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S.B. No. 1324

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) who imports or imported computer equipment
15 manufactured outside the United States into the United States
16 unless at the time of importation the company or licensee that sells
17 or sold the computer equipment to the importer has or had assets or
18 a presence in the United States sufficient to be considered the
19 manufacturer.

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

24 Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE.

25 (a) Computers and related display devices are critical elements to
26 the strength and growth of this state's economic prosperity and
27 quality of life. Many of those products can be refurbished and

1 reused, and many contain valuable components that can be recycled.

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

8 Sec. 361.954. APPLICABILITY. (a) The collection,
9 recycling, and reuse provisions of this subchapter apply to
10 computer equipment used and returned to the manufacturer by a
11 consumer in this state and do not impose any obligation on an owner
12 or operator of a solid waste facility.

13 (b) This subchapter does not apply to:

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

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

18 (3) the sale or lease of computer equipment to a
19 business or governmental entity when the manufacturer and the
20 business or governmental entity enter into a contract that
21 effectively addresses the collection, recycling, and reuse of
22 computer equipment that has reached the end of its useful life.

23 Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before
24 a manufacturer may offer computer equipment for sale in this state,
25 the manufacturer must:

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

27 (2) affix a permanent, readily visible label to the

1 computer equipment with the manufacturer's brand.

2 (b) The recovery plan must enable a consumer to recycle
3 computer equipment without paying a separate fee at the time of
4 recycling and must include provisions for:

5 (1) the manufacturer's collection from a consumer of
6 any computer equipment that has reached the end of its useful life
7 and is labeled with the manufacturer's brand; and

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

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

12 (1) reasonably convenient and available to consumers
13 in this state; and

14 (2) designed to meet the collection needs of consumers
15 in this state.

16 (d) Examples of collection methods that alone or combined
17 meet the convenience requirements of this section include:

18 (1) a system by which the manufacturer or the
19 manufacturer's designee offers the consumer a system for returning
20 computer equipment by mail;

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

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

27 (e) Collection services under this section may use existing

1 collection and consolidation infrastructure for handling computer
2 equipment and may include electronic recyclers and repair shops,
3 recyclers of other commodities, reuse organizations,
4 not-for-profit corporations, retailers, recyclers, and other
5 suitable operations.

6 (f) The recovery plan must include information for the
7 consumer on how and where to return the manufacturer's computer
8 equipment. The manufacturer:

9 (1) shall include collection, recycling, and reuse
10 information on the manufacturer's publicly available Internet
11 site;

12 (2) shall provide collection, recycling, and reuse
13 information to the commission; and

14 (3) may include collection, recycling, and reuse
15 information in the packaging for or in other materials that
16 accompany the manufacturer's computer equipment when the equipment
17 is sold.

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

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

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

27 (2) documentation verifying the collection,

1 recycling, and reuse of that computer equipment in a manner that
2 complies with Section 361.964 regarding sound environmental
3 management.

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

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

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

24 (b) Retailers can go to the commission's Internet site as
25 outlined in Section 361.958 and view all manufacturers that are
26 listed as having registered a compliant collection program.
27 Covered electronic products from manufacturers on that list may be

1 sold in or into the State of Texas.

2 (c) A retailer is not required to collect computer equipment
3 for recycling or reuse under this subchapter.

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

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

10 Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.

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

13 (b) The commission shall host or designate another person to
14 host an Internet site providing consumers with information about
15 the recycling and reuse of computer equipment, including best
16 management practices and information about and links to information
17 on:

18 (1) manufacturers' collection, recycling, and reuse
19 programs, including manufacturers' recovery plans; and

20 (2) computer equipment collection events, collection
21 sites, and community computer equipment recycling and reuse
22 programs.

23 Sec. 361.959. ENFORCEMENT. (a) The commission may conduct
24 audits and inspections to determine compliance with this
25 subchapter.

26 (b) The commission and the attorney general, as
27 appropriate, shall enforce this subchapter and, except as provided

1 by Subsections (d) and (e), take enforcement action against any
2 manufacturer, retailer, or person who recycles or reuses computer
3 equipment for failure to comply with this subchapter.

4 (c) The attorney general may file suit under Section 7.032,
5 Water Code, to enjoin an activity related to the sale of computer
6 equipment in violation of this subchapter.

7 (d) The commission shall issue a warning notice to a person
8 on the person's first violation of this subchapter. The person must
9 comply with this subchapter not later than the 60th day after the
10 date the warning notice is issued.

11 (e) A retailer who receives a warning notice from the
12 commission that the retailer's inventory violates this subchapter
13 because it includes computer equipment from a manufacturer that has
14 not submitted the recovery plan required by Section 361.955 must
15 bring the inventory into compliance with this subchapter not later
16 than the 60th day after the date the warning notice is issued.

17 Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION.
18 Financial or proprietary information submitted to the commission
19 under this subchapter is exempt from public disclosure under
20 Chapter 552, Government Code.

21 Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission
22 shall compile information from manufacturers and issue an
23 electronic report to the committee in each house of the legislature
24 having primary jurisdiction over environmental matters not later
25 than March 1 of each year.

26 Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does
27 not authorize the commission to impose a fee, including a recycling

1 fee or registration fee, on a consumer, manufacturer, retailer, or
2 person who recycles or reuses computer equipment.

3 Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer
4 is responsible for any information in any form left on the
5 consumer's computer equipment that is collected, recycled, or
6 reused.

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

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

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

21 Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this
22 section, "state agency" has the meaning assigned by Section
23 2052.101, Government Code.

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

27 (c) A state agency that purchases or leases computer

1 equipment shall require each prospective bidder to certify the
2 bidder's compliance with this subchapter. Failure to provide that
3 certification renders the prospective bidder ineligible to
4 participate in the bidding.

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

12 (e) The Texas Building and Procurement Commission and the
13 Department of Information Resources shall adopt rules to implement
14 this section.

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

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

23 SECTION 2. Section 7.052, Water Code, is amended by adding
24 Subsections (b-1) and (b-2) to read as follows:

25 (b-1) The amount of the penalty assessed against a
26 manufacturer that does not label its computer equipment or adopt
27 and implement a recovery plan as required by Section 361.955,

1 Health and Safety Code, may not exceed \$10,000 for the second
2 violation or \$25,000 for each subsequent violation. A penalty
3 under this subsection is in addition to any other penalty that may
4 be assessed for a violation of Subchapter Y, Chapter 361, Health and
5 Safety Code.

6 (b-2) Except as provided by Subsection (b-1), the amount of
7 the penalty for a violation of Subchapter Y, Chapter 361, Health and
8 Safety Code, may not exceed \$1,000 for the second violation or
9 \$2,000 for each subsequent violation. A penalty under this
10 subsection is in addition to any other penalty that may be assessed
11 for a violation of Subchapter Y, Chapter 361, Health and Safety
12 Code.

13 SECTION 3. Section 7.069, Water Code, is amended to read as
14 follows:

15 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as
16 provided by Subsection (b), a [A] penalty collected under this
17 subchapter shall be deposited to the credit of the general revenue
18 fund.

19 (b) A penalty collected under Section 7.052(b-1) or (b-2)
20 shall be paid to the commission and deposited to the credit of the
21 waste management account.

22 SECTION 4. (a) The Texas Commission on Environmental
23 Quality shall adopt any rules required to implement this Act not
24 later than May 1, 2008.

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

26 (c) The reports required under Sections 361.955 and
27 361.961, Health and Safety Code, as added by this Act, are not

1 required to be prepared or submitted for the first time before the
2 dates specified by those sections in 2010.

3 (d) Notwithstanding the 60-day limit under Subsection (d)
4 or (e), Section 361.959, Health and Safety Code, as added by this
5 Act, a retailer may sell any inventory accrued before the effective
6 date of this Act without incurring a penalty.

7 SECTION 5. This Act takes effect September 1, 2007.