

**HOUSE . . . . . No. 2017**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Peter V. Kocot*

*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 adoption of the accompanying bill:

An Act to create a framework to re-allocate responsibility for discarded products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/21/2011</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/4/2011</i>
<i>James B. Eldridge</i>		<i>2/3/2011</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/3/2011</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/4/2011</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>	<i>2/4/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>2/4/2011</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>2/4/2011</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>	<i>2/4/2011</i>

**HOUSE . . . . . No. 2017**

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By Mr. Kocot of Northampton, a petition (accompanied by bill, House, No. 2017) of Peter V. Kocot and others for the establishment of product stewardship programs to provide free of charge recycling when products are sold or discarded. Environment, Natural Resources and Agriculture.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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An Act to create a framework to re-allocate responsibility for discarded products.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           The General Laws are hereby amended by inserting after chapter 21N the following  
2 chapter:-

3           CHAPTER 21O.

4           AN ACT TO CREATE A FRAMEWORK TO RE-ALLOCATE RESPONSIBILITY  
5 FOR DISCARDED PRODUCTS

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

8           “Brand”, a name, symbol, word or mark that identifies a product and attributes the  
9 product to the owner of the brand as the producer.

10           “Covered entity”, any person with a discarded product covered by sections 1 to 15 of this  
11 act.

12 “Department”, the Department of Environmental Protection.

13 “Discarded product”, a product no longer wanted by its owner that is discarded or is  
14 intended to be discarded.

15 “Disposition rate”, quantitative measures that establish on an annual basis the percentage  
16 of discarded products that are recycled, reused or properly disposed of, including energy  
17 recovery, relative to the total amount collected or total amount collected per capita in a product  
18 stewardship program.

19 “Environmentally sound management practices”, policies as defined by rules adopted  
20 pursuant to section 7 of this act that are implemented by a producer or a stewardship organization  
21 to ensure compliance with applicable laws and that address issues such as adequate record  
22 keeping, tracking and documenting the fate of materials within this commonwealth and beyond,  
23 on-site operations, security of facilities and materials, worker health and safety requirements,  
24 environmental protection, closure plans, adequate insurance and financial assurances.

25 “Historical product”, any product that is not currently marketed or sold by the producer.

26 “Orphan product”, a product that lacks a brand, for which the producer is no  
27 longer in business and has no successor in interest or for which the Department of Environmental  
28 Protection cannot identify a producer.

29 “Performance goal”, a metric established by a producer or the Department of  
30 Environmental Protection to measure on an annual basis the performance of a product  
31 stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or  
32 health impacts related to a product.

33 “Person”, the United States, this commonwealth, a public or private corporation, a local  
34 government unit, a public agency, an individual, a partnership, an association, a firm, a  
35 trust, an estate or another legal entity.

36 “Producer” a person:

37 (a) Who manufactures a product and who sells, offers for sale or distributes that product  
38 in Massachusetts under the manufacturer’s own name or brand;

39 (b) If paragraph (a) of this subsection does not apply, who is not the manufacturer of the  
40 product but is the owner or licensee of a trademark or brand under which a product is sold or  
41 distributed in Massachusetts, whether or not the trademark is registered; or

42 (c) If paragraphs (a) and (b) of this subsection do not apply, who imports the product into  
43 Massachusetts for sale or distribution.

44 “Product”:

45 (a) A single item or group of similar items specified in section 3 of this act; and

46 (b) Historical products and orphan products of the same type as the items described in  
47 paragraph (a) of this subsection.

48 “Product goal”, any change in the design and manufacture of a product that reduces or  
49 has the potential to reduce environmental or health impacts.

50 “Product stewardship plan”, a statewide plan that describes a program for the collection,  
51 transportation, recycling, reuse and disposal of discarded products and any related performance

52 goals and product goals and that is developed and provided for by a producer or group of  
53 producers.

54 “Product stewardship program”, a statewide program financed and managed by a  
55 producer or group of producers that is based on an approved product stewardship plan and that  
56 addresses the environmental or health impacts of a product over the entire life cycle of that  
57 product.

58 “Recycling”, (a) any process by which discarded products, components and  
59 byproducts are transformed into new, usable or marketable materials in a manner in which the  
60 original products may lose their identity, and (b) does not include energy recovery or energy  
61 generation by means of combusting discarded products, components and by-products with or  
62 without other waste products.

63 “Retailer”, any person that offers new products for sale at retail through any  
64 means, including but not limited to remote offerings such as sales outlets, catalogs or the  
65 Internet.

66 “Reuse”, the return of a product into the economic stream for use in the same kind  
67 of application as originally intended, without a change in the product’s form or function.

68 “Sell” or “sale”, any transfer of title for consideration, including but not limited to  
69 remote sales conducted through sales outlets, catalogs or the Internet or any similar electronic  
70 means, but excluding lease arrangements.

71 “Statewide product stewardship system”, the statewide system of product stewardship  
72 programs established and managed by producers or stewardship organizations that are overseen  
73 by the Department of Environmental Protection.

74 “Stewardship organization”, a corporation, nonprofit or other legal entity appointed by a  
75 producer or group of producers to act as an agent on behalf of the producer to administer a  
76 product stewardship program.

77 Section 2. The department may adopt rules as necessary to implement sections 1 to 15 of  
78 this act.

79 Section 3. (1) Every two years, after consultation with the advisory committee established  
80 pursuant to subsection (6)(a) of this section, the department may identify a list of potential  
81 products that may be appropriate for a product stewardship program. The department must hold  
82 at least one public meeting where interested persons can provide comment regarding the listing  
83 of potential products.

84 (2) Upon review of any public comment and any relevant information and after  
85 consultation with the advisory committee, the department may select from the list developed  
86 pursuant to subsection (4) of this section products for further evaluation. The department may  
87 consider whether a product’s packaging should be included in this evaluation. These products  
88 shall be evaluated based on the factors in subsection (3) of this section.

89 (3) In evaluating a product, the department shall consider the following factors:

90 (a) Potential to reduce waste, toxicity, greenhouse gas emissions or other environmental  
91 or health impacts;

92 (b) Potential to encourage product design or manufacture that reduces environmental or  
93 health impacts;

94 (c) Current or potential contribution of the product to the weight, volume or toxicity of  
95 the solid waste stream;

96 (d) Public demand or need for improved recycling, reuse or disposal opportunities;

97 (e) Producer ability to manage the product through a product stewardship program;

98 (f) Fiscal impacts to local governments, producers, retailers, consumers and other  
99 affected parties of using a product stewardship program to address the management of a product  
100 after the product is discarded; and

101 (g) Any other consideration relevant to the management of a product under a product  
102 stewardship program.

103 (4) Based on the evaluation provided in subsections (2) and (3) of this section and after  
104 consultation with the advisory committee, the department may determine products to be covered  
105 under the Product Stewardship program. Prior to making this determination, the department must  
106 hold at least one public meeting and post recommendations on its website for 30 days to allow  
107 for public comments.

108 (5) The department may not add more than two products in a two-year period unless it  
109 determines that:

110 (a) The threat to the environment or public health warrants the recommendation of  
111 additional products; or

112 (b) The products are of a similar class or type.

113 (6)(a) Prior to undertaking the process described in this section, the department shall  
114 appoint and convene a standing advisory committee to provide technical information and advice  
115 regarding the identification, evaluation and recommendation of products. The committee must  
116 have at least 11 members and, at a minimum, one member must represent each of the following  
117 groups:

118 (A) Producers;

119 (B) Local governments;

120 (C) Environmental groups;

121 (D) The solid waste industry; and

122 (E) The retail industry.

123 (b) To encourage coordination with other states, the department may invite  
124 representatives from other states to participate in the committee proceedings as nonmembers.

125 Section 4. The products approved by the department identified in section 3 are covered  
126 by the provisions of sections 1 to 15 of this Act.

127 Section 5. (1) The department shall adopt product-specific rules to address the  
128 implementation of product stewardship programs for the products specified in section 6 of this  
129 act.

130 (2)(a) Prior to adopting product-specific rules, the department shall appoint an advisory  
131 committee to advise on the development of product-specific rules.

132           The committee shall have at least nine members and, at a minimum, one member must  
133 represent each of the following groups:

134           (A) Producers;

135           (B) Local governments;

136           (C) Environmental groups;

137           (D) The solid waste industry;

138           (E) The retail industry; and

139           (F) Consumers or covered entities.

140           (b) To encourage coordination with other states, the department may invite  
141 representatives from other states to participate in the committee proceedings as nonmembers.

142           (3) Any product-specific rules developed and adopted pursuant to this section shall  
143 address the following:

144           (a) Definition of covered entities;

145           (b) Environmentally sound management practices;

146           (c) Performance goals and product goals as provided in section 11 of this act;

147           (d) The disposal ban as provided in 310 CMR 19.017;

148           (e) Implementation date for the product stewardship program;

149           (f) Department's administrative fees; and

150 (g) Any other requirement relevant to the management of a product under a product  
151 stewardship program.

152 Section 6. (1) Producers of products specified in section 3 of this act for which rules are  
153 adopted pursuant to section 5 of this act shall establish product stewardship programs for the  
154 products. Every producer shall:

155 (a) Operate, either individually or collectively with other producers, a product  
156 stewardship program; or

157 (b) Enter into an agreement with one or more stewardship organizations to operate, on the  
158 producer's behalf, a product stewardship program.

159 (2) Product stewardship programs must be provided free of charge to covered entities  
160 when a product is sold or when the discarded products are delivered or collected for reuse,  
161 recycling or disposal throughout the calendar year. All discarded products collected for a  
162 program must be reused or recycled unless the applicable product-specific rule provides that  
163 such products must be properly disposed of. A program must meet or exceed the requirements  
164 for the collection of products set forth in the product stewardship plan required by section 7 of  
165 this act.

166 (3) Producers must pay all administrative, operational and capital costs associated with  
167 the product stewardship programs, including costs of collection, transportation, recycling, reuse  
168 and disposal of the products and their components. Producers must provide adequate insurance  
169 and financial assurances for operation of the product stewardship programs.

170 (4) Product stewardship programs must meet or exceed the environmentally sound  
171 management practices provided in the applicable product-specific rules as well as any other  
172 applicable federal, state or local requirements regarding the management of the collected  
173 products.

174 (5) A producer may not sell or offer for sale in Massachusetts any product unless the  
175 product or, where appropriate, the product package or container, is labeled with a brand that is  
176 permanently affixed and readily visible and the brand is included in an approved product  
177 stewardship plan.

178 (6) All product stewardship programs shall operate in accordance with:

179 (a) The product stewardship plan as approved by the department; and

180 (b) Sections 1 to 15 of this act and any applicable rules adopted pursuant to sections 1 to  
181 15 of this act.

182 (7) Product stewardship programs shall include an education and outreach component to  
183 promote the use of the program and to inform covered entities of available collection options.

184 This information must be provided to covered entities, retailers and other interested  
185 parties.

186 Section 7. (1) Producers must submit a product stewardship plan to the department that  
187 addresses the following:

188 (a) Information about participating producers, including but not limited to:

189 (A) Contact information for producers;

- 190 (B) Contact information for the individual or entity submitting the plan;
- 191 (C) A description of any stewardship organization that operates the product stewardship  
192 program; and
- 193 (D) Producers' products and associated brands covered by the product stewardship  
194 program and product stewardship plan.
- 195 (b) Information on performance goals and product goals, including but not limited to:
- 196 (A) A description of annual performance goals and, if applicable, product goals; and  
197 (B) Compliance with annual performance goals and, if applicable, product goals.
- 198 (c) Collection system information, including but not limited to:
- 199 (A) How the product stewardship program will be available, convenient, accessible and  
200 free of charge for all covered entities in urban and rural areas statewide; and
- 201 (B) How discarded products will be collected in all counties in the commonwealth and all  
202 cities with populations of at least 10,000.
- 203 (d) Implementation of environmentally sound management practices for the collection,  
204 transportation, recycling, reuse and disposal of discarded products.
- 205 (e) Management of collected products, including but not limited to:
- 206 (A) How the collected products will be recycled, reused or, where required by the  
207 product-specific rules, properly disposed of; and
- 208 (B) How all residuals that cannot be recycled or reused will be properly managed.

209 (f) Financial information, including but not limited to:

210 (A) How the product stewardship program will be financed;

211 (B) The mechanism for securing and disbursing funds to cover administrative,  
212 operational and capital costs; and

213 (C) Demonstration of adequate insurance and financial assurances for collection,  
214 transportation, recycling, reuse or disposal operations.

215 (g) Outreach and education to covered entities including, but not limited to:

216 (A) How to use and access the product stewardship program; and

217 (B) How this information will be provided to collectors, retailers and other interested  
218 parties.

219 (h) Public and stakeholder consultation, including but not limited to:

220 (A) Opportunities for the public and other stakeholders to comment on the product  
221 stewardship plan prior to submission; and

222 (B) Opportunities for the public and other stakeholders to comment on the  
223 implementation and operation of the product stewardship program.

224 (2) If the department determines that a proposed product stewardship plan complies with  
225 sections 1 to 15 of this act and any applicable rules and is in the public interest, the department  
226 shall approve the product stewardship plan.

227 (3) All product stewardship plans submitted and approved by the department must be  
228 available to the general public through the website of the producer or the stewardship  
229 organization.

230 (4) The department shall maintain a website listing of producers and brands covered by  
231 approved product stewardship plans and product stewardship programs, updated by the first day  
232 of each month.

233 Section 8. (1) All product stewardship plans must be submitted to the department no later  
234 than 120 days following the adoption of the applicable product-specific rules, or no later than  
235 120 days prior to the sale or offer for sale of a product in Massachusetts.

236 (2) The department shall approve or reject the product stewardship plan within 60 days of  
237 receiving the plan unless the department requests additional information regarding the plan.

238 (3) If a product stewardship plan is rejected and the producer wishes to submit a revised  
239 plan, the producer must do so within 60 days of the date of the letter of rejection.

240 (4) Product stewardship plans must be updated and submitted to the department for  
241 review at least once every four years from the date on which the plan is first approved or more  
242 frequently as needed to ensure compliance with this act.

243 (5) If a producer joins an approved product stewardship plan, the producer must notify  
244 the department prior to selling or offering for sale any products in Massachusetts.

245 Section 9. (1) As of the implementation date established by the applicable product  
246 specific rule, a producer, retailer or other person may not sell the product or offer the product for

247 sale to any person in this commonwealth unless the producer is participating in an approved  
248 product stewardship program.

249 (2) A retailer or other person complies with the requirements of this section if, on the date  
250 the product is ordered from the producer or its agent, the website of the department lists the  
251 producer, along with the product brand, as operating or participating in an approved product  
252 stewardship program.

253 (3) At the time of sale to a consumer, a producer, retailer or other person selling a product  
254 or offering a product for sale must provide the consumer with information on where and how to  
255 recycle or dispose of the product through a product stewardship program.

256 Section 10. (1) A producer must annually prepare and submit to the department a written  
257 report that describes how the product stewardship program was implemented in accordance with  
258 sections 1 to 15 of this act and any applicable rules.

259 (2) The department may request that additional information be submitted in order to  
260 verify any reported accomplishments under the program.

261 Section 11. (1)(a) A producer shall establish annual performance goals for discarded  
262 products collected in a product stewardship program. A producer shall establish reasonable  
263 annual performance goals for the first two years of the program's operation, provided that the  
264 goals include the following:

265 (A) Total amount collected or total amount collected per capita;

266 (B) Collection rate; and

267 (C) Disposition rate.

268 (b) The department shall establish the appropriate metric to use in measuring annual  
269 performance goals in the product-specific rule.

270 (2) Annual performance goals established by a producer for the first two years of the  
271 operation of the product stewardship program are not enforceable. However, a producer must  
272 establish, measure and report on the goal. By the third year of the operation of the product  
273 stewardship program for a product, the department shall establish an enforceable annual  
274 performance goal. A producer must meet or exceed this goal. Producers must continue to fully  
275 implement a product stewardship program even after an enforceable annual performance goal is  
276 achieved.

277 (3) A producer may establish product goals for products covered by a product  
278 stewardship program. These goals must be specific to the product and intended to achieve  
279 changes that result in a reduction in environmental or health impacts. The department shall  
280 consider and make appropriate adjustments for any product goal adopted and successfully  
281 implemented that affects the ability of a producer to meet an enforceable annual performance  
282 goal.

283 Section 12. The department may establish a schedule of fees to be paid by producers.  
284 Fees may be established in amounts to recover, but not exceed, costs incurred by the department  
285 in providing plan review, approval, program development, oversight and compliance for the  
286 products for which a producer is responsible. Fees collected by the department under this section  
287 shall be deposited in the State Treasury to the credit of the Product Stewardship Fund established  
288 under section 13 of this act.

289 Section 13. The Product Stewardship Fund is established, separate and distinct from

290 the General Fund. Interest earned by the Product Stewardship Fund shall be credited to  
291 the fund. Moneys in the fund are continuously appropriated to the department and may be used  
292 only to pay the costs of implementing sections 1 to 15 of this 2011 Act.

293 Section 14. No person shall knowingly dispose of any product specified in section 3 of  
294 this act except to handle, recycle or compost the material in accordance with a plan submitted  
295 and approved by the department.

#### 296 PENALTIES

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

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

306 Section 17. The department shall annually, not later than December 31, submit an annual  
307 report of its activities pursuant to this chapter. The report shall include: (1) an update on the  
308 implementation of this chapter and current state of compliance by collectors, processors,  
309 producers and retailers; (2) recommendations to the general court and the governor regarding  
310 proposed changes to this chapter, or any other chapter of the General Laws, or any regulations  
311 promulgated pursuant thereto; and (3) any other information the department deems appropriate.

312 The report shall be submitted to the governor, the president of the senate, the speaker of the  
313 house, the house and senate chairs of the committee on ways and means, the house and senate  
314 chairs of the joint committee on environment, natural resources and agriculture, the clerk of the  
315 senate and the clerk of the house.

316 Section 18. The department shall evaluate any federal law that establishes a national  
317 program to manage any products specified in section 3 of this Act through a product stewardship  
318 approach. If the department determines that the federal law substantially meets or exceeds the  
319 requirements and intent of sections 1 to 15 of this act, the department shall include information  
320 on the federal law in the next annual report.

321 Section 19. The department may adopt rules before the operative date specified or take  
322 any action before that date that is necessary to carry out the provisions of this chapter.

323 Section 20. No later than December 31, 2012 the department shall develop and  
324 implement the statewide product stewardship system described in this chapter.

325 Section 21. The department may participate in the establishment of a regional multistate  
326 organization or compact to assist in carrying out the requirements of this chapter.

327 Section 22. Notwithstanding any general or special law to the contrary and unless  
328 otherwise specified herein, this act shall take effect upon passage.