

**HOUSE . . . . . No. 02017**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Peter V. Kocot*

*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 passage of the accompanying bill:

An Act to create a framework to re-allocate responsibility for discarded products..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Brian Ashe</i>	<i>2nd Hampden</i>
<i>James Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>

# HOUSE . . . . . No. 02017

By Mr. Kocot of Northampton, a petition (accompanied by bill, House, No. 2017) of Turner and others for the establishment of product stewardship programs to provide free of charge recycling when products are sold or discarded Joint Committee on Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to create a framework to re-allocate responsibility for discarded products..

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

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

2 CHAPTER 21O.

3 AN ACT TO CREATE A FRAMEWORK TO RE-ALLOCATE RESPONSIBILITY FOR

4 DISCARDED PRODUCTS

5 Section 1. As used in this chapter the following words shall, unless the context clearly requires

6 otherwise, have the following meanings:

7 “Brand”, a name, symbol, word or mark that identifies a product and attributes the

8 product to the owner of the brand as the producer.

9 “Covered entity”, any person with a discarded product covered by sections 1 to 15 of this act.

10 “Department”, the Department of Environmental Protection.

11 “Discarded product”, a product no longer wanted by its owner that is discarded or is intended to  
12 be discarded.

13 “Disposition rate”, quantitative measures that establish on an annual basis the percentage of  
14 discarded products that are recycled, reused or properly disposed of, including energy recovery,  
15 relative to the total amount collected or total amount collected per capita in a product  
16 stewardship program.

17 “Environmentally sound management practices”, policies as defined by rules adopted pursuant to  
18 section 7 of this act that are implemented by a producer or a stewardship organization to ensure  
19 compliance with applicable laws and that address issues such as adequate record keeping,  
20 tracking and documenting the fate of materials within this commonwealth and beyond, on-site  
21 operations, security of facilities and materials, worker health and safety requirements,  
22 environmental protection, closure plans, adequate insurance and financial assurances.

23 “Historical product”, any product that is not currently marketed or sold by the producer.

24 “Orphan product”, a product that lacks a brand, for which the producer is no longer in  
25 business and has no successor in interest or for which the Department of Environmental  
26 Protection cannot identify a producer.

27 “Performance goal”, a metric established by a producer or the Department of  
28 Environmental Protection to measure on an annual basis the performance of a product  
29 stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or  
30 health impacts related to a product.

31 “Person”, the United States, this commonwealth, a public or private corporation, a local  
32 government unit, a public agency, an individual, a partnership, an association, a firm, a  
33 trust, an estate or another legal entity.

34 “Producer” a person:

35 (a) Who manufactures a product and who sells, offers for sale or distributes that product in  
36 Massachusetts under the manufacturer’s own name or brand;

37 (b) If paragraph (a) of this subsection does not apply, who is not the manufacturer of the product  
38 but is the owner or licensee of a trademark or brand under which a product is sold or distributed  
39 in Massachusetts, whether or not the trademark is registered; or

40 (c) If paragraphs (a) and (b) of this subsection do not apply, who imports the product into  
41 Massachusetts for sale or distribution.

42 “Product”:

43 (a) A single item or group of similar items specified in section 3 of this act; and

44 (b) Historical products and orphan products of the same type as the items described in paragraph

45 (a) of this subsection.

46 “Product goal”, any change in the design and manufacture of a product that reduces or has the  
47 potential to reduce environmental or health impacts.

48 “Product stewardship plan”, a statewide plan that describes a program for the collection,

49 transportation, recycling, reuse and disposal of discarded products and any related performance

50 goals and product goals and that is developed and provided for by a producer or group of  
51 producers.

52 “Product stewardship program”, a statewide program financed and managed by a producer or  
53 group of producers that is based on an approved product stewardship plan and that addresses the  
54 environmental or health impacts of a product over the entire life cycle of that product.

55 “Recycling”, (a) any process by which discarded products, components and byproducts  
56 are transformed into new, usable or marketable materials in a manner in which the original  
57 products may lose their identity, and (b) does not include energy recovery or energy generation  
58 by means of combusting discarded products, components and by-products with or without other  
59 waste products.

60 “Retailer”, any person that offers new products for sale at retail through any means,  
61 including but not limited to remote offerings such as sales outlets, catalogs or the Internet.

62 “Reuse”, the return of a product into the economic stream for use in the same kind of  
63 application as originally intended, without a change in the product’s form or function.

64 “Sell” or “sale”, any transfer of title for consideration, including but not limited to  
65 remote sales conducted through sales outlets, catalogs or the Internet or any similar electronic  
66 means, but excluding lease arrangements.

67 “Statewide product stewardship system”, the statewide system of product stewardship programs  
68 established and managed by producers or stewardship organizations that are overseen by the  
69 Department of Environmental Protection.

70 “Stewardship organization”, a corporation, nonprofit or other legal entity appointed by a  
71 producer or group of producers to act as an agent on behalf of the producer to administer a  
72 product stewardship program.

73 Section 2. The department may adopt rules as necessary to implement sections 1 to 15 of this act.

74 Section 3. (1) Every two years, after consultation with the advisory committee established  
75 pursuant to subsection (6)(a) of this section, the department may identify a list of potential  
76 products that may be appropriate for a product stewardship program. The department must hold  
77 at least one public meeting where interested persons can provide comment regarding the listing  
78 of potential products.

79 (2) Upon review of any public comment and any relevant information and after consultation with  
80 the advisory committee, the department may select from the list developed pursuant to  
81 subsection (4) of this section products for further evaluation. The department may consider  
82 whether a product’s packaging should be included in this evaluation. These products shall be  
83 evaluated based on the factors in subsection (3) of this section.

84 (3) In evaluating a product, the department shall consider the following factors:

85 (a) Potential to reduce waste, toxicity, greenhouse gas emissions or other environmental or health  
86 impacts;

87 (b) Potential to encourage product design or manufacture that reduces environmental or health  
88 impacts;

89 (c) Current or potential contribution of the product to the weight, volume or toxicity of the solid  
90 waste stream;

91 (d) Public demand or need for improved recycling, reuse or disposal opportunities;

92 (e) Producer ability to manage the product through a product stewardship program;

93 (f) Fiscal impacts to local governments, producers, retailers, consumers and other affected parties  
94 of using a product stewardship program to address the management of a product after the product  
95 is discarded; and

96 (g) Any other consideration relevant to the management of a product under a product  
97 stewardship program.

98 (4) Based on the evaluation provided in subsections (2) and (3) of this section and after  
99 consultation with the advisory committee, the department may determine products to be covered  
100 under the Product Stewardship program. Prior to making this determination, the department must  
101 hold at least one public meeting and post recommendations on its website for 30 days to allow  
102 for public comments.

103 (5) The department may not add more than two products in a two-year period unless it  
104 determines that:

105 (a) The threat to the environment or public health warrants the recommendation of additional  
106 products; or

107 (b) The products are of a similar class or type.

108 (6)(a) Prior to undertaking the process described in this section, the department shall appoint and  
109 convene a standing advisory committee to provide technical information and advice regarding  
110 the identification, evaluation and recommendation of products. The committee must have at least  
111 11 members and, at a minimum, one member must represent each of the following groups:

112 (A) Producers;

113 (B) Local governments;

114 (C) Environmental groups;

115 (D) The solid waste industry; and

116 (E) The retail industry.

117 (b) To encourage coordination with other states, the department may invite representatives from

118 other states to participate in the committee proceedings as nonmembers.

119 Section 4. The products approved by the department identified in section 3 are covered by the

120 provisions of sections 1 to 15 of this Act.

121 Section 5. (1) The department shall adopt product-specific rules to address the implementation of

122 product stewardship programs for the products specified in section 6 of this act.

123 (2)(a) Prior to adopting product-specific rules, the department shall appoint an advisory

124 committee to advise on the development of product-specific rules.

125 The committee shall have at least nine members and, at a minimum, one member must represent

126 each of the following groups:

127 (A) Producers;

128 (B) Local governments;

129 (C) Environmental groups;

130 (D) The solid waste industry;

131 (E) The retail industry; and

132 (F) Consumers or covered entities.

133 (b) To encourage coordination with other states, the department may invite representatives from  
134 other states to participate in the committee proceedings as nonmembers.

135 (3) Any product-specific rules developed and adopted pursuant to this section shall address the  
136 following:

137 (a) Definition of covered entities;

138 (b) Environmentally sound management practices;

139 (c) Performance goals and product goals as provided in section 11 of this act;

140 (d) The disposal ban as provided in 310 CMR 19.017;

141 (e) Implementation date for the product stewardship program;

142 (f) Department's administrative fees; and

143 (g) Any other requirement relevant to the management of a product under a product stewardship  
144 program.

145 Section 6. (1) Producers of products specified in section 3 of this act for which rules are adopted  
146 pursuant to section 5 of this act shall establish product stewardship programs for the products.

147 Every producer shall:

148 (a) Operate, either individually or collectively with other producers, a product stewardship  
149 program; or

150 (b) Enter into an agreement with one or more stewardship organizations to operate, on the  
151 producer's behalf, a product stewardship program.

152 (2) Product stewardship programs must be provided free of charge to covered entities when a  
153 product is sold or when the discarded products are delivered or collected for reuse, recycling or  
154 disposal throughout the calendar year. All discarded products collected for a program must be  
155 reused or recycled unless the applicable product-specific rule provides that such products must  
156 be properly disposed of. A program must meet or exceed the requirements for the collection of  
157 products set forth in the product stewardship plan required by section 7 of this act.

158 (3) Producers must pay all administrative, operational and capital costs associated with the  
159 product stewardship programs, including costs of collection, transportation, recycling, reuse and  
160 disposal of the products and their components. Producers must provide adequate insurance and  
161 financial assurances for operation of the product stewardship programs.

162 (4) Product stewardship programs must meet or exceed the environmentally sound management  
163 practices provided in the applicable product-specific rules as well as any other applicable federal,  
164 state or local requirements regarding the management of the collected products.

165 (5) A producer may not sell or offer for sale in Massachusetts any product unless the product or,  
166 where appropriate, the product package or container, is labeled with a brand that is permanently  
167 affixed and readily visible and the brand is included in an approved product stewardship plan.

168 (6) All product stewardship programs shall operate in accordance with:

169 (a) The product stewardship plan as approved by the department; and

170 (b) Sections 1 to 15 of this act and any applicable rules adopted pursuant to sections 1 to 15 of  
171 this act.

172 (7) Product stewardship programs shall include an education and outreach component to promote  
173 the use of the program and to inform covered entities of available collection options.

174 This information must be provided to covered entities, retailers and other interested parties.

175 Section 7. (1) Producers must submit a product stewardship plan to the department that addresses  
176 the following:

177 (a) Information about participating producers, including but not limited to:

178 (A) Contact information for producers;

179 (B) Contact information for the individual or entity submitting the plan;

180 (C) A description of any stewardship organization that operates the product stewardship  
181 program; and

182 (D) Producers' products and associated brands covered by the product stewardship program and  
183 product stewardship plan.

184 (b) Information on performance goals and product goals, including but not limited to:

185 (A) A description of annual performance goals and, if applicable, product goals; and

186 (B) Compliance with annual performance goals and, if applicable, product goals.

187 (c) Collection system information, including but not limited to:

188 (A) How the product stewardship program will be available, convenient, accessible and free of  
189 charge for all covered entities in urban and rural areas statewide; and

190 (B) How discarded products will be collected in all counties in the commonwealth and all cities  
191 with populations of at least 10,000.

192 (d) Implementation of environmentally sound management practices for the collection,  
193 transportation, recycling, reuse and disposal of discarded products.

194 (e) Management of collected products, including but not limited to:

195 (A) How the collected products will be recycled, reused or, where required by the product-  
196 specific rules, properly disposed of; and

197 (B) How all residuals that cannot be recycled or reused will be properly managed.

198 (f) Financial information, including but not limited to:

199 (A) How the product stewardship program will be financed;

200 (B) The mechanism for securing and disbursing funds to cover administrative, operational and  
201 capital costs; and

202 (C) Demonstration of adequate insurance and financial assurances for collection, transportation,  
203 recycling, reuse or disposal operations.

204 (g) Outreach and education to covered entities including, but not limited to:

205 (A) How to use and access the product stewardship program; and

206 (B) How this information will be provided to collectors, retailers and other interested parties.

207 (h) Public and stakeholder consultation, including but not limited to:

208 (A) Opportunities for the public and other stakeholders to comment on the product stewardship  
209 plan prior to submission; and

210 (B) Opportunities for the public and other stakeholders to comment on the implementation and  
211 operation of the product stewardship program.

212 (2) If the department determines that a proposed product stewardship plan complies with  
213 sections 1 to 15 of this act and any applicable rules and is in the public interest, the department  
214 shall approve the product stewardship plan.

215 (3) All product stewardship plans submitted and approved by the department must be available to  
216 the general public through the website of the producer or the stewardship organization.

217 (4) The department shall maintain a website listing of producers and brands covered by approved  
218 product stewardship plans and product stewardship programs, updated by the first day of each  
219 month.

220 Section 8. (1) All product stewardship plans must be submitted to the department no later than  
221 120 days following the adoption of the applicable product-specific rules, or no later than 120  
222 days prior to the sale or offer for sale of a product in Massachusetts.

223 (2) The department shall approve or reject the product stewardship plan within 60 days of  
224 receiving the plan unless the department requests additional information regarding the plan.

225 (3) If a product stewardship plan is rejected and the producer wishes to submit a revised plan, the  
226 producer must do so within 60 days of the date of the letter of rejection.

227 (4) Product stewardship plans must be updated and submitted to the department for review at  
228 least once every four years from the date on which the plan is first approved or more frequently  
229 as needed to ensure compliance with this act.

230 (5) If a producer joins an approved product stewardship plan, the producer must notify the  
231 department prior to selling or offering for sale any products in Massachusetts.

232 Section 9. (1) As of the implementation date established by the applicable product specific rule, a  
233 producer, retailer or other person may not sell the product or offer the product for sale to any  
234 person in this commonwealth unless the producer is participating in an approved product  
235 stewardship program.

236 (2) A retailer or other person complies with the requirements of this section if, on the date the  
237 product is ordered from the producer or its agent, the website of the department lists the  
238 producer, along with the product brand, as operating or participating in an approved product  
239 stewardship program.

240 (3) At the time of sale to a consumer, a producer, retailer or other person selling a product or  
241 offering a product for sale must provide the consumer with information on where and how to  
242 recycle or dispose of the product through a product stewardship program.

243 Section 10. (1) A producer must annually prepare and submit to the department a written report  
244 that describes how the product stewardship program was implemented in accordance with  
245 sections 1 to 15 of this act and any applicable rules.

246 (2) The department may request that additional information be submitted in order to verify any  
247 reported accomplishments under the program.

248 Section 11. (1)(a) A producer shall establish annual performance goals for discarded products  
249 collected in a product stewardship program. A producer shall establish reasonable annual  
250 performance goals for the first two years of the program's operation, provided that the goals  
251 include the following:

252 (A) Total amount collected or total amount collected per capita;

253 (B) Collection rate; and

254 (C) Disposition rate.

255 (b) The department shall establish the appropriate metric to use in measuring annual performance  
256 goals in the product-specific rule.

257 (2) Annual performance goals established by a producer for the first two years of the operation of  
258 the product stewardship program are not enforceable. However, a producer must establish,  
259 measure and report on the goal. By the third year of the operation of the product stewardship  
260 program for a product, the department shall establish an enforceable annual performance goal. A  
261 producer must meet or exceed this goal. Producers must continue to fully implement a product  
262 stewardship program even after an enforceable annual performance goal is achieved.

263 (3) A producer may establish product goals for products covered by a product stewardship  
264 program. These goals must be specific to the product and intended to achieve changes that result  
265 in a reduction in environmental or health impacts. The department shall consider and make  
266 appropriate adjustments for any product goal adopted and successfully implemented that affects  
267 the ability of a producer to meet an enforceable annual performance goal.

268 Section 12. The department may establish a schedule of fees to be paid by producers. Fees may  
269 be established in amounts to recover, but not exceed, costs incurred by the department in  
270 providing plan review, approval, program development, oversight and compliance for the  
271 products for which a producer is responsible. Fees collected by the department under this section  
272 shall be deposited in the State Treasury to the credit of the Product Stewardship Fund established  
273 under section 13 of this act.

274 Section 13. The Product Stewardship Fund is established, separate and distinct from  
275 the General Fund. Interest earned by the Product Stewardship Fund shall be credited to the fund.  
276 Moneys in the fund are continuously appropriated to the department and may be used only to pay  
277 the costs of implementing sections 1 to 15 of this 2011 Act.

278 Section 14. No person shall knowingly dispose of any product specified in section 3 of this act  
279 except to handle, recycle or compost the material in accordance with a plan submitted and  
280 approved by the department.

#### 281 PENALTIES

282 Section 15. The department shall be charged with the enforcement of sections 1 to 14, inclusive.  
283 If any person refuses to obey a decision of the department the attorney general shall, upon  
284 request of the department, file a petition for the enforcement of such decision in equity in the  
285 superior court for Suffolk County or for the county in which the defendant resides or has a place  
286 of business. After due hearing, the court shall order the enforcement of such decision or any part  
287 thereof, if legally and properly made by the department.

288 Section 16. Whoever violates any provisions of sections 1 to 14, inclusive, shall be punished by a  
289 fine of not less than \$2,500 and not more than \$25,000.00 for each day the violation remains  
290 outstanding.

291 Section 17. The department shall annually, not later than December 31, submit an annual report  
292 of its activities pursuant to this chapter. The report shall include: (1) an update on the  
293 implementation of this chapter and current state of compliance by collectors, processors,  
294 producers and retailers; (2) recommendations to the general court and the governor regarding  
295 proposed changes to this chapter, or any other chapter of the General Laws, or any regulations  
296 promulgated pursuant thereto; and (3) any other information the department deems appropriate.  
297 The report shall be submitted to the governor, the president of the senate, the speaker of the  
298 house, the house and senate chairs of the committee on ways and means, the house and senate  
299 chairs of the joint committee on environment, natural resources and agriculture, the clerk of the  
300 senate and the clerk of the house.

301 Section 18. The department shall evaluate any federal law that establishes a national program to  
302 manage any products specified in section 3 of this Act through a product stewardship approach.  
303 If the department determines that the federal law substantially meets or exceeds the requirements  
304 and intent of sections 1 to 15 of this act, the department shall include information on the federal  
305 law in the next annual report.

306 Section 19. The department may adopt rules before the operative date specified or take any  
307 action before that date that is necessary to carry out the provisions of this chapter.

308 Section 20. No later than December 31, 2012 the department shall develop and implement the  
309 statewide product stewardship system described in this chapter.

310 Section 21. The department may participate in the establishment of a regional multistate  
311 organization or compact to assist in carrying out the requirements of this chapter.

312 Section 22. Notwithstanding any general or special law to the contrary and unless otherwise  
313 specified herein, this act shall take effect upon passage.