

**HOUSE . . . . . No. 232**

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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 adoption of the accompanying bill:

An Act to require producer responsibility for collection and recycling of discarded electronic products..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>1/18/2011</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/25/2011</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/25/2011</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>	<i>1/26/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>1/31/2011</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>	<i>2/4/2011</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/4/2011</i>

**HOUSE . . . . . No. 232**

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By Mr. Koczera of New Bedford, a petition (accompanied by bill, House, No. 232) of Robert M. Koczera and others for legislation to require producer responsibility for collection and recycling of discarded electronic products. Environment, Natural Resources and Agriculture.

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[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,  
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 RESPONSIBILITY 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.