this  
271 subsection, based on adverse impact to the environment, unfair competitive advantage, and other  
272 considerations as the department deems appropriate.

273 (v) Penalties shall be paid to the department.

274 (vi) Any violation of the sales prohibitions of this Act may be enjoined in an action, in  
275 the name of the state, brought by the attorney general.

276 (vii) Beginning with the second Program Year, if a Covered Television Manufacturer  
277 fails to recycle its market share allocation, the Department shall impose a penalty on the Covered  
278 Television Manufacturer a penalty of \$0.50 per pound for each pound not met.

279 d. Financial and Proprietary Information. Financial or proprietary information submitted  
280 to the department under this Act is exempt from public disclosure, in accordance with state law.

281 e. Annual Report. The department shall compile the information from Covered  
282 Manufacturers and issue a report to the Legislature by April 1 each year, beginning the second  
283 program year.

284 f. Rules. The department may adopt such rules and regulations as are necessary to  
285 implement the provisions of this Act.

286 g. Use of Penalty Funds. The department shall use any money received from penalties or  
287 failure of Covered Television Manufacturers to meet recovery obligations to offset costs

288 associated with administering the program and to provide grants to local governments collecting  
289 Covered Devices.

290 h. No Fees. The department does not have the authority to assess any fees, including an  
291 advanced recycling fee, registration fee, or other fee, on Consumers, Manufacturers, Retailers, or  
292 recoverers for collection or recovery of Covered Devices except those noted in Sections 5, 6, and  
293 8(c).

#### 294 SECTION 8. CONSUMERS.

295 a. Data Security. Consumers remain responsible for any data or other information that  
296 may be on a Covered Device that is collected or recovered.

297 b. Education. Consumers also are encouraged to learn about proper recovery of their  
298 end-of-life covered devices by visiting the department's and Manufacturers' websites.

#### 299 SECTION 9. SOUND ENVIRONMENTAL MANAGEMENT.

300 Compliance. All covered devices collected pursuant to this Act shall be recovered in a  
301 manner that is in compliance with all applicable federal, state, and local laws and requirements.

302 b. The Department shall adopt by reference the EPA's Plug-in Guidelines as  
303 requirements.

#### 304 SECTION 10. STATE PROCUREMENT.

305 a. Compliance.

306 (i) Any person who submits a bid for a contract with a state agency for the purchase  
307 or lease of Covered Devices must show that the brand of the Covered Device is in compliance  
308 with this Act.

309 (ii) A state agency that purchases or leases Covered Devices shall require each  
310 prospective bidder to certify compliance with this Act. Failure to provide such certification shall  
311 render the prospective bidder ineligible to bid on the procurement of covered devices.

312 b. State Purchasing Preferences. In considering bids for state contracts for covered  
313 devices, in addition to any other preferences provided elsewhere under state law, the state shall  
314 give special preference to Covered Computer Manufacturers that have programs to recover other  
315 Manufacturers' Covered Computer Devices, including but not limited to collection events,  
316 recycling grants, and manufacturer initiatives to take back any covered device brand with  
317 purchase.

318 c. Rulemaking. The state's procurement agency shall adopt rules to implement this  
319 section's provisions.

## 320 SECTION 11. FEDERAL PREEMPTION.

321 This Act shall be deemed repealed if a federal law or a combination of federal laws takes  
322 effect that establishes a national program for the collection and recycling of Covered Devices  
323 that substantially meets the intent of this Act.