

1-1 By: Watson S.B. No. 1324
1-2 (In the Senate - Filed March 7, 2007; March 19, 2007, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 30, 2007, reported adversely, with favorable Committee
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1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1324 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a program for the recycling of computer equipment of
1-11 consumers in this state; providing administrative penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 361, Health and Safety Code, is amended
1-14 by adding Subchapter Y to read as follows:

1-15 SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM

1-16 Sec. 361.951. SHORT TITLE. This subchapter may be cited as
1-17 the Manufacturer Responsibility and Consumer Convenience Computer
1-18 Equipment Collection and Recovery Act.

1-19 Sec. 361.952. DEFINITIONS. In this subchapter:

1-20 (1) "Brand" means the name, symbol, logo, trademark,
1-21 or other information that identifies a product rather than the
1-22 components of the product.

1-23 (2) "Computer equipment" means a desktop or notebook
1-24 computer and includes a computer monitor or other display device
1-25 that does not contain a tuner.

1-26 (3) "Manufacturer" means a person:

1-27 (A) who manufactures or manufactured computer
1-28 equipment under a brand that:

1-29 (i) the person owns or owned; or

1-30 (ii) the person is or was licensed to use,
1-31 other than under a license to manufacture computer equipment for
1-32 delivery exclusively to or at the order of the licensor;

1-33 (B) who sells or sold computer equipment
1-34 manufactured by others under a brand that:

1-35 (i) the person owns or owned; or

1-36 (ii) the person is or was licensed to use,
1-37 other than under a license to manufacture computer equipment for
1-38 delivery exclusively to or at the order of the licensor;

1-39 (C) who manufactures or manufactured computer
1-40 equipment without affixing a brand;

1-41 (D) who manufactures or manufactured computer
1-42 equipment to which the person affixes or affixed a brand that:

1-43 (i) the person does not or has not owned; or

1-44 (ii) the person is not or was not licensed
1-45 to use; or

1-46 (E) who imports or imported computer equipment
1-47 manufactured outside the United States into the United States
1-48 unless at the time of importation the company or licensee that sells
1-49 or sold the computer equipment to the importer has or had assets or
1-50 a presence in the United States sufficient to be considered the
1-51 manufacturer.

1-52 (4) "Television" means any telecommunication system
1-53 device that can broadcast or receive moving pictures and sound over
1-54 a distance and includes a television tuner or a display device
1-55 peripheral to a computer that contains a television tuner.

1-56 Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE.

1-57 (a) Computers and related display devices are critical elements to
1-58 the strength and growth of this state's economic prosperity and
1-59 quality of life. Many of those products can be refurbished and
1-60 reused, and many contain valuable components that can be recycled.

1-61 (b) The purpose of this subchapter is to establish a
1-62 comprehensive, convenient, and environmentally sound program for
1-63 the collection, recycling, and reuse of computer equipment that has

2-1 reached the end of its useful life. The program is based on
 2-2 individual manufacturer responsibility and shared responsibility
 2-3 among consumers, retailers, and the government of this state.

2-4 Sec. 361.954. APPLICABILITY. (a) The collection,
 2-5 recycling, and reuse provisions of this subchapter apply to
 2-6 computer equipment used and returned to the manufacturer by a
 2-7 consumer in this state and do not impose any obligation on an owner
 2-8 or operator of a solid waste facility.

2-9 (b) This subchapter does not apply to:

2-10 (1) a television, any part of a motor vehicle, a
 2-11 personal digital assistant, or a telephone;

2-12 (2) a consumer's lease of computer equipment or a
 2-13 consumer's use of computer equipment under a lease agreement;

2-14 (3) the sale or lease of computer equipment to a
 2-15 business; or

2-16 (4) the sale or lease of computer equipment to a
 2-17 governmental entity when the manufacturer and the governmental
 2-18 entity enter into a contract that effectively addresses the
 2-19 collection, recycling, and reuse of computer equipment that has
 2-20 reached the end of its useful life.

2-21 Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before
 2-22 a manufacturer may offer computer equipment for sale in this state,
 2-23 the manufacturer must:

2-24 (1) adopt and implement a recovery plan; and

2-25 (2) affix a permanent, readily visible label to the
 2-26 computer equipment with the manufacturer's brand.

2-27 (b) The recovery plan must enable a consumer to recycle
 2-28 computer equipment without paying a separate fee at the time of
 2-29 recycling and must include provisions for:

2-30 (1) the manufacturer's collection from a consumer of
 2-31 any computer equipment that has reached the end of its useful life
 2-32 and is labeled with the manufacturer's brand; and

2-33 (2) recycling or reuse of computer equipment collected
 2-34 under Subdivision (1).

2-35 (c) The collection of computer equipment provided under the
 2-36 recovery plan must be:

2-37 (1) reasonably convenient and available to consumers
 2-38 in this state; and

2-39 (2) designed to meet the collection needs of consumers
 2-40 in this state.

2-41 (d) Examples of collection methods that alone or combined
 2-42 meet the convenience requirements of this section include:

2-43 (1) a system by which the manufacturer or the
 2-44 manufacturer's designee offers the consumer a system for returning
 2-45 computer equipment by mail;

2-46 (2) a system using a physical collection site that the
 2-47 manufacturer or the manufacturer's designee keeps open and staffed
 2-48 and to which the consumer may return computer equipment; and

2-49 (3) a system using a collection event held by the
 2-50 manufacturer or the manufacturer's designee at which the consumer
 2-51 may return computer equipment.

2-52 (e) Collection services under this section may use existing
 2-53 collection and consolidation infrastructure for handling computer
 2-54 equipment and may include electronic recyclers and repair shops,
 2-55 recyclers of other commodities, reuse organizations,
 2-56 not-for-profit corporations, retailers, recyclers, and other
 2-57 suitable operations.

2-58 (f) The recovery plan must include information for the
 2-59 consumer on how and where to return the manufacturer's computer
 2-60 equipment. The manufacturer:

2-61 (1) shall include collection, recycling, and reuse
 2-62 information on the manufacturer's publicly available Internet
 2-63 site;

2-64 (2) shall provide collection, recycling, and reuse
 2-65 information to the commission; and

2-66 (3) may include collection, recycling, and reuse
 2-67 information in the packaging for or in other materials that
 2-68 accompany the manufacturer's computer equipment when the equipment
 2-69 is sold.

3-1 (g) Information about collection, recycling, and reuse on a
3-2 manufacturer's publicly available Internet site does not
3-3 constitute a determination by the commission that the
3-4 manufacturer's recovery plan or actual practices are in compliance
3-5 with this subchapter or other law.

3-6 (h) Each manufacturer shall submit a report to the
3-7 commission not later than January 31 of each year that includes:

3-8 (1) the weight of computer equipment collected,
3-9 recycled, and reused during the preceding calendar year; and

3-10 (2) documentation verifying the collection,
3-11 recycling, and reuse of that computer equipment in a manner that
3-12 complies with Section 361.964 regarding sound environmental
3-13 management.

3-14 (i) If more than one person is a manufacturer of a certain
3-15 brand of computer equipment as defined by Section 361.952, any of
3-16 those persons may assume responsibility for and satisfy the
3-17 obligations of a manufacturer under this subchapter for that brand.
3-18 If none of those persons assumes responsibility or satisfies the
3-19 obligations of a manufacturer for the computer equipment of that
3-20 brand, the commission may consider any of those persons to be the
3-21 responsible manufacturer for purposes of this subchapter.

3-22 (j) The obligations under this subchapter of a manufacturer
3-23 who manufactures or manufactured computer equipment, or sells or
3-24 sold computer equipment manufactured by others, under a brand that
3-25 was previously used by a different person in the manufacture of the
3-26 computer equipment extends to all computer equipment bearing that
3-27 brand regardless of its date of manufacture.

3-28 Sec. 361.956. RETAILER RESPONSIBILITY. (a) A person who
3-29 is a retailer of computer equipment may not sell or offer to sell
3-30 computer equipment in this state unless the equipment is labeled
3-31 with the manufacturer's label and the manufacturer is included on
3-32 the commission's list of manufacturers that have recovery plans.

3-33 (b) A retailer is not required to collect computer equipment
3-34 for recycling or reuse under this subchapter.

3-35 Sec. 361.957. LIABILITY. (a) A manufacturer or retailer
3-36 of computer equipment is not liable in any way for information in
3-37 any form that a consumer leaves on computer equipment that is
3-38 collected, recycled, or reused under this subchapter.

3-39 (b) This subchapter does not exempt a person from liability
3-40 under other law.

3-41 Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.
3-42 (a) The commission shall educate consumers regarding the
3-43 collection, recycling, and reuse of computer equipment.

3-44 (b) The commission shall host or designate another person to
3-45 host an Internet site providing consumers with information about
3-46 the recycling and reuse of computer equipment, including
3-47 information about and links to information on:

3-48 (1) manufacturers' collection, recycling, and reuse
3-49 programs, including manufacturers' recovery plans; and

3-50 (2) computer equipment collection events, collection
3-51 sites, and community computer equipment recycling and reuse
3-52 programs.

3-53 (c) Inclusion on the commission's Internet site under
3-54 Subsection (b) does not constitute a determination by the
3-55 commission that the manufacturer's recovery plan or practices are
3-56 in compliance with this subchapter or other law.

3-57 Sec. 361.959. ENFORCEMENT. (a) The commission may conduct
3-58 audits and inspections to determine compliance with this
3-59 subchapter.

3-60 (b) The commission and the attorney general, as
3-61 appropriate, shall enforce this subchapter and, except as provided
3-62 by Subsections (d) and (e), take enforcement action against any
3-63 manufacturer, retailer, or person who recycles or reuses computer
3-64 equipment for failure to comply with this subchapter.

3-65 (c) The attorney general may file suit under Section 7.032,
3-66 Water Code, to enjoin an activity related to the sale of computer
3-67 equipment in violation of this subchapter.

3-68 (d) The commission shall issue a warning notice to a person
3-69 on the person's first violation of this subchapter. The person must

4-1 comply with this subchapter not later than the 60th day after the
 4-2 date the warning notice is issued.

4-3 (e) A retailer who receives a warning notice from the
 4-4 commission that the retailer's inventory violates this subchapter
 4-5 because it includes computer equipment from a manufacturer that has
 4-6 not submitted the recovery plan required by Section 361.955 must
 4-7 bring the inventory into compliance with this subchapter not later
 4-8 than the 60th day after the date the warning notice is issued.

4-9 Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION.
 4-10 Financial or proprietary information submitted to the commission
 4-11 under this subchapter is exempt from public disclosure under
 4-12 Chapter 552, Government Code.

4-13 Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission
 4-14 shall compile information from manufacturers and issue an
 4-15 electronic report to the committee in each house of the legislature
 4-16 having primary jurisdiction over environmental matters not later
 4-17 than March 1 of each year.

4-18 Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does
 4-19 not authorize the commission to impose a fee, including a recycling
 4-20 fee or registration fee, on a consumer, manufacturer, retailer, or
 4-21 person who recycles or reuses computer equipment.

4-22 Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer
 4-23 is responsible for any information in any form left on the
 4-24 consumer's computer equipment that is collected, recycled, or
 4-25 reused.

4-26 (b) A consumer is encouraged to learn about recommended
 4-27 methods for recycling and reuse of computer equipment that has
 4-28 reached the end of its useful life by visiting the commission's and
 4-29 manufacturers' Internet sites.

4-30 Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All
 4-31 computer equipment collected under this subchapter must be recycled
 4-32 or reused in a manner that complies with federal, state, and local
 4-33 law.

4-34 (b) The commission shall adopt as standards for recycling or
 4-35 reuse of computer equipment in this state the standards provided by
 4-36 "Electronics Recycling Operating Practices" as approved by the
 4-37 board of directors of the Institute of Scrap Recycling Industries,
 4-38 Inc., April 25, 2006, or other standards from a comparable
 4-39 nationally recognized organization.

4-40 Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this
 4-41 section, "state agency" has the meaning assigned by Section
 4-42 2052.101, Government Code.

4-43 (b) A person who submits a bid for a contract with a state
 4-44 agency for the purchase or lease of computer equipment must be in
 4-45 compliance with this subchapter.

4-46 (c) A state agency that purchases or leases computer
 4-47 equipment shall require each prospective bidder to certify the
 4-48 bidder's compliance with this subchapter. Failure to provide that
 4-49 certification renders the prospective bidder ineligible to
 4-50 participate in the bidding.

4-51 (d) In considering bids for a contract for computer
 4-52 equipment, in addition to any other preferences provided under
 4-53 other laws of this state, the state shall give special preference to
 4-54 a manufacturer that has a program to recycle the computer equipment
 4-55 of other manufacturers, including collection events and
 4-56 manufacturer initiatives to accept computer equipment labeled with
 4-57 another manufacturer's brand.

4-58 (e) The Texas Building and Procurement Commission and the
 4-59 Department of Information Resources shall adopt rules to implement
 4-60 this section.

4-61 Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If
 4-62 federal law establishes a national program for the collection and
 4-63 recycling of computer equipment and the commission determines that
 4-64 the federal law substantially meets the purposes of this
 4-65 subchapter, the commission may adopt an agency statement that
 4-66 interprets the federal law as preemptive of this subchapter.

4-67 (b) This subchapter expires on the date the commission
 4-68 issues a statement under this section.

4-69 SECTION 2. Section 7.052, Water Code, is amended by adding

5-1 Subsections (b-1) and (b-2) to read as follows:

5-2 (b-1) The amount of the penalty assessed against a
5-3 manufacturer that does not label its computer equipment or adopt
5-4 and implement a recovery plan as required by Section 361.955,
5-5 Health and Safety Code, may not exceed \$10,000 for the second
5-6 violation or \$25,000 for each subsequent violation. A penalty
5-7 under this subsection is in addition to any other penalty that may
5-8 be assessed for a violation of Subchapter Y, Chapter 361, Health and
5-9 Safety Code.

5-10 (b-2) Except as provided by Subsection (b-1), the amount of
5-11 the penalty for a violation of Subchapter Y, Chapter 361, Health and
5-12 Safety Code, may not exceed \$1,000 for the second violation or
5-13 \$2,000 for each subsequent violation. A penalty under this
5-14 subsection is in addition to any other penalty that may be assessed
5-15 for a violation of Subchapter Y, Chapter 361, Health and Safety
5-16 Code.

5-17 SECTION 3. Section 7.069, Water Code, is amended to read as
5-18 follows:

5-19 Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as
5-20 provided by Subsection (b), a [A] penalty collected under this
5-21 subchapter shall be deposited to the credit of the general revenue
5-22 fund.

5-23 (b) A penalty collected under Section 7.052(b-1) or (b-2)
5-24 shall be paid to the commission and deposited to the credit of the
5-25 waste management account.

5-26 SECTION 4. (a) The Texas Commission on Environmental
5-27 Quality shall adopt any rules required to implement this Act not
5-28 later than May 1, 2008.

5-29 (b) This Act may not be enforced before September 1, 2008.

5-30 (c) The reports required under Sections 361.955 and
5-31 361.961, Health and Safety Code, as added by this Act, are not
5-32 required to be prepared or submitted for the first time before the
5-33 dates specified by those sections in 2010.

5-34 (d) Notwithstanding the 60-day limit under Subsection (d)
5-35 or (e), Section 361.959, Health and Safety Code, as added by this
5-36 Act, a retailer may sell any inventory accrued before the effective
5-37 date of this Act without incurring a penalty.

5-38 SECTION 5. This Act takes effect September 1, 2007.

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