

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.

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.