

By: Naishtat

H.B. No. 2967

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a program for the disposition of electronic equipment in a manner that protects the water and other natural resources of the state; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter W to read as follows:

SUBCHAPTER W. ELECTRONIC EQUIPMENT

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Electronic equipment" means equipment that depends on electric current or an electromagnetic field to work properly and that contains one or more printed circuit boards. The term includes:

(A) computer equipment, including a central processing unit or a peripheral device, including a display monitor, keyboard, or printer;

(B) video equipment, including a television;

(C) telecommunications equipment, including a wireline or cellular telephone, facsimile machine, or answering machine;

(D) a small electronic device or appliance;

(E) audio equipment;

(F) a toy, game, or educational device; or

(G) a major household appliance.

1 (2) "Electronic equipment waste" means electronic
2 equipment or a component of electronic equipment that has been
3 discarded, become obsolete, or ceased to function, is no longer
4 wanted by its owner, or for any other reason enters the collection,
5 recovery, treatment, processing, or recycling system.

6 (3) "Historical waste" means electronic equipment
7 that:

8 (A) became electronic equipment waste before
9 September 1, 2003; and

10 (B) was manufactured by or bears the brand name
11 of a company that was still in business on September 1, 2003.

12 (4) "Orphan waste" means electronic equipment that:

13 (A) became electronic equipment waste before
14 September 1, 2003; and

15 (B) was manufactured by or bears the brand name
16 of a company that was no longer in business on September 1, 2003.

17 (5) "Plan" means a plan for producer-financed
18 collection, treatment, recovery, reuse, recycling, and disposition
19 of electronic equipment waste required by Section 361.803.

20 (6) "Producer" means any person, without regard to the
21 sales technique or channel used to sell the person's products,
22 including means of distance communication, that:

23 (A) manufactures and sells electronic equipment
24 under its own brand;

25 (B) resells under its own brand electronic
26 equipment produced by another manufacturer; or

27 (C) imports electronic equipment for first sale

1 in this state.

2 (7) "Recycling" means the reprocessing of electronic
3 equipment or components of electronic equipment that have become
4 electronic equipment waste so that they may be used for the purpose
5 for which they were designed or for other purposes. The term does
6 not include the recovery of energy or energy generation by means of
7 combusting electronic equipment waste with or without other waste.

8 (8) "Reuse" means an operation by which electronic
9 equipment or components of electronic equipment that have become
10 electronic equipment waste are used for the purpose for which they
11 were designed.

12 Sec. 361.802. COMMISSION POWERS AND DUTIES. The commission
13 shall:

14 (1) implement this subchapter; and

15 (2) include in its biennial reports under Section
16 5.178, Water Code, any recommendations regarding amendments to this
17 subchapter.

18 Sec. 361.803. PLAN APPROVAL AND IMPLEMENTATION REQUIRED. A
19 producer may not sell or resell electronic equipment in this state
20 unless:

21 (1) the commission approves a plan submitted by the
22 producer under this subchapter; and

23 (2) the producer implements the approved plan.

24 Sec. 361.804. CONTENTS OF PLAN. A plan must include:

25 (1) provisions for meeting the requirements of this
26 subchapter regarding financing the collection, treatment,
27 recovery, reuse, recycling, and disposition of:

1 (A) the electronic equipment sold by the producer
2 in this state; and

3 (B) the producer's share of the orphan waste and
4 historical waste in this state;

5 (2) provisions for meeting the requirements of this
6 subchapter regarding product recovery and component and material
7 recycling;

8 (3) a description of:

9 (A) the performance measures to be used and
10 reported by the producer to determine whether the producer is
11 meeting the requirements described by Subdivision (2); and

12 (B) any other measures to be used in evaluating
13 the producer's implementation of the plan;

14 (4) a description of the alternative or additional
15 actions to be taken by the producer to meet the requirements
16 described by Subdivision (2) if those requirements are not being
17 met;

18 (5) provisions for meeting the requirements of this
19 subchapter regarding labeling of electronic equipment and
20 education of consumers, recyclers, and processors;

21 (6) documentation of the willingness of all necessary
22 parties to implement the proposed plan for the collection,
23 treatment, recovery, reuse, recycling, and disposition of
24 electronic equipment and electronic equipment waste;

25 (7) assurance that all facilities to be used to
26 collect, treat, recover, reuse, recycle, or dispose of electronic
27 equipment or electronic equipment waste will comply with all

1 applicable existing environmental laws, rules, and regulations;
2 and

3 (8) a financial guarantee in the amount determined in
4 accordance with a schedule adopted by the commission by rule to be
5 sufficient to ensure that the costs of enforcing the plan and of
6 managing the producer's share of orphan and historical waste is not
7 borne by the public.

8 Sec. 361.805. FINANCIAL RESPONSIBILITY OF PRODUCERS. (a)
9 Each producer of electronic equipment sold or resold in this state
10 shall implement a program for financing the environmentally sound
11 collection, treatment, recovery, reuse, recycling, and disposition
12 of:

13 (1) the electronic equipment sold or resold by that
14 producer that becomes electronic equipment waste; and

15 (2) the producer's share of orphan waste and
16 historical waste derived from electronic equipment of a type sold
17 by that producer.

18 (b) Producers may satisfy the requirements of this section
19 individually or in cooperation with other producers.

20 (c) Although a producer is encouraged to provide in the plan
21 for direct collection or reverse delivery systems, the plan may
22 require consumers and other electronic equipment end users to
23 deliver electronic equipment waste into the collection system. The
24 plan must permit consumers to return electronic equipment waste
25 without charge.

26 Sec. 361.806. PRODUCER'S SHARE OF ORPHAN AND HISTORICAL
27 WASTE. (a) A producer's share of orphan waste and historical waste

1 derived from electronic equipment of a type sold by the producer is
2 proportional to the producer's share of the market for that type of
3 equipment at the time waste management costs are incurred.

4 (b) The commission shall determine annually the market
5 share of each producer for purposes of this section.

6 Sec. 361.807. LABELING OF EQUIPMENT. Each producer of
7 electronic equipment sold or resold in this state must mark or label
8 the equipment to provide consumers and other end users with
9 information relating to:

10 (1) the hazardous materials contained in the
11 electronic equipment and the components of the electronic equipment
12 containing those materials;

13 (2) the restrictions on the manner of disposal of
14 electronic equipment waste provided by Section 361.819 and the
15 producer's plan; and

16 (3) a toll-free telephone number or Internet website
17 address at which consumers and other end users of electronic
18 equipment may obtain information and instructions about the
19 procedure for disposing of the electronic equipment that becomes
20 electronic equipment waste.

21 Sec. 361.808. CONSUMER EDUCATION PLAN. Each producer of
22 electronic equipment sold or resold in this state must implement a
23 consumer education plan designed to ensure that consumers and other
24 end users of electronic equipment understand:

25 (1) the restrictions on the manner of disposal of
26 electronic equipment waste provided by Section 361.819 and the
27 producer's plan;

1 (2) the systems available for returning and collecting
2 electronic equipment waste;

3 (3) the potential effects on the environment and human
4 health of the presence of hazardous substances in electronic
5 equipment and the dangers of improper disposal of that equipment;
6 and

7 (4) the roles of consumers and other end users in
8 contributing to the reuse or recycling of electronic equipment or
9 to other means of recovering electronic equipment waste.

10 Sec. 361.809. DEMONSTRATION OF PUBLIC AWARENESS. (a) Not
11 later than the second anniversary of the date the commission
12 approves a producer's plan, the producer must demonstrate by means
13 of an independent public poll that at least 85 percent of the public
14 is aware of the producer's plan for the collection, treatment,
15 recovery, reuse, recycling, and disposition of the electronic
16 equipment sold by the producer that becomes electronic equipment
17 waste.

18 (b) In the alternative, producers may collectively satisfy
19 the requirements of this subsection by means of a single poll that
20 demonstrates that at least 85 percent of the public is aware of a
21 majority of producers' plans for the collection, treatment,
22 recovery, reuse, recycling, and disposition of the electronic
23 equipment waste that is derived from a majority of the types of
24 electronic equipment covered by this subchapter.

25 (c) The design, protocols, and implementation plan for the
26 polling required by this section must be approved by the
27 commission.

1 Sec. 361.810. PROVISION OF INFORMATION TO RECYCLERS AND
2 PROCESSORS. (a) A producer's plan must require the producer to
3 demonstrate that the producer will take adequate measures to
4 provide information to recyclers and processors of the producer's
5 electronic equipment.

6 (b) Not later than the first anniversary of the date a
7 producer begins selling or reselling electronic equipment in this
8 state, the producer shall provide to recyclers and processors
9 information regarding the following matters for purposes of
10 end-of-life treatment of the equipment:

- 11 (1) disassembly of the equipment;
12 (2) the material contained in the equipment; and
13 (3) safety concerns associated with the equipment.

14 Sec. 361.811. ENVIRONMENTAL PERFORMANCE REQUIREMENTS. (a)
15 For orphan and historical waste, a producer is responsible for
16 demonstrating:

17 (1) not later than the second anniversary of the date
18 the commission approves the producer's plan, that the producer is
19 collecting in this state at least two kilograms of electronic
20 equipment waste per person each year and is reusing or recycling at
21 least 1.5 kilograms per person each year of that waste; and

22 (2) not later than the fifth anniversary of the date
23 the commission approves the producer's plan, that the producer is
24 collecting in this state at least four kilograms of electronic
25 equipment waste per person each year and is reusing or recycling at
26 least 3.5 kilograms per person each year of that waste.

27 (b) For electronic equipment waste other than orphan or

1 historical waste, a producer is responsible for demonstrating:

2 (1) not later than the second anniversary of the date
3 the commission approves the producer's plan, that the producer is
4 recovering at least 75 percent by number of the producer's products
5 sold or resold in this state and is reusing or recycling at least 65
6 percent of the components and materials contained in the producer's
7 products sold or resold in this state; and

8 (2) not later than the fifth anniversary of the date
9 the commission approves the producer's plan, that the producer is
10 recovering at least 95 percent by number of the producer's products
11 sold or resold in this state and is reusing or recycling at least 95
12 percent of the components and materials contained in the producer's
13 products sold or resold in this state.

14 Sec. 361.812. RESTRICTIONS ON USE OF PRISON LABOR. A plan
15 may not include reliance on prison labor unless all incarcerated
16 workers involved in the processing and recycling of electronic
17 equipment waste are:

18 (1) provided with compensation equivalent to market
19 rate wages for the work performed; and

20 (2) afforded the protections of:

21 (A) state occupational safety and health laws,
22 rules, and regulations; and

23 (B) the worker safety and health protections
24 required by Section 361.816.

25 Sec. 361.813. PROHIBITION ON EXPORTING ELECTRONIC
26 EQUIPMENT WASTE. A plan must prohibit the export of electronic
27 equipment waste to any country that is not a member of the

1 Organization for Economic Cooperation and Development.

2 Sec. 361.814. SUBMISSION, REVIEW, AND APPROVAL OF PLAN.

3 (a) A producer that desires to sell or resell electronic equipment
4 in this state must submit a plan to the commission for review. The
5 plan must be accompanied by an application fee in an amount
6 determined by the commission to be sufficient to cover the cost of
7 reviewing the plan.

8 (b) The commission shall review a plan submitted under this
9 section. If the commission determines that the plan does not meet
10 the requirements of this subchapter, the commission shall advise
11 the producer of any necessary amendments to the plan and provide the
12 producer an opportunity to submit an amended plan.

13 (c) The commission shall approve a plan if the plan meets
14 the requirements of this subchapter.

15 Sec. 361.815. RESTRICTIONS ON HAZARDOUS MATERIALS. (a) A
16 producer may not sell electronic equipment in this state that
17 contains:

- 18 (1) lead;
19 (2) mercury;
20 (3) cadmium;
21 (4) hexavalent chromium;
22 (5) brominated flame retardants; or
23 (6) polyvinyl chloride.

24 (b) The commission by order may allow a producer to sell
25 electronic equipment in this state that contains a substance
26 prohibited by Subsection (a) for a period specified by the
27 commission if the producer demonstrates that it is not technically

1 possible to produce the type of electronic equipment in question
2 without using that substance.

3 (c) The commission may rescind an order issued under
4 Subsection (b) if the commission subsequently determines that it is
5 technically possible to produce the type of electronic equipment in
6 question without using the substance in question.

7 Sec. 361.816. WORKER SAFETY AND HEALTH PROTECTIONS. An
8 owner or operator of a facility used to collect, recover, or recycle
9 electronic equipment waste as part of a plan must protect the health
10 and safety of the persons employed at the facility by:

11 (1) providing to the commission in the manner provided
12 by commission rule clear evidence of compliance with all applicable
13 state and federal occupational safety and health laws, rules, and
14 regulations;

15 (2) performing routine industrial hygiene monitoring
16 of the facility for all hazardous materials of concern, including
17 monitoring for airborne lead and bromine, chlorine, and mercury
18 compounds, and reporting the results of that monitoring to the
19 commission quarterly; and

20 (3) performing routine human health monitoring, in
21 accordance with all applicable laws governing protection of
22 privacy, of all persons employed at the facility, including
23 conducting blood tests to determine whether persons have been
24 exposed to airborne lead and bromine, chlorine, and mercury
25 compounds, and reporting the results of that monitoring to the
26 commission quarterly.

27 Sec. 361.817. STATE PURCHASING AND LEASING. Each state

1 agency shall adopt policies that:

2 (1) require vendors of electronic equipment sold or
3 leased to the state to reclaim the equipment when it becomes
4 electronic equipment waste; and

5 (2) establish a preference for purchasing or leasing
6 electronic equipment that meets specified environmental
7 performance standards relating to the reduction or elimination of
8 hazardous materials.

9 Sec. 361.818. REPORTS. (a) Each producer must submit an
10 annual report to the commission detailing the producer's:

11 (1) implementation of the producer's plan; and

12 (2) compliance with this subchapter.

13 (b) The annual report must document that the implementation
14 of the plan has not resulted in the export of electronic equipment
15 waste to any country that is not a member of the Organization for
16 Economic Cooperation and Development.

17 (c) The commission shall review the report not later than
18 the 180th day after the date the report is submitted. If the
19 commission determines that the producer is not in compliance with
20 this subchapter, the commission shall notify the producer not later
21 than the end of the following quarter. If the producer fails to
22 comply with this subchapter by the end of the quarter following the
23 quarter in which the notice is given, the commission may take action
24 to enforce this subchapter.

25 (d) The commission shall post on the commission's Internet
26 website:

27 (1) the annual report required by this section for the

1 current year and the two preceding years; and

2 (2) any other report detailing the implementation of
3 the producer's plan for the current year and the two preceding
4 years.

5 Sec. 361.819. BAN ON INCINERATION OR DISPOSAL IN LANDFILL.

6 (a) Electronic equipment and electronic equipment waste may not be
7 disposed of in a landfill, incinerator, or cement kiln or used for
8 another form of energy recovery or energy generation dependent on
9 combustion of the waste.

10 (b) This section applies to whole units of electronic
11 equipment waste as well as to the constituent components or
12 materials from which the units are made.

13 Sec. 361.820. IMMUNITY FROM LIABILITY. An owner or
14 operator of a landfill who disposes of electronic equipment or
15 electronic equipment waste in a landfill is immune from liability
16 under this code or the Water Code for disposing of the electronic
17 equipment or electronic equipment waste in violation of this
18 subchapter if:

19 (1) the electronic equipment or electronic equipment
20 waste was commingled with other solid waste; and

21 (2) the owner or operator did not know when the owner
22 or operator accepted the other solid waste for disposal that it was
23 commingled with electronic equipment or electronic equipment
24 waste.

25 SECTION 2. Subchapter E, Chapter 7, Water Code, is amended
26 by adding Section 7.1855 to read as follows:

27 Sec. 7.1855. KNOWING UNAUTHORIZED DISPOSAL OF ELECTRONIC

1 EQUIPMENT OR ELECTRONIC EQUIPMENT WASTE. (a) A person commits an
2 offense if the person knowingly disposes of electronic equipment or
3 electronic equipment waste in a manner that violates Subchapter W,
4 Chapter 361, Health and Safety Code.

5 (b) An offense under this section is a Class C misdemeanor.

6 SECTION 3. (a) Except as otherwise provided by this
7 section, this Act takes effect September 1, 2003.

8 (b) Each producer who is engaged in the sale or resale of
9 electronic equipment in this state on September 1, 2003, must:

10 (1) submit to the Texas Commission on Environmental
11 Quality a plan required by Section 361.803, Health and Safety Code,
12 as added by this Act, not later than March 1, 2004;

13 (2) provide to the Texas Commission on Environmental
14 Quality a financial guarantee required by Section 361.804(8),
15 Health and Safety Code, as added by this Act, not later than the
16 earlier of:

17 (A) September 1, 2004; or

18 (B) the date the producer's plan is approved
19 under Section 361.814(c), Health and Safety Code, as added by this
20 Act;

21 (3) except as provided by Subdivision (4) of this
22 subsection, implement a plan required by Section 361.803, Health
23 and Safety Code, as added by this Act, not later than September 1,
24 2005; and

25 (4) comply with Sections 361.807 and 361.810(b),
26 Health and Safety Code, as added by this Act, not later than
27 September 1, 2004.

1 (c) Section 361.815, Health and Safety Code, as added by
2 this Act, takes effect January 1, 2006.

3 (d) Each state agency shall adopt policies under Section
4 361.817, Health and Safety Code, as added by this Act, not later
5 than March 1, 2004.

6 (e) Sections 361.819 and 361.820, Health and Safety Code,
7 and Section 7.1855, Water Code, as added by this Act, take effect
8 September 1, 2005.