SENATE DOCKET, NO. 891 FILED ON: 1/20/2011

SENATE . . . . . No. 166

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 relative to information technology producer responsibility model state legislation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	

SENATE DOCKET, NO. 891 FILED ON: 1/20/2011

SENATE . . . . . No. 166

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 166) of Marc R. Pacheco for legislation relative to information technology producer responsibility model state legislation . [Eironment, Natural Resources and Agriculture]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *203* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to information technology producer responsibility model state legislation.

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

SECTION 1. FINDINGS AND PURPOSES.

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

a. Consumer electronics products are critical elements to the strength and growth of this state's economic prosperity and our quality of life. Developing and implementing an appropriate state electronics recycling and recovery system is important to our state's resource conservation, worker health and safety, and economic prosperity goals. In order to accomplish this goal, it is important to be mindful of the differences between products and ensure appropriate treatment given those differences. While some computers and computer monitors may be refurbished and reused and other consumer electronics products contain valuable materials, some older and

11 bulkier consumer electronic products do not contain any valuable product but must be recycled,
12 like televisions. For the products covered by this legislation, differences in product life
13 expectancy, market economics, residual value, and product portability necessitate a different
14 approach to recycling as reflected in this legislation.

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

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

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

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

29 SECTION 2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

66 (vi) global positioning systems (GPS).

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

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

75 into the United States, provided, however, if at the time such covered devices are or were
76 imported into the United States, another person has offered to collect such covered devices under
77 a recovery plan pursuant to subsection c of section 5, then this clause (iii) shall not apply. A
78 Computer Manufacturer does not include a party who owns and licenses the brand appearing on
79 the Covered Computer Device and does not also manufacture or sell the Covered Computer
80 Device.

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

86 j. "Manufacturers" means Television Manufacturers and Computer Manufacturers.

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

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

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

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

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

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

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

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

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

126 SECTION 3. APPLICABILITY.

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

129 SECTION 4. COMPUTER MANUFACTURERS.

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

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

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

144 d. Collection for Covered Computer Devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

195 SECTION 5. TELEVISION MANUFACTURERS.

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

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

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

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

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

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

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

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

226 SECTION 6. RETAILERS.

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

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

233 SECTION 7. DEPARTMENT.

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

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

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

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

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

256 c. Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

294 SECTION 8. CONSUMERS.

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

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

299 SECTION 9. SOUND ENVIRONMENTAL MANAGEMENT.

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

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

304 SECTION 10. STATE PROCUREMENT.

305 a. Compliance.

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

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

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

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

320 SECTION 11. FEDERAL PREEMPTION.

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