

HOUSE No. 266

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

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>William M. Straus</i>	<i>10th Bristol</i>	<i>1/13/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/4/2011</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/3/2011</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>2/3/2011</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/3/2011</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>	<i>2/3/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/3/2011</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/4/2011</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/4/2011</i>
<i>William N. Brownsberger</i>		<i>2/1/2011</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>2/1/2011</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>2/4/2011</i>

HOUSE No. 266

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 266) of William M. Straus and others for legislation to require producer responsibility for collection, reuse and recycling of discarded electronic products. Environment, Natural Resources and Agriculture.

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

12 “Collector”, a person, registered with the Department, accepting covered electronic
13 products from households, municipalities, the Commonwealth and any other political
14 subdivision, and schools.

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

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

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

25 “Covered electronic product” means a covered computer product or a covered television
26 product collected for reuse or recycling by collectors and processors eligible for collector
27 reimbursement and processor reimbursement through the producer reimbursement system.

28 “Covered electronic product,” “covered computer product”, or “covered television product” do
29 not include any of the following:

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

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

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

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

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

45 (vi) Global positioning systems (GPS).

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

54 “Department”, the department of environmental protection.

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

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

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

68 “Netbook” means an electronic, magnetic, optical, electrochemical, or other high-speed
69 data processing device performing logical, arithmetic, or storage functions for general purpose
70 needs which are met through interaction with a number of software programs contained therein,
71 which is not designed to exclusively perform a specific type of limited or specialized application.
72 Human interface with a netbook is achieved through a keyboard, video display greater than 4" in
73 size, and mouse or other pointing device, all of which are contained within the construction of
74 the unit which comprises the netbook, and can be carried as one unit by an individual. Netbook

75 can use external, internal, or batteries for a power source. Netbook does not include a portable
76 handheld calculator, or a portable digital assistant or similar specialized device.

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

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

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

93 “Printer” means desktop printers, multifunction printer copiers, and printer/fax
94 combinations taken out of service from a person that are designed to reside on a work surface,
95 and include various print technologies, including without limitation laser and LED
96 (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and "multi-function" or

97 "all-in-one" devices that perform different tasks, including without limitation copying, scanning,
98 faxing, and printing. Printers do not include floor-standing printers, printers with optional floor
99 stand, point of sale (POS) receipt printers, household printers such as a calculator with printing
100 capabilities or label makers, or non-stand-alone printers that are embedded into products that are
101 not CEDs.

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

106 "Processor reimbursement", the minimum per pound rate, as established by the
107 department, paid by a producer to a processor for the producer's covered electronic products and
108 the producer's share of orphan waste, as determined by the department, shall include the
109 collector reimbursement, and may be broken down into specific elements, including but not
110 limited to, collection, sorting, or recycling, or type of product, as determined by the department.
111 The processor reimbursement shall never be so low for it to be cost prohibitive for all registered
112 processors to process covered electronic products.

113 "Producer", any person who: (a) has a physical presence and legal assets in the United
114 States of America and (1) manufactures or manufactured a covered electronic product under its
115 own brand or label; (2) sells or sold under its own brand or label a covered electronic product
116 produced by other suppliers; or (3) owns a brand that it licenses or licensed to another person for
117 use on a covered electronic product; or (b) imports or imported a covered electronic product into
118 the United States that was manufactured by a person without a presence in the United States of

119 America; (c) sells at retail a covered electronic product acquired from an importer that is the
120 manufacturer as described in subsection (b) and elects to register in lieu of the importer; or (d)
121 assumes the responsibilities and obligations of a producer under this Act.

122 “Program year”, a full calendar year beginning on or after January 1, 2011.

123

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

129

130 "Retailer" includes, but is not limited to, a manufacturer of a covered electronic product
131 who sells directly to a consumer through any means, including, but not limited to, transactions
132 conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not
133 including leasing, commercial financing or wholesale transactions with a distributor or other
134 retailer.

135 “Return share”, a percentage of covered computer products collected through processors
136 as calculated by the Department, either by dividing the total weight of covered computer
137 products of that producer’s brands by the total weight of covered computer products for all
138 producers’ non-orphaned brands or by using a statistically representative sample of processed
139 covered computer products.

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

143

144 “Sale” or “sell”, any transfer for valuable consideration of title including, but not limited
145 to, transactions conducted through sales outlets, through the Internet or any similar electronic
146 means, or catalogs, and excluding commercial 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 "Video display" means an output surface having a viewable area greater than four inches
151 when measured diagonally that displays moving graphical images or a visual representation of
152 image sequences or pictures, showing a number of quickly changing images on a screen in fast
153 succession to create the illusion of motion, including, but not limited to, a device that is an
154 integral part of the display that cannot be easily removed from the display by the consumer and
155 that produces the moving image on the screen and includes technology using a cathode ray tube,
156 liquid crystal display, gas plasma, digital light processing or other image projection technology.

157 Section 2. (a) No person shall engage in business as a producer unless he is registered
158 with the department pursuant to this section.

159 (b) Every producer seeking to engage in business in the commonwealth shall file an
160 application, accompanied by a producer registration fee, with the department requesting

161 registration as a producer. Said application shall be made on a form to be furnished by the
162 department, and shall include, without limitation, the following information: (1) the name and
163 contact information of the applicant; (2) the applicant's brand names of covered electronic
164 products, including all brand names sold in the commonwealth in the past, all brand names
165 currently being sold in the commonwealth, and all brand names for which the applicant is legally
166 responsible; (3) the method or methods of sale used in the commonwealth; (4) a baseline or a set
167 of baselines that describe any efforts to design covered electronic products for reuse or recycling
168 and goals and plans for further increasing design for reuse and recycling; and (5) a description of
169 any independent collection, consolidation or processing services utilized to recover, reuse, or
170 recycle the producer's products. The department shall, within sixty days, review the application
171 for registration. If said application satisfies the requirements of this section, the department shall
172 register said applicant as a producer and shall forthwith mail to him a certificate to that effect. If
173 said application fails to satisfy the requirements of this section the producer shall, within thirty
174 days, file with the department a revised application addressing the requirements noted by the
175 department.

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

180 (d) Producers shall register with the department for a specified registration period. Such
181 applications shall be submitted to the department by the date specified by the department
182 together with a renewal fee as shall be established by the department. After verification of the
183 facts stated on the application, the department shall issue a registration. Any holder of a

184 registration who fails to file a renewal application within sixty days after his registration has
185 expired shall, prior to engaging in business as a producer within the commonwealth, be required
186 to register anew and pay a late fee in addition to said renewal fee.

187 (e) The department shall use not more than twelve months as the specified registration
188 period.

189

190 (f) Producers of covered electronic products shall provide processor reimbursements for
191 their share of covered electronic product received and processed at a processor.

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

196 (h) A producer of televisions shall have the financial responsibility for the collection,
197 transportation and recycling of covered television products received by processors in the
198 commonwealth, based on the television manufacturer's market share as determined by the
199 department.

200 (i) A producer may also collect its covered electronic products for reuse or recycling by
201 establishing a collection program, either individually or in cooperation with other producers, to
202 collect these discarded products as established in this chapter. A producer establishing an
203 independent collection program for reuse or recycling either individually or in cooperation with
204 other producers shall recover 1 or more covered electronic products. A producer establishing an

205 independent collection program for reuse or recycling either individually or in cooperation with
206 other products shall at a minimum establish a physical presence in every municipality with a
207 population of 40,000 people or higher which does not have a collection location under this
208 chapter.

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210 (j) A producer establishing an independent recycling program either individually or in
211 cooperation with other producers must register and comply as a collector or as a processor
212 pursuant to this chapter; however, an additional registration fee will not be required.

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

219 (l) A producer establishing an independent collection program shall submit an annual
220 report to the department that includes at a minimum the following information for the previous
221 program year as well as any additional information required by the department: (1)
222 distinguishing the total weight of each type of covered electronic product collected for recycling;
223 (2) detailing the total number of items by each type of covered electronic product collected for
224 reuse or refurbishment; (3) a description of the plan's education, outreach, or other marketing
225 efforts to promote collection of covered electronic products; (4) a description of management

226 practices to transport and recycle discarded covered electronic products; and (5) any additional
227 information deemed necessary by the department.

228 Section 3. (a) No person shall be eligible for collector reimbursement unless he is
229 registered with the department pursuant to this section.

230 (b) Every collector seeking to be eligible for collector reimbursement shall file an
231 application, accompanied by the collector registration fee, with the department requesting
232 registration as a collector. Said application shall be made on a form to be furnished by the
233 department, and shall include, without limitation, the following information: (1) the name; (2)
234 the address; (3) the telephone number; and (4) the location of the business. The department shall,
235 within sixty days, review the application for registration. If said application satisfies the
236 requirements of this section, the department shall register said applicant as a collector and shall
237 forthwith provide him a certificate to that effect. If said application fails to satisfy the
238 requirements of this section the collector shall, within thirty days, file with the department a
239 revised application addressing the requirements noted by the department.

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

242 (d) A collector shall: (1) contract with a registered processor(s) to receive the covered
243 electronic products collected by the collector; (2) make information available to the public that
244 describes where and how to return and recycle covered electronic products; (3) accept all
245 covered electronic products and ensure that said products are transported by or delivered to a
246 registered processor; and (4) demonstrate compliance with the department rules and regulations
247 and the United States Environmental Protection Agency's Responsible Recycling Guidelines for

248 Materials Management as issued and available on the United States Environmental Protection
249 Agency's Internet website in addition to any other requirements mandated by federal or state
250 law. A collector may limit the number of covered electronic products delivered at a given time
251 by any customer to no more than 5.

252

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

256 (f) Only a person registered as a collector with the department may receive collector
257 reimbursements. Fully functioning covered electronic products that are received by a registered
258 collector in working order may be sold or donated as whole products by the collector for reuse.
259 Covered electronic products that require repair to make them a fully functioning unit may only
260 be repaired on-site at the collector's place of business by the registered collector for reuse
261 according to its original purpose.

262 (g) Registered collectors may use whole parts amassed from collected covered electronic
263 products or new parts for making repairs as long as there is a part-for-part exchange with
264 nonfunctioning covered electronic products.

265 (h) Registered collectors may not include covered electronic products that are dispersed
266 for reuse in the weight totals for collector reimbursements.

267 (i) Registered collectors must report annually to the department, on a form provided by
268 the department, and maintain a record of all covered electronic products collected, covered

269 electronic products sold through reuse or resale, covered electronic products delivered to
270 processors, and any other information the Department determines necessary a period not less
271 than three years.

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

275 (k) The department may conduct site visits of all registered collectors. The department
276 may, for cause, review records and conduct investigations regarding a violation of this chapter.

277 (l) Collectors shall register with the department at least every thirty-six months. Such
278 applications shall be submitted to the department by the date specified by the department
279 together with a renewal fee as shall be established by the department. After verification of the
280 facts stated on the application, the department shall issue a registration. Any holder of a
281 registration who fails to file a renewal application within sixty days after his registration has
282 expired shall, prior to engaging in business as a collector within the commonwealth, be required
283 to register anew and pay a late fee in addition to said renewal fee.

284 Section 4. (a) No person shall be eligible for processor reimbursement unless he is
285 registered with the department pursuant to this section.

286 (b) Every processor seeking to be eligible for processor reimbursement in the
287 commonwealth shall file an application, accompanied by appropriate processor registration fee,
288 with the department requesting registration as a processor. Said application shall be made on a
289 form to be furnished by the department, and shall include, without limitation, the following
290 information: (1) the name; (2) the address; (3) the telephone number; and (4) the location of the

291 business of the processor's business. The department shall, within sixty days, review the
292 application for registration. If said application satisfies the requirements of this section, the
293 department shall register said applicant as a processor and shall forthwith provide him a
294 certificate to that effect. If said application fails to satisfy the requirements of this section the
295 processor shall, within thirty days, file with the department a revised application addressing the
296 requirements noted by the department.

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298 (c) A processor shall: (1) be responsible for sorting all covered electronic products
299 received from a participating collector with whom the processor has a contract; (2) weigh the
300 total amount of covered electronic products received from a participating collector and reimburse
301 said collector; provided, however, that said collector reimbursement shall be due within thirty
302 days of pick-up or receipt; (3) sort, by producer type of covered electronic product, and weigh all
303 covered electronic products other than televisions received from collectors; (4) weigh all
304 televisions received from collectors; (5) either repair, refurbish, remanufacture, or recycle on-site
305 or ship covered electronic products offsite for reuse or recycling in accordance with the
306 minimum performance requirements established by the department; (6) demonstrate compliance
307 with the department rules and regulations in addition to any other requirements mandated by
308 federal or state law; (7) submit an invoice for processor reimbursement to each producer whose
309 covered electronic products, or share thereof, the processor has handled; and (8) annually submit
310 a report to the department which shall include without limitation: (i) the total aggregate weight of
311 covered electronic products processed pursuant to this chapter in the previous program year; (ii)
312 the weight, differentiated by producer, of covered electronic products processed pursuant to this
313 chapter in the previous program year; (iii) the total amount of orphan waste processed pursuant

314 to this chapter in the previous program year; and (iv) any other information to help track,
315 monitor and evaluate the management of covered electronic products, as determined by the
316 department.

317

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

321 (e) Processors shall register with the department at least every thirty-six months. Such
322 application shall be submitted to the department by the date specified by the department together
323 with a renewal fee as shall be established by the department. After verification of the facts stated
324 on the application, the department shall issue a registration. Any holder of a registration who
325 fails to file a renewal application within sixty days after his registration has expired shall, prior to
326 engaging in business as a processor within the commonwealth, be required to register anew and
327 pay a late fee in addition to said renewal fee.

328 Section 5. The fee for a collector registration, a processor registration and a producer
329 registration, or for any annual renewal thereof, shall be determined every three years by the
330 department, but in no case shall any registration or renewal fee exceed \$5000.

331 Section 6. (a) The department shall annually: (1) determine the return share for each
332 program year for each producer of covered electronic products other than covered television
333 products by dividing the weight of those covered electronic products identified for each producer
334 by the total weight of those covered electronic products identified for all producers; provided
335 further, that said calculation shall be based on the reports generated by processors of those

336 covered electronic products; provided further, that for the first program year, the return share of
337 those covered electronic products identified for each producer shall be based on the best
338 available public return share data from the United States, including data from other states, for
339 those covered electronic products from persons; provided further, that for the second and
340 subsequent program years, the return share of those covered electronic products identified for
341 each producer shall be based on the previous year's reported data as described herein; and
342 provided further, that the department shall use the return share for each producer to allocate
343 financial responsibility for orphan waste; (2) determine, based on each producer's return share,
344 each producer's share of responsibility for the orphan waste collected in the commonwealth;
345 provided, however, that each producer's return share of orphan waste shall be equivalent to its
346 percentage of return share for non-orphan covered electronic products, multiplied by the total
347 amount of orphan waste collected in the program year; and provided further, that the department,
348 in determining the producer's orphan waste share, may take into account covered electronic
349 products, including orphan waste, voluntarily collected by the producer; (3) determine the market
350 share allocation for each television producer by determining the total weight of televisions
351 recycled in the previous year, multiplied by the market share for that producer; provided,
352 however, that in the first program year, the market share identified for each television producer
353 shall be based on the best available data regarding the total number of televisions sold in the
354 commonwealth for the previous calendar year; (4) maintain a list of producers registered
355 pursuant to this chapter; and (5) conduct periodic audits of processors and collectors at a
356 frequency determined by the department, to assure accuracy of reporting and billing.

357 (b) The department shall adopt and may from time to time amend rules and regulations to
358 carry out the provisions this chapter. Such regulations shall include, but not be limited to,

359 provisions that establish (1) a process for registering covered electronic product collectors,
360 processors and producers, (2) a list of collector and processor reimbursement rates and
361 establishment of not less than monthly payment terms, (3) standards for operation, reporting and
362 auditing of producers, collectors and processors, (4) a list of covered and exempted electronic
363 products, (5) collection program standards to ensure adequate access to recycling of covered
364 electronic products, (6) procedures for the review of applications and for provision of
365 adjudicatory hearings pursuant to the provisions of chapter thirty A for any person aggrieved by
366 a determination by the department with respect to such applications, and (7) any other
367 requirements necessary to carry out the provisions of this chapter.

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370 (c) Beginning one year after this act takes effect and annually thereafter, the department
371 shall submit a report to the House Committee on Ways and Means, the Senate Committee on
372 Ways and Means, and the Joint Committee on Environment, Natural Resources and Agriculture
373 that includes information regarding the previous program year. The information shall include,
374 but is not limited to, (1) the total administrative cost to the state government, (2) the total
375 administrative cost to local governments, (3) a description of the incentive for manufacturer
376 collection, (4) a description of the education, outreach, or other marketing efforts conducted by
377 the state or local governments to promote collection of covered electronic products, and (5) the
378 effectiveness of the independent collection program requirements, independent collection
379 program compliance, and collection rates of independent programs.

380 Section 7. (a) No person shall sell covered electronic products from producers not
381 registered pursuant to this chapter. A retailer shall not be in violation of this subsection if, at
382 time of purchase from producer, the producer was not in violation of this Chapter. This
383 subsection shall not apply to used electronic products that are reused.

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

387 (c) All retailers shall provide information describing where and how to recycle a covered
388 electronic product provided by the producer and offered for sale by the retailer pursuant to this
389 act.

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

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

395

396 Section 8. (a) The department shall be charged with the enforcement of this chapter.
397 Whenever it appears that there is a violation of any provision of this chapter, or of any approval
398 or regulation issued or adopted hereunder, the department may issue an order requiring the
399 production of records or information, or imposing such restraints on or requiring such actions, as
400 it deems necessary to abate or prevent such violation. The department also may issue such orders

401 and assess such penalties as it deems necessary to secure compliance with any approval or
402 regulation issued under this chapter. Issuance of an order or penalties under this section shall not
403 preclude, and shall not be deemed an election to forego, any action to recover damages, or, to
404 seek civil penalties, criminal fines and penalties, or injunctive relief.

405 (b) Any person who violates any provision of this chapter, or any regulation, order or
406 approval issued or adopted hereunder: (a) shall be punished by a fine of not more than twenty-
407 five thousand dollars, or by imprisonment for not more than two years in a house of correction,
408 or both, for each such violation; or (b) shall be subject to a civil penalty not to exceed twenty-
409 five thousand dollars for each such violation. Each day each such violation occurs or continues
410 shall be a separate offense. The superior court shall have jurisdiction to enjoin violations of, or
411 grant such additional relief as it deems necessary or appropriate to secure compliance with, the
412 provisions of this chapter, or any order, approval or regulation issued or adopted hereunder upon
413 the petition of the attorney general or the commissioner.

414 (c) Any person aggrieved by a determination by the department to issue, deny,
415 modify, revoke or suspend any approval, or to issue an order or penalty assessment, under the
416 provisions of this chapter, may request an adjudicatory hearing before the department under the
417 provisions of chapter thirty A. Any such determination shall contain a notice of this right to
418 request a hearing and may specify a time limit, not to exceed twenty-one days, within which said
419 person shall request said hearing. If no such request is timely made, the determination shall be
420 deemed assented to. If a timely request is received, the department shall within a reasonable
421 time act upon a request in accordance with the provisions of said chapter thirty A. A person
422 aggrieved by a final decision in an adjudicatory hearing held under the provisions of this section
423 may obtain judicial review thereof pursuant to the provisions of chapter thirty A.

424 Section 9. The department may participate in the establishment of a regional multistate
425 organization or compact to assist in carrying out the requirements of this chapter.

426 Section 10. (a) There shall be in the Department an advisory commission for electronic
427 waste. The commission shall consist of one individual representing covered television product
428 manufacturers, one individual representing processors of covered electronic products, one
429 individual representing a trade association of covered computer product manufacturers or
430 covered television product manufacturers, the Senate chair of the Joint Committee on
431 Environment, Natural Resources, and Agriculture or his designee, the House chair of the Joint
432 Committee on Environment, Natural Resources, and Agriculture or his designee, one individual
433 representing covered computer manufacturers, one individual representing retailers of covered
434 electronic products, one individual representing a statewide conservation organization, one
435 individual representing a municipality or municipal organization, and the Commissioner of the
436 Department or his designee.

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

440 (c) Said advisory commission shall have the following duties: (1) It shall advise the
441 Department on policy and program development under this section, specifically regarding
442 performance standards; (2) It shall review the registration and renewal fees for producers,
443 collectors and processors, and shall make recommendations to the commissioner relative thereto;
444 and (3) It shall make recommendations to the Joint Committee on Environment, Natural

445 Resources, and Agriculture on recommendations of amending the definition of covered
446 electronic product under this statute to cover other electronic products.

447 (d) The advisory commission shall meet at least biannually and shall convene special
448 meetings at the call of the Commissioner. These meetings are not subject to Chapter 39 of the
449 General Laws; however, a written record of all meetings of the committee shall be maintained by
450 the Department. Meetings may be held in person, by telephone conference, by video conference,
451 or by web conference. Members of the commission shall serve without compensation. The
452 members of the commission representing the Department or the General Court shall serve
453 without additional compensation.

454 SECTION 2. The General Laws are hereby amended by striking chapter 21O and
455 replacing with the following:

456 CHAPTER 21O.

457 RECYCLING OF DISCARDED ELECTRONIC PRODUCTS.

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

460 "Additionally covered electronic product" means any of the following electronic products
461 taken out of service from a person in the commonwealth regardless of purchase location:
462 printers, stand-alone facsimile machine, scanner, or a machine functioning as two or more of
463 these products; video game console; or video cassette recorder/player, digital video disk player,
464 or similar video device. To the extent allowed under federal and state laws and regulations, an
465 additionally covered eligible electronic product that is being collected, recycled, or processed for

466 reuse is not considered to be hazardous waste, household waste, solid waste, or special waste.

467 The term does not include a covered television product or a covered computer product.

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

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

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

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

482 “Covered computer product” means a desktop or notebook computer, netbook, or
483 computer monitor, marketed and intended for use by a person, but does not include a covered
484 television device or additionally covered electronic product.

485 “Covered electronic product” means a covered computer product, a covered television
486 product, or additionally covered electronic product collected for reuse or recycling by collectors

487 and processors eligible for collector reimbursement and processor reimbursement through the
488 producer reimbursement system. “Covered electronic product,” “covered computer product”,
489 “covered television product,” or “additionally covered electronic product” do not include any of
490 the following:

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

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

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

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

505 (v) Personal digital assistants (PDA).

506 (vi) Global positioning systems (GPS).

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

516 “Department”, the department of environmental protection.

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

525 “Market share”, a producer’s national sales of covered electronic products that are
526 not covered computer products expressed as a percentage of the total of all producers’ national
527 sales based on the best available public data.

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

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

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

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

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

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

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

568 “Processor reimbursement”, the minimum per pound rate, as established by the
569 department, paid by a producer to a processor for the producer’s covered electronic products and
570 the producer’s share of orphan waste, as determined by the department. Said minimum
571 reimbursement shall include the collector reimbursement and may be broken down into specific
572 elements, including but not limited to, collection, sorting, or recycling, or type of product, as

573 determined by the department. The processor reimbursement shall never be so low for it to be
574 cost prohibitive for all registered processors to process covered electronic products.

575 “Producer”, any person who: (a) has a physical presence and legal assets in the United
576 States of America and (1) manufactures or manufactured a covered electronic product under its
577 own brand or label; (2) sells or sold under its own brand or label a covered electronic product
578 produced by other suppliers; or (3) owns a brand that it licenses or licensed to another person for
579 use on a covered electronic product; or (b) imports or imported a covered electronic product into
580 the United States that was manufactured by a person without a presence in the United States of
581 America; (c) sells at retail a covered electronic product acquired from an importer that is the
582 manufacturer as described in subsection (b) and elects to register in lieu of the importer; or (d)
583 assumes the responsibilities and obligations of a producer under this Act.

584 “Program year”, a full calendar year beginning on or after January 1, 2011.

585

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

591

592 "Retailer" includes, but is not limited to, a manufacturer of a covered electronic product
593 who sells directly to a consumer through any means, including, but not limited to, transactions

594 conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not
595 including leasing, commercial financing or wholesale transactions with a distributor or other
596 retailer.

597 “Return share”, a percentage of covered computer products collected through processors
598 as calculated by the Department, either by dividing the total weight of covered computer
599 products of that producer’s brands by the total weight of covered computer products for all
600 producers’ non-orphaned brands or by using a statistically representative sample of processed
601 covered computer products and additionally covered electronic products.

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

605

606 “Sale” or “sell”, any transfer for valuable consideration of title including, but not limited
607 to, transactions conducted through sales outlets, through the Internet or any similar electronic
608 means, or catalogs, and excluding commercial financing or leasing.

609

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

613 "Video display" means an output surface having a viewable area greater than four inches
614 when measured diagonally that displays moving graphical images or a visual representation of

615 image sequences or pictures, showing a number of quickly changing images on a screen in fast
616 succession to create the illusion of motion, including, but not limited to, a device that is an
617 integral part of the display that cannot be easily removed from the display by the consumer and
618 that produces the moving image on the screen and includes technology using a cathode ray tube,
619 liquid crystal display, gas plasma, digital light processing or other image projection technology.

620 Section 2. (a) No person shall engage in business as a producer unless he is registered
621 with the department pursuant to this section.

622 (b) Every producer seeking to engage in business in the commonwealth shall file an
623 application, accompanied by a producer registration fee, with the department requesting
624 registration as a producer. Said application shall be made on a form to be furnished by the
625 department, and shall include, without limitation, the following information: (1) the name and
626 contact information of the applicant; (2) the applicant's brand names of covered electronic
627 products, including all brand names sold in the commonwealth in the past, all brand names
628 currently being sold in the commonwealth, and all brand names for which the applicant is legally
629 responsible; (3) the method or methods of sale used in the commonwealth; (4) a baseline or a set
630 of baselines that describe any efforts to design covered electronic products for reuse or recycling
631 and goals and plans for further increasing design for reuse and recycling; and (5) a description of
632 any independent collection, consolidation or processing services utilized to recover, reuse, or
633 recycle the producer's products. The department shall, within sixty days, review the application
634 for registration. If said application satisfies the requirements of this section, the department shall
635 register said applicant as a producer and shall forthwith mail to him a certificate to that effect. If
636 said application fails to satisfy the requirements of this section the producer shall, within thirty

637 days, file with the department a revised application addressing the requirements noted by the
638 department.

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

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

650 (e) The department shall use not more than thirty-six months as a specified registration
651 period.

652

653 (f) Producers of covered electronic products shall reimburse processors for their share of
654 covered electronic product received and processed at the processor.

655 (g) A producer who has sold or who sells covered electronic products other than covered
656 television products in the commonwealth shall bear the financial responsibility for the collection,

657 transportation, and reuse or recycling of said covered electronic products received by processors,
658 including their return share of orphan waste as determined by the department.

659 (h) A producer of televisions shall have the financial responsibility for the collection,
660 transportation and reuse or recycling of televisions discarded in the commonwealth, based on the
661 television manufacturer's market share as determined by the department.

662 (i) A producer may also collect its covered electronic products for reuse or recycling by
663 establishing a collection program, either individually or in cooperation with other producers, to
664 collect these discarded products as established in this chapter. A producer establishing an
665 independent collection program for reuse or recycling either individually or in cooperation with
666 other producers shall recover 1 or more covered electronic products. A producer establishing an
667 independent collection program for reuse or recycling either individually or in cooperation with
668 other products shall at a minimum establish a physical presence in every municipality with a
669 population of 40,000 people or higher which does not register as a collector under this chapter.

670 (j) A producer establishing an independent recycling program either individually or in
671 cooperation with other producers must register and comply as a collector or as a processor
672 pursuant to this chapter; however, an additional registration fee will not be required.

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

679 (l) A producer establishing an independent collection program shall submit an annual
680 report to the department that includes at a minimum the following information for the previous
681 program year as well as any additional information required by the department: (1)
682 distinguishing the total weight of each type of covered electronic product collected for recycling;
683 (2) detailing the total number of items by each type of covered electronic product collected for
684 reuse or refurbishment; (3) a description of the plan's education, outreach, or other marketing
685 efforts to promote collection of covered electronic products; (4) a description of management
686 practices to transport and recycle discarded covered electronic products; and (5) any additional
687 information deemed necessary by the department.

688 (m) A producer establishing an independent collection program for reuse or recycling
689 either individually or in cooperation with other producers shall weigh the covered electronic
690 products collected and shall annually submit a statement certifying to the department the total
691 weight of covered electronic products received and the weight of orphan waste received in the
692 preceding program year.

693 Section 3. (a) No person shall be eligible for collector reimbursement unless he is
694 registered with the department pursuant to this section.

695 (b) Every collector seeking to be eligible for collector reimbursement shall file an
696 application, accompanied by the collector registration fee, with the department requesting
697 registration as a collector. Said application shall be made on a form to be furnished by the
698 department, and shall include, without limitation, the following information: (1) the name; (2)
699 the address; (3) the telephone number; and (4) the location of the business. The department shall,
700 within sixty days, review the application for registration. If said application satisfies the

701 requirements of this section, the department shall register said applicant as a collector and shall
702 forthwith provide him a certificate to that effect. If said application fails to satisfy the
703 requirements of this section the collector shall, within thirty days, file with the department a
704 revised application addressing the requirements noted by the department.

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

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

717

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

721 (f) Only a person registered as a collector with the department may receive collector
722 reimbursements. Fully functioning CEPs that are received by a registered collector in working

723 order may be sold or donated as whole products by the collector for reuse. CEPs that require
724 repair to make them a fully functioning unit may only be repaired on-site at the collector's place
725 of business by the registered collector for reuse according to its original purpose.

726 (g) Registered collectors may use whole parts amassed from collected CEPs or new parts
727 for making repairs as long as there is a part-for-part exchange with nonfunctioning CEPs.

728 (h) Registered collectors may not include CEPs that are dispersed for reuse in the weight
729 totals for collector reimbursements.

730 (i) Registered collectors must report annually to the department, on a form provided by
731 the department, and maintain a record of all covered electronic products collected, covered
732 electronic products sold through reuse or resale, covered electronic products delivered to
733 processors, and any other information the Department determines necessary a period not less
734 than three years.

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

738 (k) The department may conduct site visits of all registered collectors. The department
739 may, for cause, review records and conduct investigations regarding a violation of this chapter.

740 (l) Collectors shall register with the department at least every thirty-six months. Such
741 applications shall be submitted to the department by the date specified by the department
742 together with a renewal fee as shall be established by the department. After verification of the
743 facts stated on the application, the department shall issue a registration. Any holder of a

744 registration who fails to file a renewal application within sixty days after his registration has
745 expired shall, prior to engaging in business as a collector within the commonwealth, be required
746 to register anew and pay a late fee in addition to said renewal fee.

747 Section 4. (a) No person shall be eligible for processor reimbursement unless he is
748 registered with the department pursuant to this section.

749 (b) Every processor seeking to be eligible for processor reimbursement in the
750 commonwealth shall file an application, accompanied by appropriate processor registration fee,
751 with the department requesting registration as a processor. Said application shall be made on a
752 form to be furnished by the department, and shall include, without limitation, the following
753 information: (1) the name; (2) the address; (3) the telephone number; and (4) the location of the
754 business of the processor's business. The department shall, within sixty days, review the
755 application for registration. If said application satisfies the requirements of this section, the
756 department shall register said applicant as a processor and shall forthwith provide him a
757 certificate to that effect. If said application fails to satisfy the requirements of this section the
758 processor shall, within thirty days, file with the department a revised application addressing the
759 requirements noted by the department.

760

761 (c) A processor shall: (1) be responsible for sorting all covered electronic products
762 received from a participating collector with whom the processor has a contract; (2) weigh the
763 total amount of covered electronic products received from a participating collector and reimburse
764 said collector; provided, however, that said collector reimbursement shall be due within thirty
765 days of pick-up or receipt; (3) sort, by producer type of covered electronic product, and weigh all

766 covered electronic products other than televisions received from collectors; (4) weigh all
767 televisions received from collectors; (5) either repair, refurbish, remanufacture, or recycle on-site
768 or ship covered electronic products offsite for reuse or recycling in accordance with the
769 minimum performance requirements established by the department; (6) demonstrate compliance
770 with the department rules and regulations in addition to any other requirements mandated by
771 federal or state law; (7) submit an invoice for processor reimbursement to each producer whose
772 covered electronic products, or share thereof, the processor has handled; and (8) annually submit
773 a report to the department which shall include without limitation: (i) the total aggregate weight of
774 covered electronic products processed pursuant to this chapter in the previous program year; (ii)
775 the weight, differentiated by producer, of covered electronic products processed pursuant to this
776 chapter in the previous program year; (iii) the total amount of orphan waste processed pursuant
777 to this chapter in the previous program year; and (iv) any other information to help track,
778 monitor and evaluate the management of covered electronic products, as determined by the
779 department.

780

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

784 (e) Processors shall register with the department at least every thirty-six months. Such
785 application shall be submitted to the department by the date specified by the department together
786 with a renewal fee as shall be established by the department. After verification of the facts stated
787 on the application, the department shall issue a registration. Any holder of a registration who

788 fails to file a renewal application within sixty days after his registration has expired shall, prior to
789 engaging in business as a processor within the commonwealth, be required to register anew and
790 pay a late fee in addition to said renewal fee.

791 Section 5. The fee for a collector registration, a processor registration and a producer
792 registration, or for any annual renewal thereof, shall be determined every three years by the
793 department, but in no case shall any registration or renewal fee exceed \$10,000.

794 Section 6. (a) The department shall annually: (1) determine the return share for each
795 program year for each producer of covered electronic products other than covered television
796 products by dividing the weight of those covered electronic products identified for each producer
797 by the total weight of those covered electronic products identified for all producers; provided
798 further, that said calculation shall be based on the reports generated by processors of those
799 covered electronic products; provided further, that for the first program year, the return share of
800 those covered electronic products identified for each producer shall be based on the best
801 available public return share data from the United States, including data from other states, for
802 those covered electronic products from persons; provided further, that for the second and
803 subsequent program years, the return share of those covered electronic products identified for
804 each producer shall be based on the previous year's reported data as described herein; and
805 provided further, that the department shall use the return share for each producer to allocate
806 financial responsibility for orphan waste; (2) determine, based on each producer's return share,
807 each producer's share of responsibility for the orphan waste collected in the commonwealth;
808 provided, however, that each producer's return share of orphan waste shall be equivalent to its
809 percentage of return share for non-orphan covered electronic products, multiplied by the total
810 amount of orphan waste collected in the program year; and provided further, that the department,

811 in determining the producer's orphan waste share, may take into account electronic products,
812 including orphan waste, voluntarily collected by the producer; (3) determine the market share
813 allocation for each television producer by determining the total weight of televisions recycled in
814 the previous year, multiplied by the market share for that producer; provided, however, that in
815 the first program year, the market share identified for each television producer shall be based on
816 the best available data regarding the total number of televisions sold in the commonwealth for
817 the previous calendar year; (4) maintain a list of producers registered pursuant to this chapter;
818 and (5) conduct periodic audits of processors and collectors at a frequency determined by the
819 department, to assure accuracy of reporting and billing.

820 (b) The department shall adopt and may from time to time amend rules and regulations to
821 carry out the provisions this chapter. Such regulations shall include, but not be limited to,
822 provisions that establish (1) a process for registering covered electronic product collectors,
823 processors and producers, (2) a list of collector and processor reimbursement rates and
824 establishment of not less than monthly payment terms, (3) standards for operation, reporting and
825 auditing of producers, collectors and processors, (4) a list of covered and exempted electronic
826 products, (5) collection program standards to ensure adequate access to recycling of covered
827 electronic products, (6) procedures for the review of applications and for provision of
828 adjudicatory hearings pursuant to the provisions of chapter thirty A for any person aggrieved by
829 a determination by the department with respect to such applications, and (7) any other
830 requirements necessary to carry out the provisions of this chapter.

831

832 (c) Biennially, the department shall submit a report to the House Committee on Ways and
833 Means, the Senate Committee on Ways and Means, and the Joint Committee on Environment,
834 Natural Resources and Agriculture that includes information regarding the previous two program
835 years. The information shall include, but is not limited to, (1) the total administrative cost to the
836 state government, (2) the total administrative cost to local governments, (3) a description of the
837 incentive for manufacturer collection, (4) a description of the education, outreach, or other
838 marketing efforts conducted by the state or local governments to promote collection of covered
839 electronic products, and (5) the effectiveness of the independent collection program
840 requirements, independent collection program compliance, and collection rates of independent
841 programs.

842 (d) The department may, through regulation, amend the definitions of “covered electronic
843 products”, “covered computer products”, “covered television products”, and “additionally
844 covered electronic products” only to include additional products.

845

846 Section 7. (a) No person shall sell covered electronic products from producers not
847 registered pursuant to this chapter. A retailer shall not be in violation of this subsection if, at
848 time of purchase from producer, the producer was not in violation of this Chapter. This
849 subsection shall not apply to used electronic products that are reused.

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

853 (c) All retailers shall provide information describing where and how to recycle a covered
854 electronic product provided by the producer and offered for sale by the retailer pursuant to this
855 act.

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

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

861

862 Section 8. (a) The department shall be charged with the enforcement of this chapter.
863 Whenever it appears that there is a violation of any provision of this chapter, or of any approval
864 or regulation issued or adopted hereunder, the department may issue an order requiring the
865 production of records or information, or imposing such restraints on or requiring such actions, as
866 it deems necessary to abate or prevent such violation. The department also may issue such orders
867 and assess such penalties as it deems necessary to secure compliance with any approval or
868 regulation issued under this chapter. Issuance of an order or penalties under this section shall not
869 preclude, and shall not be deemed an election to forego, any action to recover damages, or, to
870 seek civil penalties, criminal fines and penalties, or injunctive relief.

871 (b) Any person who violates any provision of this chapter, or any regulation, order or
872 approval issued or adopted hereunder: (a) shall be punished by a fine of not more than twenty-
873 five thousand dollars, or by imprisonment for not more than two years in a house of correction,
874 or both, for each such violation; or (b) shall be subject to a civil penalty not to exceed twenty-

875 five thousand dollars for each such violation. Each day each such violation occurs or continues
876 shall be a separate offense. The superior court shall have jurisdiction to enjoin violations of, or
877 grant such additional relief as it deems necessary or appropriate to secure compliance with, the
878 provisions of this chapter, or any order, approval or regulation issued or adopted hereunder upon
879 the petition of the attorney general or the commissioner.

880 (c) Any person aggrieved by a determination by the department to issue, deny,
881 modify, revoke or suspend any approval, or to issue an order or penalty assessment, under the
882 provisions of this chapter, may request an adjudicatory hearing before the department under the
883 provisions of chapter thirty A. Any such determination shall contain a notice of this right to
884 request a hearing and may specify a time limit, not to exceed twenty-one days, within which said
885 person shall request said hearing. If no such request is timely made, the determination shall be
886 deemed assented to. If a timely request is received, the department shall within a reasonable
887 time act upon a request in accordance with the provisions of said chapter thirty A. A person
888 aggrieved by a final decision in an adjudicatory hearing held under the provisions of this section
889 may obtain judicial review thereof pursuant to the provisions of chapter thirty A.

890 Section 9. The department may participate in the establishment of a regional multistate
891 organization or compact to assist in carrying out the requirements of this chapter.

892 Section 10. (a) There shall be in the Department an advisory commission for electronic
893 waste. The commission shall consist of one individual representing covered television product
894 manufacturers, one individual representing processors of covered electronic products, one
895 individual representing a trade association of covered computer product manufacturers or
896 covered television product manufacturers, the Senate chair of the Joint Committee on

897 Environment, Natural Resources, and Agriculture or his designee, the House chair of the Joint
898 Committee on Environment, Natural Resources, and Agriculture or his designee, one individual
899 representing covered computer manufacturers, one individual representing retailers of covered
900 electronic products, one individual representing a statewide conservation organization, and the
901 Commissioner of the Department or his designee.

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

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

913 (d) The advisory commission shall meet at least annually and shall convene special
914 meetings at the call of the Commissioner. These meetings are not subject to Chapter 39 of the
915 General Laws; however, a written record of all meetings of the committee shall be maintained by
916 the Department. Meetings may be held in person, by telephone conference, by video conference,
917 or by web conference. Members of the commission shall serve without compensation. The

918 members of the commission representing the Department or the General Court shall serve
919 without additional compensation.

920 SECTION 3. Notwithstanding any general or special law to the contrary and unless
921 otherwise specified herein, Section 1 of this act shall take effect July 1, 2012.

922 SECTION 4. Notwithstanding any general or special law to the contrary and unless
923 otherwise specified herein, Section 2 of this act shall take effect July 1, 2014.