

SENATE No. 518

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2019</i>

SENATE No. 518

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 518) of Marc R. Pacheco and James B. Eldridge for legislation relative to information technology producer responsibility. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 473 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 21O the
2 following chapter:-

3 CHAPTER 21P

4 INFORMATION TECHNOLOGY PRODUCER RESPONSIBILITY

5 Section 1. The following words shall, unless the context clearly requires otherwise, have
6 the following meanings:-

7 “Brand”, the name, symbols, logo, words, trademark or other marks that identify covered
8 electronic equipment, rather than any of its components.

9 “Computer”, a desktop or notebook computer, computer monitors and printers; provided,
10 however, that “computer” shall not include an automated typewriter, professional workstation,
11 servers, in-car infotainment device, in-car infotainment system, mobile telephone, portable
12 hand-held calculator, portable or personal digital assistant, MP3 player, global positioning
13 systems, telephones or mobile telephones of any type, or other similar device; provided further,
14 that “computer” shall not include computer peripherals, commonly known as cables, mouse or
15 keyboard; and provided further, that “computer” shall not include televisions.

16 “Consumer”, any individual or a small business who has used covered electronic
17 equipment primarily for personal or small business use; provided, that a “consumer” shall not
18 include any entity involved in a wholesale transaction between a distributor and a retailer.

19 “Covered electronic equipment”, any computer and television marketed and intended for
20 use by a consumer; provided, however, that “covered electronic equipment” shall not include an
21 electronic device that is: (i) part of a motor vehicle or any component part of a motor vehicle
22 assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts
23 for use in a motor vehicle; (ii) functionally or physically a part of, or connected to, or integrated
24 within equipment or a system designed and intended for use in an industrial, governmental,
25 commercial, research and development, or medical setting, including, but not limited to,
26 diagnostic, monitoring, control or medical products as defined under the Federal Food, Drug, and
27 Cosmetic Act, or equipment used for security, sensing, monitoring, anti-terrorism, emergency
28 services purposes or equipment designed and intended primarily for use by professional users; or
29 (iii) contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer,
30 microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air
31 purifier or exercise equipment.

“Department”, the department of environmental protection.

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

“Manufacturer”, a person who: (i) manufactures covered electronic equipment under a brand that it owns or is licensed to use, for sale in the commonwealth; (ii) manufactures covered electronic equipment without affixing a brand for sale in the commonwealth; (iii) resells into the commonwealth covered electronic equipment under a brand it owns or is licensed to use produced by other suppliers, including retail establishments that sell covered electronic equipment under a brand the retailer owns or is licensed to use; (iv) imports into the United States or exports from the United States covered electronic equipment for sale in the commonwealth; (v) sells at retail covered electronic equipment acquired from an importer that is the manufacturer as described in clause (iv), and elects to register in lieu of the importer as the manufacturer for those products; (vi) manufactures covered electronic equipment, supplies covered electronic equipment to any person or persons within a distribution network that includes wholesalers or retailers in the commonwealth, and benefits from the sale in the commonwealth of those covered electronic equipment through such distribution network; or (vii) assumes the responsibilities and obligations of a manufacturer under this chapter; provided,

however, that in the event the manufacturer is one who manufactures, sells or resells under a brand it is licensed to use, the licensor or brand owner of such brand shall not be included in the definition of manufacturer under clauses (i) or (iii); provided further, that where an assertion is made that more than 1 person is a manufacturer of a certain brand of covered electronic equipment under this chapter, any 1 or more such persons may assume responsibility for and satisfy the obligations of a manufacturer under this chapter with respect to covered electronic equipment bearing that brand; and provided further, that if no person assumes responsibility for and satisfies the obligations of a manufacturer for the covered electronic equipment of that brand, the department may consider any of those persons to be the responsible manufacturer for purposes of this chapter.

“Manufacturer’s collection amount”, the total weight in covered electronic equipment that has reached the end of its useful life that each manufacturer is responsible for collecting annually, as measured by the product of the statewide collection goal and the manufacturer’s market share.

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

“Notebook computer”, an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions for general purpose needs which are met through interaction with a number of software programs contained in the device: (i) which is not designed to exclusively perform a specific type of limited or

specialized application; (ii) for which human interface is achieved through a keyboard, video display greater than 4 inch in size, and mouse or other pointing device, all of which are contained within the construction of the unit; and (iii) which can be carried as 1 unit by an individual; provided, however, that a “notebook computer” shall not include a portable handheld calculator or a portable digital assistant or similar specialized device.

“Person”, an individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or public authority.

“Program year”, a full calendar year beginning on or after January 1, 2020.

“Recycle”, processing including, but not limited to, disassembling, dismantling and shredding, of covered electronic equipment or their components to recover a useable product; provided, that “recycling” shall not include any process defined as disposal or incineration under applicable laws and regulations.

“Retailer”, a person who owns or operates a business that sells covered electronic equipment directly to a consumer, including through sales outlets, catalogs or the publicly available internet, whether or not the seller has a physical presence in the commonwealth.

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

“Sell”, “offer for sale” or “sale”, a transfer for consideration of title including, but not limited to, transactions conducted through sales outlets, catalogs or the internet or any other similar electronic means, but shall not include financing or leasing.

“Statewide collection goal”, the statewide goal in weight for collecting covered electronic equipment that has reached the end of its useful life, expressed in total pounds.

“Statewide collection rate”, the annual number of pounds per capita of covered electronic equipment collected statewide.

“Television”, an electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying of television or video programming via broadcast, cable or satellite, including, but not limited to, any direct view or projection television with a viewable screen of 9 inches or larger whose display technology is based on cathode ray tube , plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode or similar technology marketed and intended for use by a consumer primarily for personal purposes; provided, that “television” shall not include computers.

Section 2. (a) The collection and recovery provisions of this chapter shall apply to all covered electronic equipment used and returned by consumers in the commonwealth.

(b) This chapter shall not apply to a consumer’s lease of covered electronic equipment or a consumer’s use of covered electronic equipment under a lease agreement or the sale or lease of covered electronics to an entity when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling and reuse of covered electronic equipment that has reached the end of its useful life.

(c) This chapter shall not apply to a manufacturer solely of covered electronic equipment that the department determines are of such a character that the covered electronic equipment would not be used by a consumer. If, however, such a manufacturer also manufactures or manufactured 1 or more covered electronics that are of such character as to be used by a consumer, then this chapter shall apply to the manufacturer for those covered electronic equipment.

Section 3. (a) No manufacturer shall sell or offer for sale covered electronic equipment in the commonwealth unless the manufacturer has: (i) adopted and is implementing a collection and recycling plan either individually or in cooperation with other manufacturers and has provided a copy of such plan to the department; (ii) affixed a permanent, readily visible label to the covered electronic equipment with the manufacturer's brand, whether owned or licensed; (iii) paid the annual registration fee; (iv) met its annual manufacturer's collection amount for the previous program year; and (v) paid any underachievement fees due under subsection (j).

(b) The collection and recycling plan shall: (i) enable consumers and others to recycle covered electronic equipment without paying a separate fee at the time of recycling for not more than 7 items of covered electronic equipment provided in any single day to 1 collection facility or at 1 collection event; provided, that a fee may be charged under an asset recovery contract; and provided further, that a fee may be charged for "premium services", as defined through regulations promulgated by the department and which shall include, but not be limited to, data security services, data destruction, refurbishment for reuse by the consumer and on-site pickup from a consumer; (ii) be designed to enable a manufacturer to meet its manufacturer's collection amount; (iii) include provisions for the manufacturer's collection from a consumer of any covered electronic equipment that has reached the end of its useful life and is labeled with the

manufacturer's brand and recycling or reuse of covered electronic equipment collected under and (iv) include a list of all of the manufacturer's covered electronic equipment brands sold or offered for sale in the commonwealth. The manufacturer shall update its plan as appropriate or if the department notifies such manufacturer that its plan is incomplete or does not otherwise comply with this chapter.

(c) (1) The collection of covered electronic equipment provided under the collection and recycling plan shall be reasonably convenient and available to, and designed to meet the collection needs of, consumers in the commonwealth. At a minimum, a collection and recycling plan shall ensure that all counties, and all municipalities which have a population of 50,000 or greater, have at least 1 method of acceptance that is available within such county or municipality. A collection site for a county may be the same as a collection site for a city or town in that county

(2) Systems that may be used, alone or together, to meet the convenience requirements of this section shall include, but are not limited to: (i) mail-back systems in which the manufacturer or its designee offers a system in which the consumer can return end-of-life covered electronic equipment through the mail or common-carrier shipment; (ii) physical collection sites where the manufacturer or its designee keeps open and staffed physical collection sites at which the consumer may return end-of-life covered electronic equipment; and (iii) collection events where the manufacturer or its designee holds collection events at which consumers may return end-of-life covered electronic equipment.

Collection services may also use existing collection and consolidation infrastructure for handling covered electronic equipment and may include electronic recyclers and repair shops,

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

(d) Each manufacturer shall offer a collection of covered electronic equipment at no charge to consumers, except as otherwise explicitly authorized under this chapter and regulations promulgated under this chapter.

(e) Each manufacturer shall, as part of its collection and recycling plan, inform consumers in the commonwealth about how and where to return end-of-life covered electronic equipment. Each manufacturer shall include collection and recycling information on its publicly available internet site; shall provide collection and recycling information to the department; and may include collection and recycling information in the covered electronic equipment's packaging or accompanying its sale.

(f) Each manufacturer shall annually file a report with the department, on or before February 28, which includes: (i) the weight of covered electronic equipment collected and recycled during the preceding program year, by computers and televisions; (ii) a determination of whether the manufacturer has met its manufacturer's collection amount, including payment of any underachievement fee and use of any collection credits; (iii) documentation verifying the collection and recycling of the covered electronic equipment in a manner that complies with section 6; (iv) any changes to the manufacturer's collection and recycling plan; (v) an annual registration fee; and (vi) any additional information considered necessary by the department including, but not limited to, sales data reported by weight for the manufacturer's covered electronic equipment sold in the commonwealth for the previous 3 calendar years.

(g) For the first 3 program years, the statewide goal for collecting end-of-life covered electronic equipment shall be the product of a statewide collection rate of 6.0 pounds per capita, and the latest population estimate for the commonwealth, as published by the United States Census Bureau. Of the number representing the statewide goal, a total of 45 per cent, shall comprise the statewide collection goal for computers and a total of 55 per cent shall comprise the statewide collection goal for televisions. For subsequent years, if the statewide collection goal for either the computer or television category is higher or lower than the average of the 3 previous years of actual collections, then the department may adjust the next year's statewide collection rate and goal for that category, and may also adjust the next year's allocation of the total among computers and televisions. If the department determines that an adjustment in the next year's statewide collection goal is necessary, the following year's statewide collection goal shall be the average weight of covered electronic equipment collected by all manufacturers during the 3 previous program years multiplied by the goal attainment percentage. The new statewide collection goal shall equal any new statewide collection goal for computers plus any new statewide collection goal for televisions. For the purposes of this section, "goal attainment percentage" shall mean: (i) 90 per cent if the average annual total amount collected is less than 90 per cent of the previous year's statewide collection goal; (ii) 95 per cent if the average annual total amount collected is equal to or greater than 90 per cent but less than or equal to 95 per cent of the previous year's statewide collection goal; (iii) 100 per cent if the average annual total amount collected is greater than 95 per cent but less than 105 per cent of the previous year's statewide collection goal; (iv) 105 per cent if the average annual total amount collected is equal to or greater than 105 per cent but less than or equal to 110 per cent of the previous year's

206 statewide collection goal; and (v) 110 per cent if the average annual total amount collected is
207 greater than 110 per cent of the previous year's statewide collection goal.

208 (h) Each manufacturer shall annually meet its manufacturer's collection amount for
209 computers by collecting, or by purchasing another manufacturer's excess weight of, computers
210 and associated peripherals. Each manufacturer shall annually meet its manufacturer's collection
211 amount for televisions by collecting, or by purchasing another manufacturer's excess weight of,
212 televisions and associated peripherals

213 To meet its manufacturer's collection amount, manufacturers may collect and include,
214 not only its own brands of covered electronic equipment but also other brands of covered
215 electronic equipment and peripherals associated with the operation of covered electronic
216 equipment, including a keyboard, mouse, DVD player, video game console or any other device
217 that can be used with covered electronic equipment and that provides input or output into or from
218 covered electronic equipment.

219 A manufacturer may utilize any excess weight it obtained or collection credits it banked,
220 under subsection (k).

221 Units that are channeled to reuse shall count as double the weight of those recycled
222 toward a given manufacturer's collection amount.

223 The weight of any covered electronic equipment that is collected by manufacturers from
224 municipalities and transported to reuse and recycle shall be counted as double the actual weight
225 toward the manufacturer's collection amount; provided, that manufacturers shall not charge
226 municipalities for any costs related to collection, transportation or processing of such electronic
227 equipment.

(i) Each manufacturer shall pay to the department an annual registration fee which shall be deposited in the Electronics Waste Trust Fund established in section 2GGGG of chapter 29 to be used for administrative costs associated with the department's implementation of this chapter, including the department's public education program under section 5. The annual registration fee shall be based on the manufacturer's market share, within its covered electronics equipment category of computer equipment or televisions, as follows: (i) \$5,000 for manufacturers with a market share equal to or greater than 1 per cent; (ii) \$2,500 for manufacturers with a market share less than 1 per cent but greater than or equal to .10 per cent; or (iii) no fee for manufacturers with a market share less than .10 per cent.

(j) If a manufacturer does not meet its annual manufacturer's collection amount, the manufacturer shall pay a fee for underachievement, which shall be deposited in the Electronics Waste Trust Fund established in said section 2GGGG of said chapter 29 to be used for administrative costs associated with the department's implementation of this chapter, as follows: (i) if a manufacturer accepts at least 90 per cent but less than 100 per cent of its manufacturer's collection amount, the underachievement fee shall be \$0.30 multiplied by the number of additional pounds of covered electronic equipment that the manufacturer should have accepted; (ii) if a manufacturer accepts at least 50 per cent but less than 90 per cent of its manufacturer's collection amount, the underachievement fee shall be \$0.40 multiplied by the number of additional pounds of covered electronic equipment that the manufacturer should have accepted; or (iii) if a manufacturer accepts less than 50 per cent of its manufacturer's collection amount, the underachievement fee shall be \$0.50 multiplied by the number of additional pounds of covered electronic equipment that the manufacturer should have accepted.

(k) If a manufacturer accepts more than its manufacturer's collection amount in a particular year, the excess weight may be: (i) sold or traded to other manufacturers for use in meeting the other manufacturer's collection amount; provided, however, that such sold or traded amount may be used only to meet the other manufacturer's collection amount for the current year in which the excess was collected; or (ii) banked and used by the manufacturer as collection credits only for its own use; provided, however, that the manufacturer may use such credits only during the 5 years succeeding the year in which the collection credits were earned; provided further, that the manufacturer may meet not more than 25 per cent of its manufacturer's collection amount for any year with collection credits that it generated and banked in a prior year.

Section 4. (a) No retailer shall sell or offer for sale covered electronic equipment in the commonwealth unless the covered electronic equipment has a proper manufacturer label, including the manufacturer's brand and name, and such device's manufacturer is included on the department's list of manufacturers that meet the requirements under subsection (a) of section 3.

(b) Retailers may go to the department's publicly available internet site and view all manufacturers that are listed as meeting the requirements under subsection (a) of section 3. Only covered electronic equipment from manufacturers on that list may be sold in or into the commonwealth.

(c) Retailers shall not be required to collect covered electronic equipment under this chapter.

Section 5. (a) The department shall educate consumers about collection and recycling of covered electronic equipment.

(b) The department shall host, or designate another person to host, for consumers a publicly available internet site regarding covered electronic equipment collection and recycling, with information about the collection and recycling of covered electronic equipment, including best management practices and information about and links to information on manufacturers' programs and collection and recycling plans, a list of manufacturers who meet the requirements under subsection (a) of section 3 and covered electronic equipment collection events, collection sites and community collection and recycling programs.

(c) The department shall compile information from manufacturers, including manufacturers' collection results, develop annual statewide collection goals, set manufacturers' collection amounts and submit an electronic report with this information on the department's website and to the joint committee on environment, natural resources and agriculture not later than April 1 of each year.

(d) By March 15 of each year, the department shall notify each manufacturer of its market share and its manufacturer collection amount for that program year.

(e) Financial or proprietary information, including sales data, submitted to the department under this chapter shall not be considered a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66.

(f) Except as provided in subsections (i) and (j) of section 3, the department shall not assess any fees, including a collection or recycling fee, on consumers, manufacturers, retailers or others for collection or recycling of covered electronic equipment.

(g) The department may adopt such rules and regulations as are necessary to carry out this chapter.

Section 6. In meeting their obligations under this chapter, manufacturers shall be responsible for utilizing recyclers that meet or are certified to “Responsible Recycling Practices for Use in Accredited Certification Programs (R2)”, “e-Stewards Standard for Responsible Recycling and Reuse of Electronics” or that meet more robust environmental performance and accountability standards that the department may adopt.

Section 7. (a) The department may conduct audits and inspections to determine compliance under this chapter. The department and the attorney general, as appropriate, shall enforce this chapter and take enforcement action against any manufacturer, retailer or person who recycles or reuses computers for failure to comply with this chapter.

(b) Any manufacturer who fails to label its covered electronic equipment, adopt and implement a collection and recycling plan, file its annual report, meet its manufacturer’s collection amount, or pay its annual registration fee, may be assessed a penalty of up to \$10,000 for the first violation and up to \$25,000 for the second and each subsequent violation, in addition to any other penalty under the law.

(c) Except as provided in subsection (b), any person who violates any requirement of this chapter may be assessed a penalty of up to \$1,000 for the first violation and up to \$2,000 for the second and each subsequent violation, in addition to any other penalty under the law.

(d) The department shall determine the appropriate penalties under this section, based on adverse impact to the environment, unfair competitive advantage and other considerations as the department considers appropriate.

(e) Any violation of the sales prohibitions of this chapter may be enjoined in an action, in the name of the commonwealth, brought by the attorney general.

(f) Penalties collected under this chapter shall be deposited in the Electronics Waste Trust Fund established under section 2GGGG of chapter 29 for administration of this program and the department's consumer education effort under this chapter.

Section 8. (a) Manufacturers and retailers shall not be liable for information, in any form, that a consumer leaves on covered electronic equipment that is collected or recycled under this chapter.

(b) Nothing in this chapter shall exempt any person from liability under other applicable law.

Section 9. (a) Any manufacturer that submits a bid for a contract with a state agency for the purchase or lease of covered electronic equipment shall comply with this chapter. A state agency that engages in a contract with a manufacturer shall require such manufacturer to certify compliance with this chapter. Failure to provide such certification shall render the prospective bidder ineligible to bid.

(b) In considering bids for state contracts for covered electronic equipment, in addition to any other preferences under the law, the commonwealth shall give special preference to manufacturers who have programs to recover other manufacturers' covered electronic equipment, including, but not limited to, collection events, recycling grants and manufacturer initiatives to take back any covered electronic equipment brand with purchase.

(c) The operational services division shall adopt rules and regulations to implement this section.

SECTION 2. Chapter 29 of the General Laws is hereby amended by inserting after section 2FFFF the following section:-

Section 2GGGG. (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Electronics Waste Trust Fund, hereinafter called the fund. The fund shall be administered by the department of environmental protection. The fund may be expended for the hiring of staff or contractors and for such other purposes as the department of environmental protection considers necessary to administer and enforce chapter 21P.

(b) There shall be credited to the fund any fees, penalties and other revenues received under chapter 21P, revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund and any gifts, grants, private contributions and interest or investment earnings on the fund's assets and all other sources.

(c) Any unexpended balance in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point.

SECTION 3. Clause (iv) of subsection (a) of section 3 of chapter 21P of the General Laws shall take effect on January 1, 2020.

SECTION 4. Clause (v) of subsection (a) of section 3 of chapter 21P of the General Laws shall take effect on January 1, 2021.

355 SECTION 5. Manufacturers shall be required to file the annual report required by
356 subsection (f) of section 3 of chapter 21P of the General Laws beginning in the second year of
357 the recycling program.

358 SECTION 6. Subsection (j) of section 3 of chapter 21P of the General Laws shall be
359 effective beginning January 1, 2020.

360 SECTION 7. The department of environmental protection shall be required to compile
361 the electronic report under subsection (c) of section 5 of chapter 21P beginning in the second
362 year of the recycling program.