

## BILL ANALYSIS

Senate Research Center

H.B. 821  
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Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With the digital transition coming in June 2009, millions of old tube televisions will be discarded as Texans buy new high definition televisions. Old tube televisions can contain several pounds of lead and toxic flame retardants. There is a significant risk of dangerous substances getting released into the environment if old televisions are not properly recycled. Several other states already require the recycling of televisions by manufacturers and six manufacturers already take back their old products.

This bill adds Subchapter Z to Chapter 361 of the Health and Safety Code to create the Television Equipment Recycling Program. It requires television manufacturers to recycle their market share of the televisions recycled in Texas, regardless of the brand of television.

H.B. 821 amends current law relating to the sale, recovery, and recycling of certain television equipment and provides administrative penalties.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Sections 361.979 and 361.982, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 361.988, Health and Safety Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 361, Health and Safety Code, by adding Subchapter Z, as follows:

#### SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971. DEFINITIONS. Defines "brand," "consumer," "covered television equipment," "market share allocation," "recycling," "retailer," "television," and "television manufacturer."

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. Provides that the purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment. Provides that the program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Sec. 361.973. APPLICABILITY. (a) Provides that, except as provided by this section and Section 361.988, this subchapter applies only to covered television equipment that is offered for sale or sold to a consumer in this state or used by a consumer in this state and returned for recycling.

(b) Provides that this subchapter does not apply to computer equipment as that term is defined by Section 361.952 (Solid Waste Disposal Act); any part of a motor vehicle, including a replacement part; a device that is functionally or physically part of or connected to another system or piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment, or used for security, sensing, monitoring, antiterrorism, or emergency services purposes; a device that is contained in exercise equipment and intended for home use or an appliance intended for home use including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier; a telephone of any type; a personal digital assistant; a global positioning system; a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of the equipment that has reached the end of its useful life.

Sec. 361.974. SALES PROHIBITION. Prohibits a person from offering for sale in this state new covered television equipment unless the equipment has been labeled in compliance with Section 361.975.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. Authorizes a television manufacturer to sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. Requires that the label be permanently affixed and readily visible.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) Requires a manufacturer of covered television equipment to register with the Texas Natural Resource Conservation Commission (TNRCC) and pay a registration fee of \$2,500. Requires a registered television manufacturer to renew the registration and pay the fee on or before January 31 of each year. Requires that the registration or registration renewal include a list of all brands the television manufacturer uses in this state on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand, and contact information for the person TNRCC may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Requires each registered television manufacturer of covered television equipment, not later than January 31 of each year, to report to TNRCC the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer is authorized to report the total amount of covered television equipment the television manufacturer sold nationally in the preceding calendar year; and the total weight of covered television equipment the manufacturer collected and recycled in this state during the preceding calendar year.

Sec. 361.977. MANUFACTURER'S RECOVERY PLAN AND RELATED RESPONSIBILITIES. (a) Requires that each television manufacturer of covered television equipment sold in this state, individually or as a member of a group of television manufacturers, submit to TNRCC a recovery plan to collect, transport, and recycle covered television equipment.

(b) Requires an individual television manufacturer that submits a recovery plan under Subsection (a) to collect, transport, and recycle covered television equipment. Requires the individual television manufacturer, beginning with the television manufacturer's second year of registration, to collect, transport, and recycle the quantity of covered television equipment computed by TNRCC as the manufacturer's market share allocation.

(c) Requires a group of television manufactures that submits a recovery plan under Subsection (a) to collect, transport, and recycle covered television equipment. Requires the group of television manufacturers, beginning the second year of registration for a group of television manufacturers, to collect, transport, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(d) Requires that a recovery plan under Subsection (a) include at a minimum a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its program, individually or in partnership with other television manufacturers; beginning with the television manufacturer's second year of registration, the total weight covered television equipment collected, transported, and recycled by or on behalf of the television manufacturer during the preceding year; and collection methods that allow a consumer to recycle television equipment without paying a separate fee at the time of recycling.

(e) Requires TNRCC to review the recovery plan for the satisfaction of the requirements of this subchapter. Requires TNRCC, if the registration and recovery plan are complete, to include the television manufacturer on TNRCC's Internet website listing as provided by Section 361.981(a). Authorizes TNRCC to reject the recovery plan if it does not meet all requirements of this subchapter.

Sec. 361.978. **RETAILER RESPONSIBILITY.** (a) Authorizes a retailer to order and sell only products from a television manufacturer that is included on the list published under Section 361.981(a) that identifies manufacturers whose recovery plans have been approved by TNRCC. Requires a retailer to consult that list before ordering covered television equipment in this state. Provides that a retailer is considered to have complied with this subsection and is authorized to sell a product in the retailer's inventory if, on the date the product was ordered from the manufacturer, the manufacturer was listed on the Internet website described by Section 361.981(a) as having an approved recovery plan.

(b) Requires a person who is a retailer of covered television equipment to provide to consumers in writing the information published by TNRCC regarding the legal disposition and recycling of television equipment. Authorizes the information to be included with the sales receipt or as part of the packaging of the equipment. Authorizes the retailer, alternatively, to provide the information required by this subsection through a toll-free telephone number and address of an Internet website provided to consumers.

(c) Provides that this chapter does not require a retailer to collect covered television equipment for recycling.

Sec. 361.979. **RECYCLER RESPONSIBILITIES.** (a) Requires a person who is engaged in the business of recycling covered television equipment in this state to register with TNRCC and certify that the person is in compliance with the standards adopted under Section 361.987; on or before January 31 of each year renew the registration with TNRCC and certify the person's continued compliance with the standards adopted under Section 361.987; recycle all covered television equipment accepted for recycling in accordance with the standards adopted under Section 361.987; maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; obtain and retain documentation in accordance with TNRCC rules that covered television equipment received for recycling was last used by a consumer in this state; and annually report to TNRCC the total weight of covered television equipment received and recycled by the person in the preceding 12 months.

(b) Authorizes TNRCC to impose a fee for registration under this section in an amount necessary to recover the costs of registrations under this section.

Sec. 361.980. **LIABILITY.** (a) Provides that a television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for

information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) Provides that this subchapter does not exempt a person from liability under other law.

Sec. 361.981. COMMISSION RESPONSIBILITIES. (a) Requires TNRCC to publish on a publicly accessible Internet website a list of television manufacturers who have registered with TNRCC and a list of television manufacturers who are in full compliance with this subchapter.

(b) Requires TNRCC to remove manufacturers no longer in compliance with this subchapter from the Internet website once each calendar quarter.

(c) Requires TNRCC to educate consumers regarding the collection and recycling of covered television equipment.

(d) Requires TNRCC to host or designate another person to host an Internet website and to provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about television manufacturers' recovery plans; and covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Provides that information about collection and recycling provided on a television manufacturer's publically available Internet website and through a toll-free telephone number does not constitute a determination by TNRCC that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(f) Requires TNRCC, not later than February 15 of each year, to establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state to the total weight of covered television equipment sold in this state during the preceding year.

(g) Requires TNRCC, not later than March 1 of each year, to compute and provide to each registered television manufacturer the manufacturer's market share allocation for collection, recycling, and transportation that year. Provides that a television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) Requires TNRCC to provide to each county and municipality of this state information regarding the legal disposition and recycling of covered television equipment. Requires that the information be provided in writing.

Sec. 361.982. ENFORCEMENT. (a) Authorizes TNRCC to conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) Requires TNRCC and the attorney general, as appropriate, to enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) Authorizes the executive director or the attorney general to institute a suit under Section 7.032 (Injunctive Relief), Water Code, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) Requires TNRCC to issue a warning notice to a person on the person's first violation of this subchapter. Requires the person to comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) Requires a retailer who receives a warning notice from TNRCC that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter to bring inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Sec. 361.983. **FINANCIAL AND PROPRIETARY INFORMATION.** Provides that financial or proprietary information submitted to TNRCC under this subchapter is exempt from public disclosure under Chapter 552 (Public Information), Government Code.

Sec. 361.984. **ANNUAL REPORT TO LEGISLATURE.** (a) Requires TNRCC to compile information from manufacturers and issue an electronic report to TNRCC in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each year.

(b) Requires that the report include collection information provided to TNRCC by each manufacturer's annual report required by Section 361.976(b); a summary of comments that have been received from stakeholders such as television manufactures, electronic equipment recyclers, local governments, and nonprofit organizations; a comparison of the amount of television equipment collected in other states that have television equipment recycling programs to the amount of television equipment collected in this state; and any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

Sec. 361.985. **FEES.** (a) Provides that except as provided by Sections 361.976(a) and 361.979, this subchapter does not authorize TNRCC to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment.

(b) Authorizes fees or costs collected under this subchapter to be used by TNRCC only to implement this subchapter.

Sec. 361.986. **CONSUMER RESPONSIBILITIES.** (a) Provides that a consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) Provides that a consumer is encouraged to learn about recommended methods for recycling of covered television equipment that has reached the end of its useful life by visiting TNRCC's and television manufacturer's Internet websites or calling their toll-free telephone numbers.

Sec. 361.987. **MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT.** (a) Requires that covered television equipment collected under this subchapter be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) Requires TNRCC to adopt standards for recycling of covered television equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., April 25, 2006, or other standards from a comparable nationally recognized organization.

Sec. 361.988. **STATE PROCUREMENT REQUIREMENTS.** (a) Defines "state agency."

(b) Requires a person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment to be in compliance with this subchapter.

(c) Requires a state agency that purchases or leases covered television equipment to require a prospective bidder to certify the bidder's compliance with this subchapter before the agency is authorized to accept the prospective bidder's bid.

(d) Requires the state, in considering bids for a contract for covered television equipment, in addition to any other preferences provided under other laws of this state, to give special preference to a manufacturer that through its recovery plan collects more than its market share allocation or provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month.

(e) Requires the comptroller of public accounts (comptroller) to adopt rules to implement this section.

Sec. 361.989. FEDERAL PREEMPTION; EXPIRATION. (a) Authorizes TNRCC, if federal law establishes a national program for the collection and recycling of covered television equipment and TNRCC determines that the federal law substantially meets the purposes of this subchapter, to adopt an agency statement that interpretes the federal law as preemptive of this subchapter.

(b) Provides that this subchapter expires on the date TNRCC issues a statement under this section.

SECTION 2. Amends Sections 7.052(b-1) and (b-2), Water Code, as follows:

(b-1) Prohibits the amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955 (Manufacturer Responsibilities) or 361.977, Health and Safety Code, as applicable, from exceeding \$10,000 for the second violation. Provides that penalty under this subsection is an addition to any other penalty that may be assessed for a violation of Subchapter Y (Computer Equipment Recycling Program) or Z, Chapter 361 (Solid Waste Disposal Act), Health and Safety Code.

(b-2) Makes a conforming change.

SECTION 3. (a) Authorizes the Texas Commission on Environmental Quality (TCEQ) to adopt any rules required to implement this Act not later than May 1, 2010.

(b) Prohibits this Act from being enforced before September 1, 2010.

(c) Provides that a report required under Section 361.976, Health and Safety Code, as added by this Act, is not required to be prepared or submitted for the first time before the date specified by that section in 2012.

(d) Authorizes a retailer of television equipment, notwithstanding Section 361.982, Health and Safety Code, as added by this Act, to sell television equipment inventory that the retailer acquired before the effective date of this Act without incurring a penalty.

(e) Provides that a retailer of covered television equipment is not required to provide the information described by Section 361.978(b), Health and Safety Code, as added by this Act, before the date on which TCEQ rules implementing this Act take effect.

SECTION 4. Effective date: September 1, 2009.