

By: Naishtat

H.B. No. 3758

A BILL TO BE ENTITLED

AN ACT

relating to the recovery and recycling of used electronic devices;  
creating an offense.

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. ELECTRONIC DEVICES

Sec. 361.951. DEFINITIONS. (a) In this subchapter:

(1) "Cathode ray tube" means a vacuum tube or picture  
tube used to convert an electronic signal into a visual image.

(2) "Computer" means an electronic, magnetic,  
optical, electrochemical, or other high-speed data processing  
device performing logical, arithmetic, or storage functions and  
includes both a computer central processing unit and a monitor. The  
term does not include an automated typewriter or typesetter, a  
portable handheld calculator, a portable digital assistant, or  
another similar device.

(3) "Consumer" means an individual, charitable  
organization, small business, governmental entity, school, or  
nonprofit organization that purchases a covered electronic device  
in a retail sale.

(4) "Covered electronic device" means a desktop  
personal computer, computer monitor, portable computer, cathode  
ray tube-based television, or non-cathode ray tube-based

1 television sold to a consumer. The term does not include:

2 (A) a device that is a part of a motor vehicle or  
3 a component part of a motor vehicle assembled by or for a vehicle  
4 manufacturer or franchised dealer, including a replacement part for  
5 use in a motor vehicle;

6 (B) a device that is functionally or physically  
7 part of a larger piece of equipment designed and intended for use in  
8 an industrial, commercial, or medical setting, including  
9 diagnostic, monitoring, or control equipment;

10 (C) a device that is contained in a clothes  
11 washer, clothes dryer, refrigerator, refrigerator and freezer,  
12 microwave oven, conventional oven or range, dishwasher, room air  
13 conditioner, dehumidifier, or air purifier; or

14 (D) a telephone of any type, other than a  
15 telephone that contains a video display area greater than four  
16 inches when measured diagonally.

17 (5) "Covered electronic recycler" means an entity that  
18 has received approval from the commission to recycle covered  
19 electronic devices for compensation.

20 (6) "Manufacturer" means a person who, as of September  
21 1, 2007, or subsequently, and regardless of the selling technique  
22 used, including by means of remote sale:

23 (A) manufactures covered electronic devices  
24 under its own brand for sale in this state;

25 (B) manufactures covered electronic devices for  
26 sale in this state without affixing a brand;

27 (C) resells in this state covered electronic

1 devices produced by other suppliers under its own brand or label;

2 (D) imports or exports covered electronic  
3 devices into the United States for sale in this state, except that  
4 if a company from whom an importer purchases the devices has a  
5 presence or assets in the United States, that company is considered  
6 to be the manufacturer of the devices; or

7 (E) manufactures covered electronic devices,  
8 supplies them to any person within a distribution network that  
9 includes a wholesaler or retailer in this state, and benefits from  
10 the sale in this state of those covered electronic devices through  
11 that distribution network.

12 (7) "Manufacturer's brand" means a manufacturer's  
13 name, brand name, or brand label, and all manufacturers' names,  
14 brand names, and brand labels for which the manufacturer has legal  
15 responsibility, including any names, brand names, or brand labels  
16 of companies that have been acquired by the manufacturer.

17 (8) "Monitor" means a separate video display component  
18 of a computer, whether sold separately or with a computer central  
19 processing unit, and includes:

20 (A) a display using cathode ray tube, liquid  
21 crystal, gas plasma, digital light processing, or other image  
22 projection technology that is greater than four inches when  
23 measured diagonally;

24 (B) the case;

25 (C) the interior wires and circuitry;

26 (D) the cable to the central processing unit; and

27 (E) the power cord.

1           (9) "New entrant" means:

2                   (A) a manufacturer of televisions that have been  
3 sold in this state for less than 10 years; or

4                   (B) a manufacturer of desktop computers, laptop  
5 or portable computers, or computer monitors that have been sold in  
6 this state for less than five years.

7           (10) "Obligation" means the quantity of covered  
8 electronic devices, by weight, identified for an individual  
9 manufacturer, as defined by the commission under Section 361.958.

10           (11) "Portable computer" means a computer and video  
11 display greater than four inches in size when measured diagonally  
12 that can be carried as one unit by an individual.

13           (12) "Purchase" means the taking, by sale, of title in  
14 exchange for consideration.

15           (13) "Recycling" means any process by which covered  
16 electronic devices that would otherwise become solid waste or  
17 hazardous waste are collected, separated, and processed to be  
18 returned to use in the form of raw materials or products, in  
19 accordance with environmental standards established by the  
20 commission.

21           (14) "Registrant" means a manufacturer of covered  
22 electronic devices that is in full compliance with this subchapter.

23           (15) "Retail sales" includes sales of products by  
24 means of sales outlets, the Internet, mail order, or otherwise,  
25 regardless of whether the seller has a physical presence in this  
26 state.

27           (16) "Retailer" means a person who owns or operates a

1 business that sells new covered electronic devices in this state by  
2 any means to a consumer.

3 (17) "Sell" or "sale" means any transfer for  
4 consideration of title, including a transaction conducted by means  
5 of a sales outlet, a catalog, or the Internet or other similar  
6 electronic means. The term does not include a lease.

7 (18) "State recycling rate" means the ratio of the  
8 weight of the total overall returns of covered electronic devices  
9 in this state to the weight of the total overall sales of covered  
10 electronic devices in this state during the preceding calendar  
11 year.

12 (19) "Television" means a stand-alone display system  
13 that:

14 (A) contains a cathode ray tube or other type of  
15 display that is primarily intended to receive video programming by  
16 means of broadcast and has a viewable area greater than four inches  
17 when measured diagonally;

18 (B) is able to adhere to standard consumer video  
19 formats such as PAL, SECAM, NTSC, and HDTV;

20 (C) has the capability of selecting different  
21 broadcast channels; and

22 (D) supports sound capability.

23 (20) "Video display" means an output surface having a  
24 viewable area greater than four inches when measured diagonally  
25 that displays, by using cathode ray tube, liquid crystal display,  
26 gas plasma, digital light processing, or other image projection  
27 technology, moving graphical images or a visual representation of

1 image sequences or pictures showing a number of quickly changing  
2 images on a screen in fast succession in order to create the  
3 illusion of motion. The term includes any device that is an  
4 integral part of a display, cannot be easily removed from the  
5 display by the consumer, and produces a moving image on a screen.

6 (21) "White box manufacturer" means a person who  
7 manufactured unbranded covered electronic devices offered for sale  
8 in this state on or after:

9 (A) the 10th year before the beginning of a  
10 program year in the case of televisions; or

11 (B) the fifth year before the beginning of a  
12 program year in the case of desktop computers, portable computers,  
13 or computer monitors.

14 (b) Notwithstanding Subsection (a)(9), a manufacturer of  
15 both televisions and computers or a manufacturer of both  
16 televisions and computer monitors that is described by Subsection  
17 (a)(9)(A) or (B) but not both Subsections (a)(9)(A) and (B) is not  
18 considered a new entrant for purposes of this subchapter.

19 Sec. 361.952. EXPANSION OF SCOPE OF COVERED ELECTRONIC  
20 DEVICES. Notwithstanding Section 361.951(a)(4), on or after  
21 September 1, 2009:

22 (1) a peripheral device for a television or computer,  
23 including a printer, facsimile machine, mouse, keyboard, digital  
24 versatile disc player, videocassette recorder, or video game  
25 player, is considered to be a covered electronic device for  
26 purposes of this subchapter; and

27 (2) the commission may adopt rules expanding the

1 definition of "covered electronic device" to include devices in  
2 addition to those specified by Section 361.951(a)(4) and  
3 Subdivision (1) of this section.

4 Sec. 361.953. SALES PROHIBITION. (a) A manufacturer that  
5 is not in compliance with this subchapter may not offer a covered  
6 electronic device for sale in this state.

7 (b) An entity may not offer for sale in this state a new  
8 covered electronic device from a manufacturer that is not in  
9 compliance with this subchapter. The commission shall maintain a  
10 list of all manufacturers that are in compliance with this  
11 subchapter and post the list on the commission's Internet website.  
12 A seller of products in this state or that are imported into this  
13 state shall consult the list before selling covered electronic  
14 devices in this state. A seller is considered to have complied with  
15 the requirements of this subsection if, on the date the product was  
16 ordered from the manufacturer or its agent, the manufacturer was  
17 listed on the commission's Internet website as being in compliance.

18 Sec. 361.954. LABELING REQUIREMENT. A manufacturer may not  
19 sell or offer for sale a covered electronic device in this state  
20 unless the device is labeled with the manufacturer's brand and the  
21 label is affixed permanently and readily visible.

22 Sec. 361.955. REPORTING AND REGISTRATION. (a) Not later  
23 than January 30 of each year, each manufacturer of covered  
24 electronic devices shall:

25 (1) report to the commission the total weight of  
26 covered electronic devices manufactured by the manufacturer and  
27 sold in this state during the preceding calendar year; or

1           (2) request that the commission compute the total  
2 weight of covered electronic devices manufactured by the  
3 manufacturer and sold in this state by using prorated national  
4 sales data based on the population of each state.

5           (b) Not later than January 30 of each year, each  
6 manufacturer of covered electronic devices shall register with the  
7 commission and pay a registration fee of:

8           (1) \$5,000 if the manufacturer manufactured at least  
9 1,000 units of covered electronic devices during the preceding  
10 year; or

11           (2) \$2,500 if the manufacturer manufactured less than  
12 1,000 units of covered electronic devices during the preceding  
13 year.

14           Sec. 361.956. MANUFACTURER RESPONSIBILITY. (a) Each  
15 manufacturer of covered electronic devices sold in this state must  
16 submit an additional fee to the commission that is equal to the  
17 state recycling rate multiplied by the weight in pounds of sales of  
18 the manufacturer's covered electronic devices sold in this state  
19 during the preceding calendar year multiplied by an amount  
20 determined by the commission not to exceed \$0.50 per pound.

21           (b) In lieu of paying the fee provided by Subsection (a), a  
22 manufacturer or a group of manufacturers may submit a plan to  
23 collect, transport, and recycle covered electronic devices. This  
24 subsection does not apply to a manufacturer that is a new entrant or  
25 a white box manufacturer.

26           (c) An individual manufacturer that submits a plan under  
27 Subsection (b) in lieu of paying the fee provided by Subsection (a)



1 must collect, transport, and recycle a quantity of covered  
2 electronic devices that is equal to the weight of sales of the  
3 manufacturer's covered electronic devices in this state during the  
4 preceding calendar year multiplied by the state recycling rate. A  
5 manufacturer that collects equipment for domestic refurbishment  
6 and reuse rather than recycling may double count the weight of  
7 equipment that was collected and then refurbished for domestic  
8 reuse in computing the manufacturer's annual obligation.

9 (d) A group of manufacturers that submits a plan under  
10 Subsection (b) in lieu of paying the fee provided by Subsection (a)  
11 must collect, transport, and recycle a quantity of obligations  
12 equal to the sum of the obligations of each participating  
13 manufacturer.

14 (e) A plan under Subsection (b) must be filed with the  
15 manufacturer's annual registration and include at a minimum:

16 (1) the methods that will be used to collect the  
17 covered electronic devices, including the names and locations of  
18 all collection and consolidation points;

19 (2) an estimate of the amount of covered electronic  
20 devices that will be collected annually;

21 (3) the processes and methods that will be used to  
22 recycle recovered covered electronic devices, including a  
23 description of the disassembly, the physical recovery operation,  
24 such as crushing, shredding, grinding, or glass-to-glass  
25 recycling, or the other operations that will be used, and the names  
26 and locations of all facilities to be used;

27 (4) documentation of audits of each processor used in

1 the plan and compliance with processing standards established under  
2 Section 361.961;

3 (5) a description of the accounting and reporting  
4 systems that will be employed to track progress toward fulfilling  
5 the plan's obligations;

6 (6) the means that will be used to publicize the  
7 collection opportunities;

8 (7) the intention of the registrant to fulfill its  
9 obligations through operation of its own program, either  
10 individually or in partnership with other manufacturers; and

11 (8) the total weight of covered electronic devices  
12 collected, transported, and recycled during the preceding year.

13 (f) Before the fee provided by Subsection (a) may be waived,  
14 the plan under Subsection (b) must be reviewed and approved by the  
15 commission. If the commission approves the plan, the commission  
16 shall waive the manufacturer's obligation to pay the fee provided  
17 by Subsection (a). The commission may reject the plan in whole or  
18 in part and may impose additional requirements as a condition of  
19 approval.

20 (g) If a manufacturer fails to comply with all the terms and  
21 conditions of an approved plan, the manufacturer shall pay the  
22 commission:

23 (1) the cost of collecting, transporting, and  
24 recycling the unmet portion of its obligation, to be computed by  
25 multiplying the quantity of the outstanding portion in pounds by an  
26 amount determined by the commission not to exceed \$0.50 per pound;  
27 and

1           (2) a penalty in an amount equal to the cost of  
2 collecting, transporting, and recycling 10 percent of the  
3 manufacturer's total obligation, to be computed in the manner  
4 provided by Subdivision (1).

5           (h) A manufacturer that collects, transports, and recycles  
6 covered electronic devices in excess of the manufacturer's  
7 obligation may sell credits to another registrant.

8           Sec. 361.957. RETAILER RESPONSIBILITY. (a) A retailer  
9 must clearly post and provide information provided by the  
10 commission that describes where and how to recycle a covered  
11 electronic device and opportunities and locations for the  
12 collection or return of the device, through the use of a toll-free  
13 telephone number and Internet website, information included in the  
14 packaging, or information provided accompanying the sale of the  
15 device. This information shall be provided in clear written form in  
16 English and any other language considered to be a primary language  
17 by the Texas Education Agency.

18           (b) A retailer may sell only products from registrants. A  
19 retailer shall consult the list described by Section 361.953 before  
20 selling covered electronic devices in this state. A retailer is  
21 considered to have complied with this subsection if on the date the  
22 product was ordered from the manufacturer or its agent, the  
23 manufacturer was listed as being in compliance on the Internet  
24 website described by Section 361.953(b).

25           Sec. 361.958. COMMISSION RESPONSIBILITY. (a) Not later  
26 than February 15 of each year, the commission shall establish the  
27 state recycling rate by computing the ratio of the weight of total

1 overall returns of covered electronic devices in this state to the  
2 weight of total overall sales of covered electronic devices in this  
3 state during the preceding calendar year.

4 (b) Not later than March 1 of each year, the commission  
5 shall provide each registrant with its responsibility for fees from  
6 sales or for collection, recycling, and transportation in pounds  
7 for that year.

8 (c) The commission shall receive fees as described by  
9 Section 361.956 from manufacturers for the sale of covered  
10 electronic devices.

11 (d) The commission must ensure that at least one electronics  
12 collection opportunity is available in each county in this state  
13 and is convenient, to the maximum extent feasible, to all consumers  
14 in the county. In a county with a population of 50,000 or more, the  
15 electronics collection opportunity must be available at least five  
16 days of each week. In a county with a population of less than  
17 50,000, the electronics collection opportunity must be available at  
18 least four days of each month.

19 (e) The commission shall ensure that collection sites do not  
20 place limits on the number of covered electronic devices permitted  
21 for drop-off by consumers.

22 (f) The commission shall encourage the use of existing  
23 collection and consolidation infrastructure for handling covered  
24 electronic devices to the extent that the infrastructure is  
25 accessible on a regular and ongoing basis to at least 85 percent of  
26 the population of this state, is cost-effective, and meets the  
27 environmentally sound management requirements of Section 361.961.

1       (g) The commission shall maintain a list of registrants and  
2 post the list on an Internet website that is updated at least once  
3 each month.

4       (h) The commission shall organize and coordinate a public  
5 education and outreach program.

6       (i) Fees received by the commission under this subchapter  
7 shall be deposited to the credit of the waste management account and  
8 may be used by the commission only to implement this subchapter.

9       (j) The commission shall prepare a plan every two years  
10 that:

11           (1) establishes per capita collection and recycling  
12 goals; and

13           (2) identifies any necessary actions of this state to  
14 expand collection opportunities to achieve the per capita  
15 collection and recycling goals.

16       (k) The commission shall post the plan described by  
17 Subsection (j) on the commission's Internet website and submit the  
18 plan to the legislature.

19       (l) The commission annually shall submit to the legislature  
20 a report that includes:

21           (1) a list of all parties that the commission has  
22 designated as approved to receive payments for collection,  
23 transportation, or recycling, the amount of the payments it has  
24 made to those parties, and the purpose of those payments;

25           (2) the total weight of covered electronic devices  
26 collected in this state during the preceding calendar year;

27           (3) the total weight of covered electronic devices

1 sold in this state during the preceding calendar year;

2 (4) the progress made toward achieving the goals  
3 described by Subsection (j)(1);

4 (5) a complete listing of all collection sites  
5 operating in this state during the preceding calendar year, the  
6 parties that operated them, and the amount of material by weight  
7 collected at each site;

8 (6) an evaluation of the effectiveness of the public  
9 education and outreach program under Subsection (h); and

10 (7) an evaluation of the existing collection and  
11 processing infrastructure.

12 (m) The commission shall annually post the report required  
13 by Subsection (l) on its Internet website.

14 (n) The program to implement this subchapter and commission  
15 rules adopted under Section 361.964 shall be fully audited by an  
16 independent, certified public accountant at the end of each  
17 calendar year. A copy of the audit report shall be submitted to the  
18 legislature.

19 (o) The commission shall maintain an Internet website and  
20 toll-free telephone number for obtaining up-to-date listings of  
21 where consumers can bring covered electronic devices for recycling  
22 under this subchapter.

23 (p) The commission may not be held financially liable or  
24 responsible for any violation of federal, state, or local law by any  
25 entity to which the commission makes a payment under Section  
26 361.960.

27 (q) Not more frequently than annually and not less

1 frequently than biennially, the commission shall review, at a  
2 public hearing, the fees required by Sections 361.955(b) and  
3 361.956(a). The commission shall include in the report required by  
4 Subsection (1) any recommended changes to the fees.

5 Sec. 361.959. PROHIBITION ON FEES FOR COLLECTION OR  
6 RECYCLING OF COVERED ELECTRONIC DEVICES. Fees or costs may not be  
7 charged to consumers for the collection, transportation, or  
8 recycling of covered electronic devices.

9 Sec. 361.960. REIMBURSEMENT FOR COLLECTION,  
10 TRANSPORTATION, AND RECYCLING. (a) The commission shall engage in  
11 competitive bidding for the collection, transportation, and  
12 recycling of covered electronic devices.

13 (b) The commission shall make payments for the collection,  
14 transportation, and recycling of covered electronic devices to an  
15 authorized or approved entity on receipt of a completed and  
16 verified invoice submitted to the commission in the form and manner  
17 determined by the commission.

18 (c) To receive payment, proof is required that:

19 (1) the covered electronic device was collected from a  
20 consumer who is a resident of this state or is otherwise located in  
21 this state, or who provides evidence that the device was purchased  
22 in this state after September 1, 2007;

23 (2) the collection, transportation, and recycling of  
24 the covered electronic device was conducted in accordance with all  
25 federal, state, and local laws, including this subchapter, and the  
26 commission's rules; and

27 (3) fees or costs were not charged to the customer.

Sec. 361.961. ENVIRONMENTALLY SOUND MANAGEMENT

REQUIREMENTS. (a) Covered electronic devices collected through any program in this state, whether organized by manufacturers, retailers, for-profit or nonprofit corporations, the commission, or another governmental entity, must be recycled in a manner that complies with all applicable federal, state, and local laws, rules, regulations, and ordinances, and must not be exported for disposal in a manner that poses a significant risk to the public health or the environment. A plan or program required by this subchapter may not include the use of federal or state prison labor for disassembly or processing of electronic waste.

(b) The commission shall establish performance requirements in order for collectors, transporters, and recyclers to be eligible to receive money from the commission. All entities shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on that agency's Internet website in addition to any other requirements mandated by federal or state law.

(c) The commission shall maintain an Internet website that includes a list of entities and organizations that it has determined have met those performance standards.

Sec. 361.962. DISPOSAL BAN. Beginning September 1, 2009, a person may not:

(1) place in municipal solid waste a covered electronic device; or

(2) place in a solid waste facility a component or



1 subassembly of a covered electronic device.

2 Sec. 361.963. USE OF MONEY AWARDED IN ENFORCEMENT ACTION.  
3 Any money awarded by a court in an action under Chapter 7, Water  
4 Code, to enforce this subchapter shall be deposited to the credit of  
5 the waste management account and may be used by the commission only  
6 to implement this subchapter.

7 Sec. 361.964. REGULATORY AUTHORITY. The commission may  
8 adopt rules as necessary to administer this subchapter.

9 Sec. 361.965. MULTISTATE IMPLEMENTATION. The commission  
10 may participate in the establishment and implementation of a  
11 regional, multistate organization or compact to assist in carrying  
12 out this subchapter.

13 Sec. 361.966. RELATION TO FEDERAL LAW. This subchapter is  
14 intended to govern all aspects of the collection and recycling of  
15 covered electronic devices. If a federal law is enacted that  
16 authorizes the commission to implement a program for collecting or  
17 recycling covered electronic devices that is at least as protective  
18 of public health and the environment as this subchapter, the  
19 commission shall implement the program authorized by federal law.

20 SECTION 2. Subchapter E, Chapter 7, Water Code, is amended  
21 by adding Section 7.1635 to read as follows:

22 Sec. 7.1635. VIOLATIONS RELATING TO RECOVERY AND RECYCLING  
23 OF USED ELECTRONIC DEVICES. (a) In this section, "covered  
24 electronic device" has the meaning assigned by Sections 361.951 and  
25 361.952, Health and Safety Code.

26 (b) A person commits an offense if the person:

27 (1) sells a new covered electronic device by means of

1 any person that is not in full compliance with the provisions of  
2 Subchapter Y, Chapter 361, Health and Safety Code;

3 (2) applies for compensation for the collection,  
4 transportation, or recycling of covered electronic devices not  
5 collected within the state or within the region as provided by  
6 Section 361.965, Health and Safety Code, if applicable;

7 (3) uses a qualified collection program to recycle  
8 covered electronic devices not discarded within the state or within  
9 the region as provided by Section 361.965, Health and Safety Code,  
10 if applicable;

11 (4) knowingly fails to report or accurately report any  
12 data required to be reported to the commission by Subchapter Y,  
13 Chapter 361, Health and Safety Code; or

14 (5) fails to pay any fees required by Subchapter Y,  
15 Chapter 361, Health and Safety Code.

16 (c) An offense under this section is a Class B misdemeanor.

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