

1-1 By: Bonnen, et al. (Senate Sponsor - Watson) H.B. No. 2714
1-2 (In the Senate - Received from the House May 3, 2007;
1-3 May 7, 2007, read first time and referred to Committee on Natural
1-4 Resources; May 18, 2007, reported favorably by the following vote:
1-5 Yeas 11, Nays 0; May 18, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to a program for the recycling of computer equipment of
1-9 consumers in this state; providing administrative penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 361, Health and Safety Code, is amended
1-12 by adding Subchapter Y to read as follows:

1-13 SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM

1-14 Sec. 361.951. SHORT TITLE. This subchapter may be cited as
1-15 the Manufacturer Responsibility and Consumer Convenience Computer
1-16 Equipment Collection and Recovery Act.

1-17 Sec. 361.952. DEFINITIONS. In this subchapter:

1-18 (1) "Brand" means the name, symbol, logo, trademark,
1-19 or other information that identifies a product rather than the
1-20 components of the product.

1-21 (2) "Computer equipment" means a desktop or notebook
1-22 computer and includes a computer monitor or other display device
1-23 that does not contain a tuner.

1-24 (3) "Manufacturer" means a person:

1-25 (A) who manufactures or manufactured computer
1-26 equipment under a brand that:

1-27 (i) the person owns or owned; or

1-28 (ii) the person is or was licensed to use,
1-29 other than under a license to manufacture computer equipment for
1-30 delivery exclusively to or at the order of the licensor;

1-31 (B) who sells or sold computer equipment
1-32 manufactured by others under a brand that:

1-33 (i) the person owns or owned; or

1-34 (ii) the person is or was licensed to use,
1-35 other than under a license to manufacture computer equipment for
1-36 delivery exclusively to or at the order of the licensor;

1-37 (C) who manufactures or manufactured computer
1-38 equipment without affixing a brand;

1-39 (D) who manufactures or manufactured computer
1-40 equipment to which the person affixes or affixed a brand that:

1-41 (i) the person does not or has not owned; or
1-42 (ii) the person is not or was not licensed

1-43 to use; or

1-44 (E) for whose account computer equipment
1-45 manufactured outside the United States is or was imported into the
1-46 United States, if at the time of importation the computer equipment
1-47 was not included for collection under the recovery plan of another
1-48 person.

1-49 (4) "Television" means any telecommunication system
1-50 device that can broadcast or receive moving pictures and sound over
1-51 a distance and includes a television tuner or a display device
1-52 peripheral to a computer that contains a television tuner.

1-53 Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE. (a)
1-54 Computers and related display devices are critical elements to the
1-55 strength and growth of this state's economic prosperity and quality
1-56 of life. Many of those products can be refurbished and reused, and
1-57 many contain valuable components that can be recycled.

1-58 (b) The purpose of this subchapter is to establish a
1-59 comprehensive, convenient, and environmentally sound program for
1-60 the collection, recycling, and reuse of computer equipment that has
1-61 reached the end of its useful life. The program is based on
1-62 individual manufacturer responsibility and shared responsibility
1-63 among consumers, retailers, and the government of this state.

1-64 Sec. 361.954. APPLICABILITY. (a) The collection,

2-1 recycling, and reuse provisions of this subchapter apply to
 2-2 computer equipment used and returned to the manufacturer by a
 2-3 consumer in this state.

2-4 (b) This subchapter does not apply to:

2-5 (1) a television, any part of a motor vehicle, a
 2-6 personal digital assistant, or a telephone;

2-7 (2) a consumer's lease of computer equipment or a
 2-8 consumer's use of computer equipment under a lease agreement; or

2-9 (3) the sale or lease of computer equipment to a
 2-10 business.

2-11 Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before a
 2-12 manufacturer may offer computer equipment for sale in this state,
 2-13 the manufacturer must:

2-14 (1) adopt and implement a recovery plan; and

2-15 (2) affix a permanent, readily visible label to the
 2-16 computer equipment with the manufacturer's brand.

2-17 (b) The recovery plan must include, at no charge to the
 2-18 consumer, provisions for:

2-19 (1) the manufacturer's collection from a consumer of
 2-20 any computer equipment that has reached the end of its useful life
 2-21 and is labeled with the manufacturer's brand; and

2-22 (2) recycling or reuse of computer equipment collected
 2-23 under Subdivision (1).

2-24 (c) The collection of computer equipment provided under the
 2-25 recovery plan must be:

2-26 (1) reasonably convenient and available to consumers
 2-27 in this state; and

2-28 (2) designed to meet the collection needs of consumers
 2-29 in this state.

2-30 (d) Collection methods that meet the convenience
 2-31 requirements of this section include:

2-32 (1) a system by which the manufacturer or the
 2-33 manufacturer's designee offers the consumer a system for returning
 2-34 computer equipment by mail;

2-35 (2) a system using a physical collection site that the
 2-36 manufacturer or the manufacturer's designee keeps open and staffed
 2-37 and to which the consumer may return computer equipment; and

2-38 (3) a system using a collection event held by the
 2-39 manufacturer or the manufacturer's designee at which the consumer
 2-40 may return computer equipment.

2-41 (e) Collection services under this section may use existing
 2-42 collection and consolidation infrastructure for handling computer
 2-43 equipment and may include electronic recyclers and repair shops,
 2-44 recyclers of other commodities, reuse organizations,
 2-45 not-for-profit corporations, retailers, recyclers, and other
 2-46 suitable operations.

2-47 (f) The recovery plan must include information for the
 2-48 consumer on how and where to return the manufacturer's computer
 2-49 equipment. The manufacturer:

2-50 (1) shall include collection, recycling, and reuse
 2-51 information on the manufacturer's publicly available Internet
 2-52 site;

2-53 (2) shall provide collection, recycling, and reuse
 2-54 information to the commission; and

2-55 (3) may include collection, recycling, and reuse
 2-56 information in the packaging for or in other materials that
 2-57 accompany the manufacturer's computer equipment when the equipment
 2-58 is sold.

2-59 (g) Information about collection, recycling, and reuse on a
 2-60 manufacturer's publicly available Internet site does not
 2-61 constitute a determination by the commission that the
 2-62 manufacturer's recovery plan or actual practices are in compliance
 2-63 with this subchapter or other law.

2-64 (h) Each manufacturer shall submit a report to the
 2-65 commission not later than January 31 of each year that includes:

2-66 (1) the weight of computer equipment collected,
 2-67 recycled, and reused during the preceding calendar year; and

2-68 (2) documentation verifying the collection,
 2-69 recycling, and reuse of that computer equipment in a manner that

3-1 complies with Section 361.964 regarding sound environmental
 3-2 management.

3-3 (i) If more than one person is a manufacturer of a certain
 3-4 brand of computer equipment as defined by Section 361.952, any of
 3-5 those persons may assume responsibility for and satisfy the
 3-6 obligations of a manufacturer under this subchapter for that brand.
 3-7 If none of those persons assumes responsibility or satisfies the
 3-8 obligations of a manufacturer for the computer equipment of that
 3-9 brand, the commission may consider any of those persons to be the
 3-10 responsible manufacturer for purposes of this subchapter.

3-11 (j) The obligations under this subchapter of a manufacturer
 3-12 who manufactures or manufactured computer equipment, or sells or
 3-13 sold computer equipment manufactured by others, under a brand that
 3-14 was previously used by a different person in the manufacture of the
 3-15 computer equipment extends to all computer equipment bearing that
 3-16 brand regardless of its date of manufacture.

3-17 Sec. 361.956. RETAILER RESPONSIBILITY. A person who is a
 3-18 retailer of computer equipment may not sell or offer to sell
 3-19 computer equipment in this state unless the equipment is labeled
 3-20 with the manufacturer's label and the manufacturer is included on
 3-21 the commission's list of manufacturers that have recovery plans.

3-22 Sec. 361.957. LIABILITY. (a) A manufacturer or retailer of
 3-23 computer equipment is not liable in any way for information in any
 3-24 form that a consumer leaves on computer equipment that is
 3-25 collected, recycled, or reused under this subchapter.

3-26 (b) This subchapter does not exempt a person from liability
 3-27 under other law.

3-28 Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.
 3-29 (a) The commission shall educate consumers regarding the
 3-30 collection, recycling, and reuse of computer equipment.

3-31 (b) The commission shall host or designate another person to
 3-32 host an Internet site providing consumers with information about
 3-33 the recycling and reuse of computer equipment, including
 3-34 information about and links to information on:

3-35 (1) manufacturers' collection, recycling, and reuse
 3-36 programs, including manufacturers' recovery plans; and

3-37 (2) computer equipment collection events, collection
 3-38 sites, and community computer equipment recycling and reuse
 3-39 programs.

3-40 (c) Inclusion on the commission's Internet site under
 3-41 Subsection (b) does not constitute a determination by the
 3-42 commission that the manufacturer's recovery plan or practices are
 3-43 in compliance with this subchapter or other law.

3-44 Sec. 361.959. ENFORCEMENT. (a) The commission may conduct
 3-45 audits and inspections to determine compliance with this
 3-46 subchapter.

3-47 (b) The commission and the attorney general, as
 3-48 appropriate, shall enforce this subchapter and take enforcement
 3-49 action against any manufacturer, retailer, or person who recycles
 3-50 or reuses computer equipment for failure to comply with this
 3-51 subchapter.

3-52 (c) Notwithstanding Section 7.052, Water Code, a
 3-53 manufacturer that does not label its new computer equipment or
 3-54 adopt and implement a recovery plan as required by Section
 3-55 361.955(a) may be assessed an administrative penalty, in addition
 3-56 to any other penalty under this subchapter, of not more than \$10,000
 3-57 for the first violation and not more than \$25,000 for each
 3-58 subsequent violation.

3-59 (d) Except as provided by Subsection (c) and
 3-60 notwithstanding Section 7.052, Water Code, a person who violates
 3-61 this subchapter may be assessed an administrative penalty, in
 3-62 addition to any other penalty under this subchapter, of not more
 3-63 than \$1,000 for the first violation and not more than \$2,000 for
 3-64 each subsequent violation.

3-65 (e) A penalty assessed under this section shall be paid to
 3-66 the commission and deposited to the Waste Management Account, #549.

3-67 (f) A violation of a prohibition of this subchapter related
 3-68 to sales may be enjoined in an action brought by the attorney
 3-69 general on behalf of this state under Section 7.032, Water Code.

4-1 (g) Money collected under this section may be used only for
 4-2 the administration of this subchapter.

4-3 Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION.
 4-4 Financial or proprietary information submitted to the commission
 4-5 under this subchapter is exempt from public disclosure under
 4-6 Chapter 552, Government Code.

4-7 Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission
 4-8 shall compile information from producers and issue an electronic
 4-9 report to the committee in each house of the legislature having
 4-10 primary jurisdiction over environmental matters not later than
 4-11 March 1 of each year.

4-12 Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does
 4-13 not authorize the commission to impose a fee, including a recycling
 4-14 fee or registration fee, on a consumer, manufacturer, retailer, or
 4-15 person who recycles or reuses computer equipment.

4-16 Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer
 4-17 is responsible for any information in any form left on the
 4-18 consumer's computer equipment that is collected, recycled, or
 4-19 reused.

4-20 (b) A consumer is encouraged to learn about recommended
 4-21 methods for recycling and reuse of computer equipment that has
 4-22 reached the end of its useful life by visiting the commission's and
 4-23 manufacturers' Internet sites.

4-24 Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All
 4-25 computer equipment collected under this subchapter must be recycled
 4-26 or reused in a manner that complies with federal, state, and local
 4-27 law.

4-28 (b) The commission shall adopt as standards for recycling or
 4-29 reuse of computer equipment in this state the standards provided by
 4-30 "Electronics Recycling Operating Practices" as approved by the
 4-31 board of directors of the Institute of Scrap Recycling Industries,
 4-32 Inc., April 25, 2006, or other standards from a comparable
 4-33 nationally recognized organization.

4-34 Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this
 4-35 section, "state agency" has the meaning assigned by Section
 4-36 2052.101, Government Code.

4-37 (b) A person who submits a bid for a contract with a state
 4-38 agency for the purchase or lease of computer equipment must be in
 4-39 compliance with this subchapter.

4-40 (c) A state agency that purchases or leases computer
 4-41 equipment shall require each prospective bidder to certify the
 4-42 bidder's compliance with this subchapter. Failure to provide that
 4-43 certification renders the prospective bidder ineligible to
 4-44 participate in the bidding.

4-45 (d) In considering bids for a contract for computer
 4-46 equipment, in addition to any other preferences provided under
 4-47 other laws of this state, the state shall give special preference to
 4-48 a manufacturer that has a program to recycle or reuse the computer
 4-49 equipment of other manufacturers, including collection events,
 4-50 recycling grants, and manufacturer initiatives to accept computer
 4-51 equipment labeled with another manufacturer's brand.

4-52 (e) The Texas Building and Procurement Commission and the
 4-53 Department of Information Resources shall adopt rules to implement
 4-54 this section.

4-55 Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If
 4-56 federal law establishes a national program for the collection and
 4-57 recycling of computer equipment and the commission determines that
 4-58 the federal law substantially meets the purposes of this
 4-59 subchapter, the commission may adopt an agency statement that
 4-60 interprets the federal law as preemptive of this subchapter.

4-61 (b) This subchapter expires on the date the commission
 4-62 issues a statement under this section.

4-63 SECTION 2. (a) The Texas Commission on Environmental
 4-64 Quality shall adopt any rules required to implement this Act not
 4-65 later than May 1, 2008.

4-66 (b) This Act may not be enforced before September 1, 2008.

4-67 (c) The reports required under Sections 361.955 and
 4-68 361.961, Health and Safety Code, as added by this Act, are not
 4-69 required to be prepared or submitted for the first time before the

5-1 dates specified by those sections in 2010.

5-2 SECTION 3. This Act takes effect September 1, 2007.

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