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H.B. No. 2714

A BILL TO BE ENTITLED

AN ACT

relating to a program for the recycling of computer equipment of consumers in this state; providing administrative penalties.

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

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

SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM

Sec. 361.951. SHORT TITLE. This subchapter may be cited as the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.

Sec. 361.952. DEFINITIONS. In this subchapter:

(1) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(2) "Computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

(3) "Manufacturer" means a person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

1 (B) who sells or sold computer equipment
2 manufactured by others under a brand that:

3 (i) the person owns or owned; or

4 (ii) the person is or was licensed to use,
5 other than under a license to manufacture computer equipment for
6 delivery exclusively to or at the order of the licensor;

7 (C) who manufactures or manufactured computer
8 equipment without affixing a brand;

9 (D) who manufactures or manufactured computer
10 equipment to which the person affixes or affixed a brand that:

11 (i) the person does not or has not owned; or

12 (ii) the person is not or was not licensed
13 to use; or

14 (E) for whose account computer equipment
15 manufactured outside the United States is or was imported into the
16 United States, if at the time of importation the computer equipment
17 was not included for collection under the recovery plan of another
18 person.

19 (4) "Television" means any telecommunication system
20 device that can broadcast or receive moving pictures and sound over
21 a distance and includes a television tuner or a display device
22 peripheral to a computer that contains a television tuner.

23 Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE. (a)
24 Computers and related display devices are critical elements to the
25 strength and growth of this state's economic prosperity and quality
26 of life. Many of those products can be refurbished and reused, and
27 many contain valuable components that can be recycled.

1 (b) The purpose of this subchapter is to establish a
2 comprehensive, convenient, and environmentally sound program for
3 the collection, recycling, and reuse of computer equipment that has
4 reached the end of its useful life. The program is based on
5 individual manufacturer responsibility and shared responsibility
6 among consumers, retailers, and the government of this state.

7 Sec. 361.954. APPLICABILITY. (a) The collection,
8 recycling, and reuse provisions of this subchapter apply to
9 computer equipment used and returned to the manufacturer by a
10 consumer in this state.

11 (b) This subchapter does not apply to:

12 (1) a television, any part of a motor vehicle, a
13 personal digital assistant, or a telephone;

14 (2) a consumer's lease of computer equipment or a
15 consumer's use of computer equipment under a lease agreement; or

16 (3) the sale or lease of computer equipment to a
17 business.

18 Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before a
19 manufacturer may offer computer equipment for sale in this state,
20 the manufacturer must:

21 (1) adopt and implement a recovery plan; and

22 (2) affix a permanent, readily visible label to the
23 computer equipment with the manufacturer's brand.

24 (b) The recovery plan must include, at no charge to the
25 consumer, provisions for:

26 (1) the manufacturer's collection from a consumer of
27 any computer equipment that has reached the end of its useful life

1 and is labeled with the manufacturer's brand; and

2 (2) recycling or reuse of computer equipment collected
3 under Subdivision (1).

4 (c) The collection of computer equipment provided under the
5 recovery plan must be:

6 (1) reasonably convenient and available to consumers
7 in this state; and

8 (2) designed to meet the collection needs of consumers
9 in this state.

10 (d) Collection methods that meet the convenience
11 requirements of this section include:

12 (1) a system by which the manufacturer or the
13 manufacturer's designee offers the consumer a system for returning
14 computer equipment by mail;

15 (2) a system using a physical collection site that the
16 manufacturer or the manufacturer's designee keeps open and staffed
17 and to which the consumer may return computer equipment; and

18 (3) a system using a collection event held by the
19 manufacturer or the manufacturer's designee at which the consumer
20 may return computer equipment.

21 (e) Collection services under this section may use existing
22 collection and consolidation infrastructure for handling computer
23 equipment and may include electronic recyclers and repair shops,
24 recyclers of other commodities, reuse organizations,
25 not-for-profit corporations, retailers, recyclers, and other
26 suitable operations.

27 (f) The recovery plan must include information for the

1 consumer on how and where to return the manufacturer's computer
2 equipment. The manufacturer:

3 (1) shall include collection, recycling, and reuse
4 information on the manufacturer's publicly available Internet
5 site;

6 (2) shall provide collection, recycling, and reuse
7 information to the commission; and

8 (3) may include collection, recycling, and reuse
9 information in the packaging for or in other materials that
10 accompany the manufacturer's computer equipment when the equipment
11 is sold.

12 (g) Information about collection, recycling, and reuse on a
13 manufacturer's publicly available Internet site does not
14 constitute a determination by the commission that the
15 manufacturer's recovery plan or actual practices are in compliance
16 with this subchapter or other law.

17 (h) Each manufacturer shall submit a report to the
18 commission not later than January 31 of each year that includes:

19 (1) the weight of computer equipment collected,
20 recycled, and reused during the preceding calendar year; and

21 (2) documentation verifying the collection,
22 recycling, and reuse of that computer equipment in a manner that
23 complies with Section 361.964 regarding sound environmental
24 management.

25 (i) If more than one person is a manufacturer of a certain
26 brand of computer equipment as defined by Section 361.952, any of
27 those persons may assume responsibility for and satisfy the

1 obligations of a manufacturer under this subchapter for that brand.
2 If none of those persons assumes responsibility or satisfies the
3 obligations of a manufacturer for the computer equipment of that
4 brand, the commission may consider any of those persons to be the
5 responsible manufacturer for purposes of this subchapter.

6 (j) The obligations under this subchapter of a manufacturer
7 who manufactures or manufactured computer equipment, or sells or
8 sold computer equipment manufactured by others, under a brand that
9 was previously used by a different person in the manufacture of the
10 computer equipment extends to all computer equipment bearing that
11 brand regardless of its date of manufacture.

12 Sec. 361.956. RETAILER RESPONSIBILITY. A person who is a
13 retailer of computer equipment may not sell or offer to sell
14 computer equipment in this state unless the equipment is labeled
15 with the manufacturer's label and the manufacturer is included on
16 the commission's list of manufacturers that have recovery plans.

17 Sec. 361.957. LIABILITY. (a) A manufacturer or retailer of
18 computer equipment is not liable in any way for information in any
19 form that a consumer leaves on computer equipment that is
20 collected, recycled, or reused under this subchapter.

21 (b) This subchapter does not exempt a person from liability
22 under other law.

23 Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.

24 (a) The commission shall educate consumers regarding the
25 collection, recycling, and reuse of computer equipment.

26 (b) The commission shall host or designate another person to
27 host an Internet site providing consumers with information about

1 the recycling and reuse of computer equipment, including
2 information about and links to information on:

3 (1) manufacturers' collection, recycling, and reuse
4 programs, including manufacturers' recovery plans; and

5 (2) computer equipment collection events, collection
6 sites, and community computer equipment recycling and reuse
7 programs.

8 (c) Inclusion on the commission's Internet site under
9 Subsection (b) does not constitute a determination by the
10 commission that the manufacturer's recovery plan or practices are
11 in compliance with this subchapter or other law.

12 Sec. 361.959. ENFORCEMENT. (a) The commission may conduct
13 audits and inspections to determine compliance with this
14 subchapter.

15 (b) The commission and the attorney general, as
16 appropriate, shall enforce this subchapter and take enforcement
17 action against any manufacturer, retailer, or person who recycles
18 or reuses computer equipment for failure to comply with this
19 subchapter.

20 (c) Notwithstanding Section 7.052, Water Code, a
21 manufacturer that does not label its new computer equipment or
22 adopt and implement a recovery plan as required by Section
23 361.955(a) may be assessed an administrative penalty, in addition
24 to any other penalty under this subchapter, of not more than \$10,000
25 for the first violation and not more than \$25,000 for each
26 subsequent violation.

27 (d) Except as provided by Subsection (c) and

1 notwithstanding Section 7.052, Water Code, a person who violates
2 this subchapter may be assessed an administrative penalty, in
3 addition to any other penalty under this subchapter, of not more
4 than \$1,000 for the first violation and not more than \$2,000 for
5 each subsequent violation.

6 (e) A penalty assessed under this section shall be paid to
7 the commission and deposited to the Waste Management Account, #549.

8 (f) A violation of a prohibition of this subchapter related
9 to sales may be enjoined in an action brought by the attorney
10 general on behalf of this state under Section 7.032, Water Code.

11 (g) Money collected under this section may be used only for
12 the administration of this subchapter.

13 Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION.
14 Financial or proprietary information submitted to the commission
15 under this subchapter is exempt from public disclosure under
16 Chapter 552, Government Code.

17 Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission
18 shall compile information from producers and issue an electronic
19 report to the committee in each house of the legislature having
20 primary jurisdiction over environmental matters not later than
21 March 1 of each year.

22 Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does
23 not authorize the commission to impose a fee, including a recycling
24 fee or registration fee, on a consumer, manufacturer, retailer, or
25 person who recycles or reuses computer equipment.

26 Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer
27 is responsible for any information in any form left on the

1 consumer's computer equipment that is collected, recycled, or
2 reused.

3 (b) A consumer is encouraged to learn about recommended
4 methods for recycling and reuse of computer equipment that has
5 reached the end of its useful life by visiting the commission's and
6 manufacturers' Internet sites.

7 Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All
8 computer equipment collected under this subchapter must be recycled
9 or reused in a manner that complies with federal, state, and local
10 law.

11 (b) The commission shall adopt as standards for recycling or
12 reuse of computer equipment in this state the standards provided by
13 "Electronics Recycling Operating Practices" as approved by the
14 board of directors of the Institute of Scrap Recycling Industries,
15 Inc., April 25, 2006, or other standards from a comparable
16 nationally recognized organization.

17 Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this
18 section, "state agency" has the meaning assigned by Section
19 2052.101, Government Code.

20 (b) A person who submits a bid for a contract with a state
21 agency for the purchase or lease of computer equipment must be in
22 compliance with this subchapter.

23 (c) A state agency that purchases or leases computer
24 equipment shall require each prospective bidder to certify the
25 bidder's compliance with this subchapter. Failure to provide that
26 certification renders the prospective bidder ineligible to
27 participate in the bidding.

1 (d) In considering bids for a contract for computer
2 equipment, in addition to any other preferences provided under
3 other laws of this state, the state shall give special preference to
4 a manufacturer that has a program to recycle or reuse the computer
5 equipment of other manufacturers, including collection events,
6 recycling grants, and manufacturer initiatives to accept computer
7 equipment labeled with another manufacturer's brand.

8 (e) The Texas Building and Procurement Commission and the
9 Department of Information Resources shall adopt rules to implement
10 this section.

11 Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If
12 federal law establishes a national program for the collection and
13 recycling of computer equipment and the commission determines that
14 the federal law substantially meets the purposes of this
15 subchapter, the commission may adopt an agency statement that
16 interprets the federal law as preemptive of this subchapter.

17 (b) This subchapter expires on the date the commission
18 issues a statement under this section.

19 SECTION 2. (a) The Texas Commission on Environmental
20 Quality shall adopt any rules required to implement this Act not
21 later than May 1, 2008.

22 (b) This Act may not be enforced before September 1, 2008.

23 (c) The reports required under Sections 361.955 and
24 361.961, Health and Safety Code, as added by this Act, are not
25 required to be prepared or submitted for the first time before the
26 dates specified by those sections in 2010.

27 SECTION 3. This Act takes effect September 1, 2007.