SENATE DOCKET, NO. 525 FILED ON: 1/19/2011

SENATE . . . . . No. 352

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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:
James B. Eldridge	
Frank I. Smizik	*15th Norfolk*
Marc R. Pacheco	
Stephen M. Brewer	*Worcester, Hampden, Hampshire, Franklin*
Benjamin B. Downing	*Berkshire, Hampshire, and Franklin*
Patricia D. Jehlen	
Sonia Chang-Diaz	
Katherine M. Clark	*Middlesex and Essex*
Susan C. Fargo	
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Daniel A. Wolf	
Stephen Kulik	*1st Franklin*
Cory Atkins	*14th Middlesex*
Lori A. Ehrlich	*8th Essex*
William N. Brownsberger	
Jennifer E. Benson	*37th Middlesex*

Tom Sannicandro	*7th Middlesex*
James J. Dwyer	*30th Middlesex*
Jason M. Lewis	*31st Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Sheila C. Harrington	*1st Middlesex*
Ellen Story	*3rd Hampshire*

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SENATE . . . . . No. 352

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 352) of Wolf, Story, Harrington and other members of the General Court for legislation to require producer responsibility for collection reuse and recycling of discarded electronic products [Joint Committee on Environment, Natural Resources and Agriculture].

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to require producer responsibility for collection, reuse and recycling of discarded electronic products.
□.

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

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

CHAPTER 21O.

RECYCLING OF DISCARDED ELECTRONIC PRODUCTS.

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

7 "Additionally covered electronic product" means any of the following electronic products
8 taken out of service from a person in this State regardless of purchase location: printers; stand-
9 alone facsimile machine; video game console, video cassette recorder/player, digital video disk
10 player, or similar video device; zip drive, external hard drive, or similar storage device; or
11 scanner. To the extent allowed under federal and state laws and regulations, an additionally
12 covered eligible electronic product that is being collected, recycled, or processed for reuse is not
13 considered to be hazardous waste, household waste, solid waste, or special waste. The term does
14 not include a covered television product or a covered computer product.

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

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

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

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

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

32 ?Covered electronic product? means a covered computer product, a covered television
33 product, or additionally covered electronic product collected for reuse or recycling by collectors
34 and processors eligible for collector reimbursement and processor reimbursement through the
35 producer reimbursement system. ?Covered electronic product,? ?covered computer product?,
36 ?covered television product,? or ?additionally covered electronic product? do not include any of
37 the following:

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

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

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

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

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

53 (vi) Global positioning systems (GPS).

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

63 ?Department?, the department of environmental protection.

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

72 ?Market share?, a television producer?s national sales of televisions expressed as a
73 percentage of the total of all television producers? national sales based on the best available
74 public data.

75 ?Monitor?, a video display device without a tuner that can display pictures and sound and
76 is used with a computer.

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

86 ?Notebook computer? means an electronic, magnetic, optical, electrochemical, or other
87 high-speed data processing device performing logical, arithmetic, or storage functions for
88 general purpose needs which are met through interaction with a number of software programs
89 contained therein, which is not designed to exclusively perform a specific type of limited or
90 specialized application. Human interface with a notebook computer is achieved through a
91 keyboard, video display greater than 4" in size, and mouse or other pointing device, all of which
92 are contained within the construction of the unit which comprises the notebook computer, and
93 can be carried as one unit by an individual. Supplemental standalone interface devices typically

94 can also be attached to the notebook computer. Notebook computers can use external, internal, or
95 batteries for a power source. Notebook computer does not include a portable handheld calculator,
96 or a portable digital assistant or similar specialized device. A notebook computer is sometimes
97 referred to as a laptop computer.

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

100 ?Person?, a natural person, corporation, association, partnership, government body or
101 other legal entity.

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

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

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

118 ?Producer?, any person who: (a) has a physical presence and legal assets in the United
119 States of America and (1) manufactures or manufactured a covered electronic product under its
120 own brand or label; (2) sells or sold under its own brand or label a covered electronic product
121 produced by other suppliers; or (3) owns a brand that it licenses or licensed to another person for
122 use on a covered electronic product; or (b) imports or imported a covered electronic product into
123 the United States that was manufactured by a person without a presence in the United States of
124 America; (c) sells at retail a covered electronic product acquired from an importer that is the
125 manufacturer as described in subsection (b) and elects to register in lieu of the importer; or (d)
126 assumes the responsibilities and obligations of a producer under this Act.

127 ?Program year?, a full calendar year beginning on or after January 1, 2013.

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

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

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

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

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

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

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

152 Section 3. (a) Every producer seeking to engage in business in the commonwealth shall
153 file an application, accompanied by the producer registration fee, with the department requesting
154 registration as a producer. Said application shall be made on a form to be furnished by the
155 department, and shall include, without limitation, the following information: (1) the name and
156 contact information of the applicant; (2) the applicant's brand names of covered electronic
157 products, including all brand names sold in the commonwealth in the past, all brand names
158 currently being sold in the commonwealth, and all brand names for which the applicant is legally

159 responsible; (3) the method or methods of sale used in the commonwealth; (4) a baseline or a set
160 of baselines that describe any efforts to design covered electronic products for reuse or recycling
161 and goals and plans for further increasing design for reuse and recycling; and (5) a description of
162 any collection, consolidation or processing services utilized to recover, reuse, or recycle the
163 applicant's products. The department shall, within 60 days, review the application for
164 registration. If said application satisfies the requirements of this section, the department shall
165 register said applicant as a producer and shall forthwith mail to him a certificate to that effect. If
166 said application fails to satisfy the requirements of this section the producer shall, within 30
167 days, file with the department a revised application addressing the requirements noted by the
168 department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 A producer establishing an independent television recycling program either individually
246 or in cooperation with other producers that collects in excess of its market share or cumulative
247 market share allocation assigned by the Department will receive a one pound credit for each
248 pound by which they exceed the allocation. This credit may be used to count toward the market
249 share allocation during the following three program years or may be transferred for consideration
250 to another independent collection program for another producer to count toward its market share
251 allocation during the next three program years. The credits earned under this clause may only
252 be used toward no more than twenty-five percent of a producer?s market share allocation during
253 any given program year. The total number of pounds processed by each producer, including
254 credits that would be carried over, must be included in the report to the Department and used by
255 the Department in calculating the target for the following program year.

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

258 Section 7. (a) Every collector seeking to engage in business in the commonwealth shall
259 file an application, accompanied by the collector registration fee, with the department requesting
260 registration as a collector. Said application shall be made on a form to be furnished by the
261 department, and shall include, without limitation, the following information: (1) the name; (2)
262 the address; (3) the telephone number; and (4) the location of the business. The department shall,
263 within 60 days, review the application for registration. If said application satisfies the

264 requirements of this section, the department shall register said applicant as a collector and shall
265 forthwith mail to him a certificate to that effect. If said application fails to satisfy the
266 requirements of this section the collector shall, within 30 days, file with the department a revised
267 application addressing the requirements noted by the department.

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

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

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

283 (e) Only an entity registered as a collector with the department may act as a collector in a
284 plan. All covered electronic products received by a registered collector must be submitted to a
285 plan. Fully functioning computers that are received by a registered collector in working order

286 may be sold or donated as whole products by the collector for reuse. Computers that require
287 repair to make them a fully functioning unit may only be repaired on-site at the collector?s place
288 of business by the registered collector for reuse according to its original purpose.

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

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

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

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

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

304 Section 8. Collectors shall register with the department every 3 years. Such applications
305 shall be submitted to the department by the date specified by the department together with a
306 renewal fee as shall be established by the department. After verification of the facts stated on the

307 application, the department shall issue a registration, which shall expire in 3 years. Any holder of
308 a registration who fails to file a renewal application within 60 days after notification by the
309 department that his registration has expired shall, prior to engaging in business as a collector
310 within the commonwealth, be required to register anew and pay a late fee in addition to said
311 renewal fee.

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

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

324 (b) A processor shall: (1) be responsible for sorting all covered electronic products
325 received from a participating collector with whom the processor has a contract; (2) weigh the
326 total amount of covered electronic products received from a participating collector and reimburse
327 said collector; provided, however, that said collector reimbursement shall be due within 30 days
328 of pick-up; (3) sort, by producer, and weigh all covered electronic products other than televisions

329 received from collectors; (4) weigh all televisions received from collectors; (5) either repair,
330 refurbish, remanufacture, or recycle on-site or ship covered electronic products offsite for reuse
331 or recycling in accordance with the minimum performance requirements established by the
332 department; (6) demonstrate compliance with the department rules and regulations and the
333 United States Environmental Protection Agency?s Responsible Recycling Guidelines for
334 Materials Management as issued and available on the United States Environmental Protection
335 Agency?s Internet website in addition to any other requirements mandated by federal or state
336 law; (7) submit an invoice for producer reimbursement to each producers whose waste the
337 processor has handled; and (8) annually submit a report to the department which shall include
338 without limitation: (i) the total aggregate weight of covered electronic products processed
339 pursuant to this chapter in the previous program year; (ii) the weight, differentiated by producer,
340 of covered electronic products processed pursuant to this chapter in the previous program year;
341 (iii) the total amount of orphan waste processed pursuant to this chapter in the previous program
342 year; and (iv) any other information to help track, monitor and evaluate the management of
343 covered electronic products, as determined by the department.

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

347 Section 11. Processors shall register with the department every 3 years. Such application
348 shall be submitted to the department by the date specified by the department together with a
349 renewal fee as shall be established by the department. After verification of the facts stated on the
350 application, the department shall issue a registration, which shall expire in 3 years. Any holder of
351 a registration who fails to file a renewal application within 60 days after notification by the

352 department that his registration has expired shall, prior to engaging in business as a processor
353 within the commonwealth, be required to register anew and pay a late fee in addition to said
354 renewal fee.

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

358 Section 13. (a) The department shall annually: (1) determine the return share for each
359 program year for each producer of electronic products other than televisions by dividing the
360 weight of covered electronic products identified for each producer by the total weight of covered
361 electronic products identified for all producers; provided further, that said calculation shall be
362 based on the reports generated by processors of covered electronic products in the
363 commonwealth; provided further, that for the first program year, the return share of covered
364 electronic products identified for each producer shall be based on the best available public return
365 share data from the United States, including data from other states, for covered electronic
366 products from persons; provided further, that for the second and subsequent program years, the
367 return share of covered electronic products identified for each producer shall be based on the
368 previous year?s reported data as described herein; and provided further, that the department shall
369 use the return share for each producer to allocate financial responsibility for orphan waste; (2)
370 determine, based on each producer?s return share, each producer?s share of responsibility for the
371 orphan waste collected in the commonwealth; provided, however, that each producer?s return
372 share of orphan waste shall be equivalent to its percentage of return share for non-orphan
373 covered electronic products, multiplied by the total amount of orphan waste collected in the
374 program year; and provided further, that the department, in determining the producer?s orphan

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

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

395 (c) Beginning one year after this act takes effect and annually thereafter, the department
396 shall submit a report to the House Committee on Ways and Means, the Senate Committee on
397 Ways and Means, and the Joint Committee on Environment, Natural Resources and Agriculture

398 that includes information regarding the previous program year. The information shall include,
399 but is not limited to, (1) the total administrative cost to the state government, (2) the total
400 administrative cost to local governments, (3) a description of the incentive for manufacturer
401 collection, and (4) a description of the education, outreach, or other marketing efforts conducted
402 by the state or local governments to promote collection of covered electronic products.

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

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

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

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

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

416 Section 15. The department shall be charged with the enforcement of sections 1 to 14,
417 inclusive. If any person refuses to obey a decision of the department the attorney general shall,
418 upon request of the department, file a petition for the enforcement of such decision in the

419 superior court for Suffolk County or for the county in which the defendant resides or has a place
420 of business. After hearing, the court shall order the enforcement of such decision or any part
421 thereof, if legally and properly made by the department.

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

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

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

439 (c) Said advisory commission shall have the following duties: (1) It shall advise the
440 Department on policy and program development under this section, specifically regarding

441 performance standards; (2) It shall review the registration and renewal fees for producers,
442 collectors and processors, and shall make recommendations to the commissioner relative thereto;
443 and (3) It shall make recommendations to the Joint Committee on Environment, Natural
444 Resources, and Agriculture on recommendations of amending the definition of electronic product
445 under this statute to cover other electronic products, including but not limited to medical
446 equipment.

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

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