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# SENATE . . . . . No. 2078

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

An Act relative to information technology producer responsibility.

*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. Computers and televisions 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 collection and recycling system are important to our state's resource conservation, worker health and safety, and economic prosperity goals.

b. The purpose of this act is to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of a specified statewide goal by weight of covered electronic equipment that has reached the end of its useful life, determined by each manufacturer's market share. The program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

14 SECTION 2. The General Laws are hereby amended by inserting after chapter 21O the
15 following chapter:-

16 CHAPTER 21P

17 INFORMATION TECHNOLOGY PRODUCER RESPONSIBILITY

18 Section 1. Definitions.

19 a. "Brand" means the name, symbols, logo, words, trademark, or other marks that
20 identify a Covered Electronic, rather than any of its components.

21 b. "Computer" means a desktop or notebook computer, as defined below, computer
22 monitors and printers. "Computer" does not mean an automated typewriter, professional
23 workstation, servers, ICI device, ICI system, mobile telephone, portable hand-held calculator,
24 portable or personal digital assistant (PDA), MP3 player, global positioning systems (GPS),
25 telephones of any type (including mobile), or other similar device. "Computer" does not include
26 computer peripherals, commonly known as cables, mouse or keyboard. The term does not
27 include televisions.

28 (i). "Desktop computer" means an electronic, magnetic, optical,
29 electrochemical, or other high-speed data processing device performing logical, arithmetic, and
30 storage functions for general purpose needs which are met through interaction with a number of
31 software programs contained therein, which is not designed to exclusively perform a specific
32 type of limited or specialized application. Human interface with a desktop computer is achieved
33 through a standalone keyboard, stand-alone monitor or other display unit, and a stand-alone

34 mouse or other pointing device, and is designed for a single user. A desktop computer has a main
35 unit that is intended to be persistently located in a single location, often on a desk or on the floor.

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

48 c. "Consumer" means any person located in the state who owns or uses covered
49 electronic equipment, including but not limited to an individual, business, corporation, limited
50 partnership, not-for-profit corporation, a public corporation, public school, school district,
51 private or parochial school or government entity, but does not include an entity involved in a
52 wholesale transaction between a distributer and retailer.

53 d. "Covered electronic equipment" means any computer and television marketed and
54 intended for use by a consumer. Covered electronic equipment does not include any of the
55 following:

56 (i) An electronic device that is a part of a motor vehicle or any component
57 part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer,
58 including replacement parts for use in a motor vehicle;

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

66 (iii) An electronic device that is contained within a clothes washer, clothes
67 dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range,
68 dishwasher, room air conditioner, dehumidifier, air purifier, or exercise equipment.

69 e. "Department" means the state department of environmental protection.

70 f. "Manufacturer" means a person who:

71 (i) manufactures covered electronic equipment under a brand that it licenses
72 or owns, for sale in this state;

73 (ii) manufactures covered electronic equipment without affixing a brand for
74 sale in this state;

75 (iii) resells into this state covered electronic equipment under a brand it owns
76 or licenses produced by other suppliers, including retail establishments that sell covered
77 electronic equipment under a brand the retailer owns or licenses;

78 (iv) imports into the United States or exports from the United States covered
79 electronic equipment for sale in this state;

80 (v) sells at retail covered electronic equipment acquired from an importer that
81 is the manufacturer as described in subparagraph (iv) of this subdivision, and elects to register in
82 lieu of the importer as the manufacturer for those products;

83 (vi) manufactures covered electronic equipment, supplies them to any person
84 or persons within a distribution network that includes wholesalers or retailers in this state, and
85 benefits from the sale in this state of those covered electronic equipment through such
86 distribution network; or

87 (vii) assumes the responsibilities and obligations of a manufacturer under this
88 act.

89 In the event the manufacturer is one who manufactures, sells, or resells under a brand it
90 licenses, the licensor or brand owner of such brand shall not be included in the definition of
91 manufacturer under subsection (i) or (iii) above.

92 Where an assertion is made that more than one person is a manufacturer of a certain
93 brand of covered electronic equipment under this act, any one or more such persons may assume
94 responsibility for and satisfy the obligations of a manufacturer under this act with respect to
95 covered electronic equipment bearing that brand. If no person assumes responsibility for and

96 satisfies the obligations of a manufacturer for the covered electronic equipment of that brand, the
97 department may consider any of those persons to be the responsible manufacturer for purposes of
98 this act.

99 g. “Manufacturer’s Collection Amount” or MCA means the total weight in covered
100 electronic equipment that has reached the end of its useful life that each manufacturer is
101 responsible for collecting annually, as measured by the product of the statewide collection goal,
102 the latest population estimate for the state, as published by the U.S. Census Bureau, and the
103 manufacturer’s market share.

104 h. “Market share” means a manufacturer's percentage share of the total weight of
105 covered electronic equipment sold, as determined by the department using the best available
106 commercial analytical information reported by weight, of either state-specific data or national
107 data extrapolated to the state based on population.

108 i. “Person” means any individual, business entity, partnership, limited liability
109 company, corporation, not-for-profit corporation, association, governmental entity, public benefit
110 corporation or public authority.

111 j. “Program year” means a full calendar year beginning on or after January 1, 2012.

112 k. “Recycle” means processing (including disassembling, dismantling, and
113 shredding) covered electronic equipment or their components to recover a useable product.
114 “Recycling” does not include any process defined as disposal or incineration under applicable
115 laws and regulations.

116 l. “Retailer” means a person who owns or operates a business that sells covered
117 electronic equipment directly to a consumer, including through sales outlets, catalogs or the
118 publicly available Internet, whether or not the seller has a physical presence in this state.

119 m. “Reuse” means any operation by which an electronic product or component of an
120 electronic product changes ownership but retains its form and function and is used for the same
121 purpose for which it was originally purchased.

122 n. “Sell,” “offer for sale,” or “sale” means any transfer for consideration of title
123 including, but not limited to, transactions conducted through sales outlets, catalogs, or the
124 Internet or any other similar electronic means, but does not mean financing or leasing.

125 o. “Statewide collection goal” means the statewide goal in weight for collecting
126 covered electronic equipment that has reached the end of its useful life, expressed as either a
127 total or a per capita figure.

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

136 Section 2. Applicability.

137 a. General. The collection and recovery provisions of this act apply to covered
138 electronic equipment used and returned by consumers in this state.

139 b. Leases. This act does not apply to a consumer's lease of covered electronic
140 equipment or a consumer's use of covered electronic equipment under a lease agreement, or the
141 sale or lease of covered electronics to an entity when the manufacturer and the entity enter into a
142 contract that effectively addresses the collection, recycling, and reuse of covered electronic
143 equipment that has reached the end of its useful life.

144 c. Non-Consumer Use. This act does not apply to a manufacturer solely of covered
145 electronic equipment that the department determines are of such a character that the covered
146 electronic equipment would not be used by a consumer. If, however, such a manufacturer also
147 manufacturers or manufactured one or more covered electronics that are of such character as to
148 be used by a consumer, then the provisions of this section nevertheless apply to the manufacturer
149 for those covered electronic equipment.

150 Section 3. Manufacturers.

151 a. Sale Prohibition. No manufacturer shall sell or offer for sale covered electronic
152 equipment in this state unless the manufacturer:

153 (i) Has adopted and is implementing a collection and recycling plan either
154 individually or in cooperation with other manufacturers;

155 (ii) Has affixed a permanent, readily visible label to the computer with the
156 manufacturer's brand (whether owned or licensed);

157 (iii) Has paid the annual registration fee;

158 (iv) Beginning in 2013, has met its annual manufacturer's collection amount
159 for the previous program year; and

160 (v) Beginning in 2014, has paid any underachievement fees due under
161 subsection k of this section.

162 b. Collection and recycling plan. The collection and recycling plan:

163 (i) Must enable a consumer to recycle covered electronic equipment without
164 paying a separate fee at the time of recycling for seven or fewer items of covered electronic
165 equipment provided in any single day to one collection facility or at one collection event;

166 (ii) Should be designed to enable a manufacturer to meet its manufacturer's
167 collection amount; and

168 (iii) Must include provisions for:

169 (1) the manufacturer's collection from a consumer of any covered
170 electronic equipment that has reached the end of its useful life and is labeled with the
171 manufacturer's brand; and

172 (2) recycling or reuse of covered electronic equipment collected under
173 subdivision (1).

174 (iv) The plan shall include a list of all of the manufacturer's covered electronic
175 equipment brands sold or offered for sale in the state. The manufacturer shall update its plan as
176 appropriate.

177 c. Collection.

178 (i) The collection of covered electronic equipment provided under the
179 collection and recycling plan must be reasonably convenient and available to, and designed to
180 meet the collection needs of, consumers in this state. At a minimum, a collection and recycling
181 plan must ensure that all counties of the state, and all municipalities which have a population of
182 fifty thousand or greater, have at least one method of acceptance that is available within such
183 county or municipality. A collection site for a county may be the same as a collection site for a
184 city or town in that county

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

187 (1) Mail-back systems: the manufacturer or its designee offers a
188 system in which the consumer can return end-of-life covered electronic equipment through the
189 mail or common-carrier shipment;

190 (2) Physical collection sites: the manufacturer or its designee keeps
191 open and staffed physical collection site(s) at which the consumer may return end-of-life covered
192 electronic equipment; and

193 (3) Collection events: the manufacturer or its designee holds
194 collection event(s) at which consumers may return end-of-life covered electronic equipment.

195 (4) Collection services may use existing collection and consolidation
196 infrastructure for handling covered electronic equipment and may include electronic recyclers
197 and repair shops, municipal or local government transfer stations, recyclers of other
198 commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other
199 suitable operations.

200 e. Cost. Manufacturers must offer collection of covered electronic equipment at no
201 charge to consumers, except as otherwise explicitly authorized under this act.

202 f. Education. Each manufacturer shall, as part of its collection and recycling plan,
203 inform consumers in this state about how and where to return end-of-life covered electronic
204 equipment. Each manufacturer shall include collection and recycling information on its publicly
205 available Internet site, shall provide collection and recycling information to the department; and
206 may include collection and recycling information in the covered electronic equipment's
207 packaging or accompanying its sale.

208 g. Annual Filing. Each manufacturer shall annually file a report to the department
209 on or before February 28, beginning the second program year, with the following:

210 (i) The weight of covered electronic equipment collected and recycled during
211 the preceding program year, by computers and televisions;

212 (ii) Determination that the manufacturer has met its manufacturer's collection
213 amount, including payment of any underachievement fee and use of any collection credits;

214 (iii) Documentation verifying the collection and recycling of the covered
215 electronic equipment in a manner that complies with section 7 regarding sound environmental
216 management;

217 (iv) Any changes to the manufacturer's collection and recycling plan; and

218 (v) Annual registration fee;

219 (vi) Any additional information deemed necessary by the department,
220 including but not limited to sales data reported by weight for the manufacturer's covered
221 electronic equipment sold in this state for the previous three calendar years.

222 h. Statewide Collection Goal. For program years 2012, 2013 and 2014, the
223 statewide goal for collecting end-of-life covered electronic equipment is 4.0 pounds per person,
224 comprised of a statewide collection goal of 1.8 pounds per person for computers and a statewide
225 collection goal of 2.2 pounds per person for televisions. For subsequent years, if either statewide
226 collection goal category is higher or lower than the average of the three previous years, then the
227 department may adjust the next year's statewide collection goal for that category. If the
228 department determines that an adjustment in the next year's statewide collection goal is
229 necessary, the following year's statewide collection goal will be the average weight of covered
230 electronic equipment collected by all manufacturers during the three previous program years
231 multiplied by the goal attainment percentage. The new statewide collection goal will equal any
232 new statewide collection goal for computers plus any new statewide collection goal for
233 televisions. For the purposes of this section, "goal attainment percentage" shall mean:

234 (1) ninety percent if the average annual total amount collected is less than
235 ninety percent of the previous year's statewide collection goal;

236 (2) ninety-five percent if the average annual total amount collected is equal to
237 or greater than ninety percent but less than or equal to ninety-five percent of the previous year's
238 statewide collection goal;

239 (3) one hundred percent if the average annual total amount collected is greater
240 than ninety-five percent but less than one hundred five percent of the previous year's statewide
241 collection goal;

242 (4) one hundred five percent if the average annual total amount collected is
243 equal to or greater than one hundred five percent but less than or equal to one hundred ten
244 percent of the previous year's statewide collection goal;

245 (5) one hundred ten percent if the average annual total amount collected is
246 greater than one hundred ten percent of the previous year's statewide collection goal.

247 i. Manufacturer's Collection Amount.

248 (1) Each manufacturer must meet its manufacturer's collection amount
249 annually.

250 (2) Manufacturers may collect and include, for purposes of meeting its
251 manufacturer's collection amount, not only its own brands of covered electronic equipment but
252 also other brands of covered electronic equipment and peripherals associated with the operation
253 of covered electronic equipment, including a keyboard, mouse, DVD player, video game
254 console, or any other device that can be used with covered electronic equipment and that
255 provides input or output into or from covered electronic equipment.

256 (3) A manufacturer may utilize any excess weight it obtained or collection
257 credits it banked, pursuant to subsection (l) below.

258 (4) In order to prioritize reuse of covered electronic equipment, units that are
259 channeled to reuse shall count as double the weight of those recycled toward a given
260 manufacturer's collection amount.

261 j. Annual Registration Fee. Each manufacturer shall pay to the department an
262 annual registration fee to be used for administrative costs associated with the department's
263 implementation of this act, including the department's public education program under section 5.
264 The annual registration fee depends on the manufacturer's market share, within its covered
265 electronics equipment category of computer equipment or televisions, as follows:

266 (1) $5,000 for manufacturers with a market share equal to or greater than
267 one percent.

268 (2) $2,500 for manufacturers with a market share less than one percent but
269 greater than or equal to one-tenths of one percent.

270 (3) No fee for manufacturers with a market share less than one-tenth of one
271 percent.

272 k. Underachievement Fee. If for program year 2014 or any year thereafter a
273 manufacturer does not meet its annual manufacturer's collection amount, the manufacturer must
274 pay a fee for underachievement to the department, as follows:

275 (1) If a manufacturer accepts at least ninety percent but less than one hundred
276 percent of its manufacturer's collection amount, the underachievement fee shall be thirty cents
277 multiplied by the number of additional pounds of covered electronic equipment that the
278 manufacturer should have accepted.

279 (2) If a manufacturer accepts at least fifty percent but less than ninety percent of
280 its manufacturer's collection amount, the underachievement fee shall be forty cents multiplied by
281 the number of additional pounds of covered electronic equipment that the manufacturer should
282 have accepted.

283 (3) If a manufacturer accepts less than fifty percent of its manufacturer's
284 collection amount, the underachievement fee shall be fifty cents multiplied by the number of
285 additional pounds of covered electronic equipment that the manufacturer should have accepted.

286 l. Excess Weight Collected. If a manufacturer accepts more than its manufacturer's
287 collection amount in a particular year, the excess weight may be:

288 (1) sold or traded to other manufacturers for use in meeting their manufacturer's
289 collection amount; provided, however, that such sold or traded amount may be used only to meet
290 the manufacturer's collection amount for the current year in which the excess was collected; or

291 (2) banked and used by the manufacturer as collection credits only for its own
292 use; provided, however, that the manufacturer may use such credits only for a period no longer
293 than five years succeeding the year in which the collection credits were earned, and the
294 manufacturer may meet no more than twenty five percent of its manufacturer's collection
295 amount for any year with collection credits that it generated and banked in a prior year.

296 Section 4. Retailers.

297 a. No retailer shall sell or offer for sale covered electronic equipment in this state
298 unless the covered electronic equipment has a proper manufacturer label, including the

299 manufacturer's brand and name, and such device's manufacturer is included on the department's
300 list of manufacturers that meet the requirements in section 3(a).

301 b. Retailers can go to the department's publicly available Internet site and view all
302 manufacturers that are listed as meeting the requirements of section 3(a). Only covered
303 electronic equipment from manufacturers on that list may be sold in or into this state.

304 c. Retailers are not required to collect covered electronic equipment under this act.

305 Section 5. Department

306 a. Education. The department shall educate consumers about collection and
307 recycling of covered electronic equipment.

308 b. Website. The department shall host, or designate another person to host, for
309 consumers a publicly available Internet site about covered electronic equipment collection and
310 recycling, with information about the collection and recycling of covered electronic equipment,
311 including best management practices and information about and links to information on
312 manufacturers' programs and collection and recycling plans, a list of manufacturers who meet
313 the requirements of section 3(a), and covered electronic equipment collection events, collection
314 sites, and community collection and recycling programs.

315 c. State Report. The department shall compile information from manufacturers,
316 develop annual statewide collection goals, set manufacturers' collection amounts, and issue an
317 electronic report with this information to the Joint Committee on Evironment, Natural Resources
318 and Agriculture by April 1 of each year, beginning the second program year.

319 d. Manufacturer Collection Amount. By March 15 of each year, the department
320 shall notify each manufacturer of its market share and its manufacturer collection amount for that
321 program year.

322 e. Financial and Propriety Information. Financial or proprietary information
323 submitted to the department under this act is exempt from public disclosure, in accordance with
324 state law.

325 f. Use of Underachievement Fees. The department shall use any manufacturer
326 underachievement fees for administration of this act, including its consumer public education
327 program.

328 g. No Other Fees. Expect as provided in sections 3(j) and 3(k), the department does
329 not have the authority to assess any fees, including a collection or recycling fee, on consumers,
330 manufacturers, retailers, or others for collection or recycling of covered electronic equipment.

331 h. Rules. The department may adopt such rules and regulations as are necessary to
332 implement this act.

333 Section 6. Consumers.

334 a. Education. Consumers are encouraged to learn about recommended methods for
335 collection, recycling and reuse of their end-of-life covered electronic equipment by visiting the
336 department's and manufacturers' publicly available Internet sites.

337 b. Data Security. Consumers remain responsible for any data or other information
338 that may be on covered electronic equipment that is collected or recycled.

339 Section 7. Sound Environmental Management.

340 a. Compliance. All covered electronic equipment collected pursuant to this act shall
341 be collected and recycled in a manner that complies with all applicable federal, state, and local
342 laws and requirements.

343 b. In meeting their obligations under this act, manufacturers are responsible for
344 utilizing recyclers that meet or are certified to "e-Stewards Standard for Responsible Recycling
345 and Reuse of Electronics," or that meet more robust environmental performance and
346 accountability standards that the department may adopt.

347 Section 8. Enforcement

348 a. The department may conduct audits and inspections to determine compliance
349 under this act. The department and the attorney general, as appropriate, shall enforce this act and
350 take enforcement action against any manufacturer, retailer, or person who recycles or reuses
351 computers for failure to comply with this act.

352 b. Any manufacturer who fails to label its covered electronic equipment, adopt and
353 implement a collection and recycling plan, file its annual report, meet its manufacturer's
354 collection amount, or pay its annual registration fee, may be assessed a penalty of up to ten
355 thousand dollars for the first violation and up to twenty-five thousand dollars for the second and
356 each subsequent violation, in addition to being responsible for any other enforcement pursuant to
357 the law.

358 c. Except as provided in subsection (b) above, any person who violates any
359 requirement of this act may be assessed a penalty of up to one thousand dollars for the first
360 violation and up to two thousand dollars for the second and each subsequent violation, in
361 addition to being responsible for any other enforcement pursuant to the law.

362 d. The department shall determine the appropriate penalties, as provided in this
363 section, based on adverse impact to the environment, unfair competitive advantage, and other
364 considerations as the department deems appropriate.

365 e. Any violation of the sales prohibitions of this act may be enjoined in an action, in
366 the name of the state, brought by the attorney general.

367 f. Penalties collected under this act shall be deposited to the credit of the
368 department's fund for administration of this program and its consumer education effort under
369 this act.

370 Section 9. Liability

371 a. Manufacturers and retailers are not liable in any way for information in any form
372 that a consumer leaves on covered electronic equipment that is collected or recycled under this
373 act.

374 b. Nothing in this act is intended to exempt any person from liability under other
375 applicable law.

376 Section 10. State Procurement.

377 a. Compliance.

378 (i) Any manufacturer that submits a bid for a contract with a state agency for
379 the purchase or lease of covered electronic equipment must be in compliance with this act.

380 (ii) A state agency that engages in a contract with a manufacturer shall require
381 such manufacturer to certify compliance with this act. Failure to provide such certification shall
382 render the prospective bidder ineligible to bid.

383 b. State Purchasing Preferences. In considering bids for state contracts for covered
384 electronic equipment, in addition to any other preferences provided elsewhere under state law,
385 the state shall give special preference to manufacturers who have programs to recover other
386 manufacturers' covered electronic equipment, including but not limited to collection events,
387 recycling grants, and manufacturer initiatives to take back any covered electronic equipment
388 brand with purchase.

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

391 Section 11. Federal Preemption.

392 This act shall be deemed repealed if a federal law or rule or a combination thereof takes
393 effect that establishes a national program for the collection and recycling of covered electronic
394 equipment that substantially meets the intent of this act.