

HOUSE No. 252**The Commonwealth of Massachusetts**

PRESENTED BY:

Frank I. Smizik

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, reuse and recycling of discarded electronic products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/13/2011</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>	<i>2/4/2011</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>2/4/2011</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/4/2011</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</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>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/4/2011</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>	<i>2/3/2011</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>	<i>2/3/2011</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>	<i>2/3/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/3/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>1/31/2011</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>	<i>2/1/2011</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>2/1/2011</i>
<i>Linda Campbell</i>	<i>15th Essex</i>	<i>2/1/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/28/2011</i>

<i>Alice K. Wolf</i>	<i>25th Middlesex</i>	<i>1/28/2011</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/28/2011</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>1/18/2011</i>
<i>William N. Brownsberger</i>		<i>1/19/2011</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/19/2011</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>	<i>1/21/2011</i>
<i>James B. Eldridge</i>		<i>1/21/2011</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/25/2011</i>
<i>Michael O. Moore</i>		<i>1/26/2011</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/28/2011</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>2/1/2011</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/31/2011</i>
<i>Geraldine M. Creedon</i>	<i>11th Plymouth</i>	<i>2/3/2011</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/3/2011</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/3/2011</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>2/4/2011</i>

HOUSE No. 252

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 252) of Frank I. Smizik and others for legislation to require producer responsibility for collection reuse and recycling of discarded electronic products. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4374 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to require producer responsibility for collection, reuse 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. The General Laws are hereby amended by inserting after chapter 21N the
2 following chapter:-

3 CHAPTER 21O.

4 RECYCLING OF DISCARDED ELECTRONIC PRODUCTS.

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

7 "Additionally covered electronic product" means any of the following electronic products
8 taken out of service from a person in this State regardless of purchase location: printers; stand-
9 alone facsimile machine; video game console, video cassette recorder/player, digital video disk

10 player, or similar video device; zip drive, external hard drive, or similar storage device; or
11 scanner. To the extent allowed under federal and state laws and regulations, an additionally
12 covered eligible electronic product that is being collected, recycled, or processed for reuse is not
13 considered to be hazardous waste, household waste, solid waste, or special waste. The term does
14 not include a covered television product or a covered computer product.

15 “Collection”, the aggregation of covered electronic products from households,
16 municipalities, the Commonwealth and any other political subdivision, and schools, including
17 the accumulation of covered electronic products at handling facilities, transfer stations, and solid
18 waste facilities, including all the activities up to the time the covered electronic products are
19 collected by a processor.

20 “Collector”, a person accepting covered electronic products from households,
21 municipalities, the Commonwealth and any other political subdivision, and schools.

22 “Collector reimbursement”, the minimum per pound rate, as established by the
23 department, paid by a processor to a collector for all covered electronic products collected.

24 “Computer”, an electronic, magnetic, optical, electrochemical, or other high speed data
25 processing device performing logical, arithmetic, or storage functions, including a laptop or a
26 combined computer central processing unit and monitor; provided, however, that an automated
27 typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other
28 similar device shall not be considered a computer.

29 “Covered computer product” means a desktop or notebook computer, netbook, or
30 computer monitor, marketed and intended for use by a person, but does not include a covered
31 television device.

“Covered electronic product” means a covered computer product, a covered television product, or additionally covered electronic product collected for reuse or recycling by collectors and processors eligible for collector reimbursement and processor reimbursement through the producer reimbursement system. “Covered electronic product,” “covered computer product,” “covered television product,” or “additionally covered electronic product” do not include any of the following:

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

(ii) A covered electronic product that is functionally or physically a part of, or connected to, or integrated within equipment or a system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including but not limited to diagnostic, monitoring, control or medical products (as defined under the Federal Food, Drug, and Cosmetic Act), or equipment used for security, sensing, monitoring, anti-terrorism, emergency services purposes or equipment designed and intended primarily for use by professional users.

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

(iv) Telephones of any type, including mobile phones.

(v) A personal digital assistant (PDA).

(vi) Global positioning systems (GPS).

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

“Department”, the department of environmental protection.

“Desktop computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, and storage functions for general purpose needs which are met through interaction with a number of software programs contained therein, which is not designed to exclusively perform a specific type of limited or specialized application. Human interface with a desktop computer is achieved through a standalone keyboard, stand-alone monitor or other display unit, and a stand-alone mouse or other pointing device, and is designed for a single user. A desktop computer has a main unit that is intended to be persistently located in a single location, often on a desk or on the floor.

“Market share”, a television producer’s national sales of televisions expressed as a percentage of the total of all television producers’ national sales based on the best available public data.

“Monitor”, a video display device without a tuner that can display pictures and sound and is used with a computer.

“Netbook” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions for general purpose needs which are met through interaction with a number of software programs contained therein, which is not designed to exclusively perform a specific type of limited or specialized application. Human interface with a netbook is achieved through a keyboard, video display greater than 4" in size, and mouse or other pointing device, all of which are contained within the construction of the unit which comprises the netbook, and can be carried as one unit by an individual. Netbook can use external, internal, or batteries for a power source. Netbook does not include a portable handheld calculator, or a portable digital assistant or similar specialized device.

“Notebook computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions for general purpose needs which are met through interaction with a number of software programs contained therein, which is not designed to exclusively perform a specific type of limited or specialized application. Human interface with a notebook computer is achieved through a keyboard, video display greater than 4" in size, and mouse or other pointing device, all of which are contained within the construction of the unit which comprises the notebook computer, and can be carried as one unit by an individual. Supplemental standalone interface devices typically can also be attached to the notebook computer. Notebook computers can use external, internal, or batteries for a power source. Notebook computer does not include a portable handheld calculator, or a portable digital assistant or similar specialized device. A notebook computer is sometimes referred to as a laptop computer.

“Orphan waste”, a covered electronic product, the producer of which cannot be identified or is no longer in business and has no successor in interest.

“Person”, a natural person, corporation, association, partnership, government body or other legal entity.

“Printer” means desktop printers, multifunction printer copiers, and printer/fax combinations taken out of service from a person that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and "multi-function" or "all-in-one" devices that perform different tasks, including without limitation copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with optional floor stand, point of sale (POS) receipt printers, household printers such as a calculator with printing capabilities or label makers, or non-stand-alone printers that are embedded into products that are not CEDs

“Processor”, a person registered with the department to receive electronic products from collectors for the purpose of sorting, weighing and reusing or recycling or shipping offsite for reuse or recycling in accordance with minimum performance requirements established by the department.

“Processor reimbursement”, the minimum per pound rate, as established by the department, paid by a producer to a processor for the producer’s covered electronic products and the producer’s share of orphan waste as determined by the department.

“Producer”, any person who: (a) has a physical presence and legal assets in the United States of America and (1) manufactures or manufactured a covered electronic product under its

own brand or label; (2) sells or sold under its own brand or label a covered electronic product produced by other suppliers; or (3) owns a brand that it licenses or licensed to another person for use on a covered electronic product; or (b) imports or imported a covered electronic product into the United States that was manufactured by a person without a presence in the United States of America; (c) sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in subsection (b) and elects to register in lieu of the importer; or (d) assumes the responsibilities and obligations of a producer under this Act.

“Program year”, a full calendar year beginning on or after January 1, 2013.

“Recycling”, to recover materials or by-products which are: (a) reused; (b) used as an ingredient or a feedstock in an industrial or manufacturing process to make a marketable product; or (c) used in a particular function or application as an effective substitute for a commercial product or commodity; provided, however, that recycle shall not mean to recover energy from the combustion of a material.

“Retailer”, shall include, but shall not be limited to, a person or a producer that sells new covered electronic products directly to a person through any means including, without limitation, transactions conducted through sales outlets and catalogs, but not including wholesale transactions with a distributor or other retailer.

“Return share”, a percentage of covered electronic products other than televisions collected through processors as calculated by dividing the total weight of covered electronic products other than televisions of that producer’s brands by the total weight of covered electronic products other than televisions for all producers’ non-orphaned brands.

141 “Reuse”, any operation by which an electronic product or component of an electronic
142 product changes ownership but retains its form and function and is used for the same purpose for
143 which it was originally purchased.

144 “Sale” or “sell”, any transfer for valuable consideration of title including, but not limited
145 to, transactions conducted through sales outlets, or through catalogs, and excluding commercial
146 financing or leasing.

147 “Television”, any telecommunication system device that can broadcast or receive moving
148 pictures and sound over a distance and includes a television tuner or a display device peripheral
149 to a computer that contains a television tuner.

150 Section 2. No person shall engage in business as a producer unless he is registered with
151 the department pursuant to section 3.

152 Section 3. (a) Every producer seeking to engage in business in the commonwealth shall
153 file an application, accompanied by the producer registration fee, with the department requesting
154 registration as a producer. Said application shall be made on a form to be furnished by the
155 department, and shall include, without limitation, the following information: (1) the name and
156 contact information of the applicant; (2) the applicant's brand names of covered electronic
157 products, including all brand names sold in the commonwealth in the past, all brand names
158 currently being sold in the commonwealth, and all brand names for which the applicant is legally
159 responsible; (3) the method or methods of sale used in the commonwealth; (4) a baseline or a set
160 of baselines that describe any efforts to design covered electronic products for reuse or recycling
161 and goals and plans for further increasing design for reuse and recycling; and (5) a description of
162 any collection, consolidation or processing services utilized to recover, reuse, or recycle the

applicant's products. The department shall, within 60 days, review the application for registration. If said application satisfies the requirements of this section, the department shall register said applicant as a producer and shall forthwith mail to him a certificate to that effect. If said application fails to satisfy the requirements of this section the producer shall, within 30 days, file with the department a revised application addressing the requirements noted by the department.

(b) The department may keep information submitted pursuant to this section confidential as provided by section 10 of chapter 66 of the General Laws. The department will publish on its website the following information: (1) the name and contact information of the producer submitting the application and (2) the producer's brand names of covered electronic products.

Section 4. (a) Registered producers shall register with the department for a specified registration period. Such applications shall be submitted to the department by the date specified by the department together with a renewal fee as shall be established by the department. After verification of the facts stated on the application, the department shall issue a registration. Any holder of a registration who fails to file a renewal application within 60 days after notification by the department that his registration has expired shall, prior to engaging in business as a producer within the commonwealth, be required to register anew and pay a late fee in addition to said renewal fee.

(b) The department shall use twelve months as a specified registration period for the first three registration periods. After three registration periods, the department may allow producers to register for a period not to exceed thirty-six months.

Section 5. (a) Producers of electronic products shall reimburse collectors for their share of product received at the processor.

(b) A producer who has sold or who sells covered electronic products other than televisions in the commonwealth shall bear the financial responsibility for the collection, transportation, and reuse or recycling of said covered electronic products received by processors, including their return share of orphan waste as determined by the department.

(c) A producer of televisions shall have the financial responsibility for the collection, transportation and reuse or recycling of televisions discarded in the commonwealth, based on the television manufacturer's market share.

(d) A producer may also collect its covered electronic products for reuse or recycling by establishing a collection program, either individually or in cooperation with other producers, to collect these discarded products as established in this chapter. A producer establishing an independent collection program for reuse or recycling either individually or in cooperation with other producers shall recover 1 or more electronic products. A producer establishing an independent recycling program either individually or in cooperation with other producers shall meet either of the following criteria to be able to continue the program. In order for an independent recycling program to maintain good standing with the department, the program must either of the following:

(i) include convenient, staffed collection sites in not less than eight counties in the commonwealth, at least one collection site within every municipality within the commonwealth with a population of at least 50,000, and be open for collections for no less than 160 hours per year. A collection site for a county may be the same as a collection site for a city in the county.

(ii) collect no less than 100,000 pounds, or higher as determined by the department, of covered electronic products cumulatively from all collections sites or collection methods.

The department shall provide a report no later than December 31, 2013, to the Joint Committee on Environment, Natural Resources, and Agriculture and the House and Senate Committees on Ways and Means on independent collection programs. This report shall include, but not be limited to, the effectiveness of the independent collection program requirements, independent collection program compliance, and collection rates of independent programs.

A producer establishing an independent recycling program either individually or in cooperation with other producers will register as a collector pursuant to section 7 of this chapter or a processor pursuant to section 10 of this chapter; however, an additional registration fee will not be required.

A producer establishing an independent recycling program either individually or in cooperation with other producers shall provide information specified by the department describing the locations for the collection or return of the producer's product, including information on opportunities and locations for donation of the product for reuse via, without limitation: (1) a toll-free telephone number; (2) a website; (3) information included in or on the packaging; or (4) written information provided at the point of sale.

A producer establishing an independent collection program shall submit an annual report to department that includes at a minimum the following information for the previous program year as well as any additional information required by the department:

(1) distinguishing the total weight of each type of covered electronic product collected for recycling;

228 (2) detailing the total number of items by each type of covered electronic product
229 collected for reuse or refurbishment;

230 (3) a description of the plan's education, outreach, or other marketing efforts to promote
231 collection of covered electronic products;

232 (4) a description of management practices to transport and recycle discarded covered
233 electronic products; and

234 (5) any additional information deemed necessary by the department.

235 A producer establishing an independent collection program for reuse or recycling either
236 individually or in cooperation with other producers shall weigh the covered electronic products
237 collected and shall annually submit a statement certifying to the department the total weight of
238 electronic products received and the weight of orphan waste received in the preceding program
239 year.

240 The department, in determining the producer's return share, shall take into account
241 electronic products voluntarily collected by the producer.

242 A producer establishing an independent collection program for reuse or recycling either
243 individually or in cooperation with other producers shall not charge a fee for collecting,
244 transporting or recycling electronic products.

245 A producer establishing an independent television recycling program either individually
246 or in cooperation with other producers that collects in excess of its market share or cumulative
247 market share allocation assigned by the Department will receive a one pound credit for each
248 pound by which they exceed the allocation. This credit may be used to count toward the market

share allocation during the following three program years or may be transferred for consideration to another independent collection program for another producer to count toward its market share allocation during the next three program years. The credits earned under this clause may only be used toward no more than twenty-five percent of a producer's market share allocation during any given program year. The total number of pounds processed by each producer, including credits that would be carried over, must be included in the report to the Department and used by the Department in calculating the target for the following program year.

Section 6. No person shall engage in business as a collector unless he is registered with the department pursuant to section 7.

Section 7. (a) Every collector seeking to engage in business in the commonwealth shall file an application, accompanied by the collector registration fee, with the department requesting registration as a collector. Said application shall be made on a form to be furnished by the department, and shall include, without limitation, the following information: (1) the name; (2) the address; (3) the telephone number; and (4) the location of the business. The department shall, within 60 days, review the application for registration. If said application satisfies the requirements of this section, the department shall register said applicant as a collector and shall forthwith mail to him a certificate to that effect. If said application fails to satisfy the requirements of this section the collector shall, within 30 days, file with the department a revised application addressing the requirements noted by the department.

(b) If a municipality applies to be a collector under this statute, the statute will apply to them except no registration or renewal fee will be required.

(c) A collector shall: (1) contract with a registered processor or processors to receive the covered electronic products collected by the collector; (2) make information available to the public that describes where and how to return, recycle, and dispose of covered electronic products; (3) accept all covered electronic products and ensure that said products are transported by or delivered to a registered processor; and (4) demonstrate compliance with the department rules and regulations and the United States Environmental Protection Agency's Responsible Recycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or state law. A collector may limit the number of covered electronic products delivered at a given time by any customer to no more than 5.

(d) A collector shall not: (1) charge a fee to persons for the collection or recycling of covered electronic products; or (2) knowingly accept covered electronic products imported into the commonwealth for the purpose of recycling or discard.

(e) Only an entity registered as a collector with the department may act as a collector in a plan. All covered electronic products received by a registered collector must be submitted to a plan. Fully functioning computers that are received by a registered collector in working order may be sold or donated as whole products by the collector for reuse. Computers that require repair to make them a fully functioning unit may only be repaired on-site at the collector's place of business by the registered collector for reuse according to its original purpose.

(f) Registered collectors may use whole parts amassed from collected computers or new parts for making repairs as long as there is a part-for-part exchange with nonfunctioning computers submitted to a plan.

(g) Registered collectors may not include computers that are dispersed for reuse in the weight totals for compensation by the plan.

(h) Registered collectors must maintain a record of computers sold or donated by the collector for a period of three years.

(i) Registered collectors must display a notice at the point of collection that computers received by the collector may be repaired and sold or donated as a fully functioning computer rather than submitted to a processor for recycling

(j) The department may conduct site visits of all registered collectors that reuse or refurbish computers and who have an agreement with the department, collector, or producer to provide collection services. The department may, for cause, review records and conduct investigations regarding a violation of this section, including but not limited to Section 14 (d) or (e).

Section 8. Collectors shall register with the department every 3 years. Such applications shall be submitted to the department by the date specified by the department together with a renewal fee as shall be established by the department. After verification of the facts stated on the application, the department shall issue a registration, which shall expire in 3 years. Any holder of a registration who fails to file a renewal application within 60 days after notification by the department that his registration has expired shall, prior to engaging in business as a collector within the commonwealth, be required to register anew and pay a late fee in addition to said renewal fee.

Section 9. No person shall engage in business as a processor unless he is registered with the department pursuant to section 10.

Section 10. (a) Every processor seeking to engage in business in the commonwealth shall file an application, accompanied by appropriate processor registration fee, with the department requesting registration as a processor. Said application shall be made on a form to be furnished by the department, and shall include, without limitation, the following information: (1) the name; (2) the address; (3) the telephone number; and (4) the location of the business of the processor's business. The department shall, within 60 days, review the application for registration. If said application satisfies the requirements of this section, the department shall register said applicant as a processor and shall forthwith mail to him a certificate to that effect. If said application fails to satisfy the requirements of this section the processor shall, within 30 days, file with the department a revised application addressing the requirements noted by the department.

(b) A processor shall: (1) be responsible for sorting all covered electronic products received from a participating collector with whom the processor has a contract; (2) weigh the total amount of covered electronic products received from a participating collector and reimburse said collector; provided, however, that said collector reimbursement shall be due within 30 days of pick-up; (3) sort, by producer, and weigh all covered electronic products other than televisions received from collectors; (4) weigh all televisions received from collectors; (5) either repair, refurbish, remanufacture, or recycle on-site or ship covered electronic products offsite for reuse or recycling in accordance with the minimum performance requirements established by the department; (6) demonstrate compliance with the department rules and regulations and the United States Environmental Protection Agency's Responsible Recycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or state law; (7) submit an invoice for producer reimbursement to each producers whose waste the

processor has handled; and (8) annually submit a report to the department which shall include without limitation: (i) the total aggregate weight of covered electronic products processed pursuant to this chapter in the previous program year; (ii) the weight, differentiated by producer, of covered electronic products processed pursuant to this chapter in the previous program year; (iii) the total amount of orphan waste processed pursuant to this chapter in the previous program year; and (iv) any other information to help track, monitor and evaluate the management of covered electronic products, as determined by the department.

(c) A processor shall not charge a fee for accepting, sorting, weighing, processing for reuse or recycling a covered electronic product for which the processor receives compensation under the provisions of this section.

Section 11. Processors shall register with the department every 3 years. Such application shall be submitted to the department by the date specified by the department together with a renewal fee as shall be established by the department. After verification of the facts stated on the application, the department shall issue a registration, which shall expire in 3 years. Any holder of a registration who fails to file a renewal application within 60 days after notification by the department that his registration has expired shall, prior to engaging in business as a processor within the commonwealth, be required to register anew and pay a late fee in addition to said renewal fee.

Section 12. The fee for a collector registration, a processor registration and a producer registration, or for any annual renewal thereof, shall be determined every three years by the department, but in no case shall any registration or renewal fee exceed \$5000.

Section 13. (a) The department shall annually: (1) determine the return share for each program year for each producer of electronic products other than televisions by dividing the weight of covered electronic products identified for each producer by the total weight of covered electronic products identified for all producers; provided further, that said calculation shall be based on the reports generated by processors of covered electronic products in the commonwealth; provided further, that for the first program year, the return share of covered electronic products identified for each producer shall be based on the best available public return share data from the United States, including data from other states, for covered electronic products from persons; provided further, that for the second and subsequent program years, the return share of covered electronic products identified for each producer shall be based on the previous year's reported data as described herein; and provided further, that the department shall use the return share for each producer to allocate financial responsibility for orphan waste; (2) determine, based on each producer's return share, each producer's share of responsibility for the orphan waste collected in the commonwealth; provided, however, that each producer's return share of orphan waste shall be equivalent to its percentage of return share for non-orphan covered electronic products, multiplied by the total amount of orphan waste collected in the program year; and provided further, that the department, in determining the producer's orphan waste share, may take into account electronic products, including orphan waste, voluntarily collected by the producer; (3) determine the market share allocation for each television producer by determining the total weight of televisions recycled in the previous year, multiplied by the market share for that producer; provided, however, that in the first program year, the market share identified for each television producer shall be based on the best available data regarding the total number of televisions sold in the commonwealth for the previous calendar year; (4)

maintain a list of producers registered pursuant to this chapter; and (5) conduct periodic audits of processors and collectors at a frequency determined by the department, to assure accuracy of reporting and billing.

(b) The department shall adopt and may from time to time amend rules and regulations, and the commissioner may issue orders, to enforce the provisions of this chapter. Said regulations shall include, but not be limited to, establishing, as a maximum number not higher than twelve, the number of times a year payment from producers to collectors and processors be made, adjudicatory procedures for denied revised applications and minimum performance requirements for collection and processing of covered electronic products. Any person, including any political subdivision of the commonwealth who violates this chapter, or any order issued pursuant thereto, or any rule or regulation promulgated hereunder shall be subject to a fine of not more than twenty-five thousand dollars for each such violation. Each day each such violation occurs or continues shall be deemed a separate offense. These penalties shall be in addition to any other penalties that may be prescribed by law.

(c) Beginning one year after this act takes effect and annually thereafter, the department shall submit a report to the House Committee on Ways and Means, the Senate Committee on Ways and Means, and the Joint Committee on Environment, Natural Resources and Agriculture that includes information regarding the previous program year. The information shall include, but is not limited to, (1) the total administrative cost to the state government, (2) the total administrative cost to local governments, (3) a description of the incentive for manufacturer collection, and (4) a description of the education, outreach, or other marketing efforts conducted by the state or local governments to promote collection of covered electronic products.

Section 14. (a) No person shall sell covered electronic products from producers not registered pursuant to this chapter. A retailer shall not be in violation of this subsection if, at time of purchase from producer, the producer was not in violation of this Chapter. This subsection shall not apply to used electronic products that are reused.

(b) No person shall offer for sale an electronic product unless a visible, permanent label clearly identifying the producer of that product is affixed to said electronic product.

(c) All retailers shall provide information describing where and how to recycle an electronic product provided by the producer pursuant to this act.

(d) No person shall knowingly dispose of any electronic product except as provided in this chapter.

(e) No person shall import a covered electronic product into the commonwealth with the intent of recycling or discarding said product; provided further, that any covered electronic product so imported shall not be eligible for reimbursement under the provisions of this chapter.

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

Section 16. The department may participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

Section 17. (a) There shall be in the Department an advisory commission, chaired by the Commissioner of the Department or his designee, for electronic waste. The commission shall include the Senate chair of the Joint Committee on Environment, Natural Resources, and Agriculture or his designee, the House chair of the Joint Committee on Environment, Natural Resources, and Agriculture or his designee. The advisory commission shall also include the following individuals to be appointed by the Secretary of Energy and Environmental Affairs: one individual representing covered television product manufacturers, one individual representing processors of covered electronic products, one individual representing a trade association of covered computer product manufacturers or covered television product manufacturers, one individual representing covered computer manufacturers, one individual representing retailers of covered electronic products and one individual representing a statewide conservation organization.

(b) Appointments to the advisory commission shall be made not later than 30 days after the effective date of this statute. If a vacancy occurs on the commission, the vacancy shall be filled within 30 days.

(c) Said advisory commission shall have the following duties: (1) It shall advise the Department on policy and program development under this section, specifically regarding performance standards; (2) It shall review the registration and renewal fees for producers, collectors and processors, and shall make recommendations to the commissioner relative thereto; and (3) It shall make recommendations to the Joint Committee on Environment, Natural Resources, and Agriculture on recommendations of amending the definition of electronic product under this statute to cover other electronic products, including but not limited to medical equipment.

447 (d) The advisory commission shall meet at least four times a year and shall convene
448 special meetings at the call of the Commissioner. A written record of all meetings of the
449 committee shall be maintained by the Department. Members of the commission shall serve
450 without compensation. The members of the commission representing the Department or the
451 General Court shall serve without additional compensation.

452 SECTION 2. Notwithstanding any general or special law to the contrary and unless
453 otherwise specified herein, this act shall take effect January 1, 2012.