

By: Leibowitz

H.B. No. 821

A BILL TO BE ENTITLED

AN ACT

relating to a program for the recycling of electronic equipment of consumers in this state; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter Y, Chapter 361, Health and Safety Code, is amended to read as follows:

SUBCHAPTER Y. ELECTRONIC [~~COMPUTER~~] EQUIPMENT RECYCLING PROGRAM

SECTION 2. Section 361.951, Health and Safety Code, is amended to read as follows:

Sec. 361.951. SHORT TITLE. This subchapter may be cited as the Manufacturer Responsibility and Consumer Convenience Electronic [~~Computer~~] Equipment Collection and Recovery Act.

SECTION 3. Sections 361.952(3) and (4), Health and Safety Code, are amended to read as follows:

(3) "Consumer" means an individual who uses a television or computer equipment that is purchased primarily for personal or home business use.

(4) "Manufacturer" means a person:

(A) who manufactures or manufactured televisions or 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 televisions or computer equipment for delivery exclusively to or at the order of the

1 licensor;

2 (B) who sells or sold televisions or computer
3 equipment manufactured by others under a brand that:

4 (i) the person owns or owned; or

5 (ii) the person is or was licensed to use,
6 other than under a license to manufacture televisions or computer
7 equipment for delivery exclusively to or at the order of the
8 licensor;

9 (C) who manufactures or manufactured televisions
10 or computer equipment without affixing a brand;

11 (D) who manufactures or manufactured televisions
12 or computer equipment to which the person affixes or affixed a brand
13 that:

14 (i) the person does not or has not owned; or

15 (ii) the person is not or was not licensed
16 to use; or

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

23 SECTION 4. Section 361.953, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE. (a)
26 Televisions, computers, [~~Computers~~] and related display devices
27 are critical elements to the strength and growth of this state's

1 economic prosperity and quality of life. Many of those products can
2 be refurbished and reused, and many contain valuable components
3 that can be recycled.

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

11 SECTION 5. Section 361.954, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 361.954. APPLICABILITY. (a) The collection,
14 recycling, and reuse provisions of this subchapter apply to
15 televisions and computer equipment used and returned to the
16 manufacturer by a consumer in this state and do not impose any
17 obligation on an owner or operator of a solid waste facility.

18 (b) This subchapter does not apply to:

19 (1) [~~a television,~~] any part of a motor vehicle, a
20 personal digital assistant, or a telephone;

21 (2) a consumer's lease of a television or computer
22 equipment or a consumer's use of a television or computer equipment
23 under a lease agreement; or

24 (3) the sale or lease of a television or computer
25 equipment to an entity when the manufacturer and the entity enter
26 into a contract that effectively addresses the collection,
27 recycling, and reuse of a television or computer equipment that has

1 reached the end of its useful life.

2 SECTION 6. Sections 361.955(a), (b), (c), (d), (e), (f),
3 (h), (i), and (j), Health and Safety Code, are amended to read as
4 follows:

5 (a) Before a manufacturer may offer a television or computer
6 equipment for sale in this state, the manufacturer must:

- 7 (1) adopt and implement a recovery plan; and
8 (2) affix a permanent, readily visible label to the
9 television or computer equipment with the manufacturer's brand.

10 (b) The recovery plan must enable a consumer to recycle a
11 television or computer equipment without paying a separate fee at
12 the time of recycling and must include provisions for:

- 13 (1) the manufacturer's collection from a consumer of
14 any television or computer equipment that has reached the end of its
15 useful life and is labeled with the manufacturer's brand; and
16 (2) recycling or reuse of a television or computer
17 equipment collected under Subdivision (1).

18 (c) The collection of a television or computer equipment
19 provided under the recovery plan must be:

- 20 (1) reasonably convenient and available to consumers
21 in this state; and
22 (2) designed to meet the collection needs of consumers
23 in this state.

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

- 26 (1) a system by which the manufacturer or the
27 manufacturer's designee offers the consumer a system for returning

1 a television or computer equipment by mail;

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

6 (3) a system using a collection event held by the
7 manufacturer or the manufacturer's designee at which the consumer
8 may return a television or computer equipment.

9 (e) Collection services under this section may use existing
10 collection and consolidation infrastructure for handling a
11 television or computer equipment and may include electronic
12 recyclers and repair shops, recyclers of other commodities, reuse
13 organizations, not-for-profit corporations, retailers, recyclers,
14 and other suitable operations.

15 (f) The recovery plan must include information for the
16 consumer on how and where to return the manufacturer's television
17 or computer equipment. The manufacturer:

18 (1) shall include collection, recycling, and reuse
19 information on the manufacturer's publicly available Internet
20 site;

21 (2) shall provide collection, recycling, and reuse
22 information to the commission; and

23 (3) may include collection, recycling, and reuse
24 information in the packaging for or in other materials that
25 accompany the manufacturer's television or computer equipment when
26 the equipment is sold.

27 (h) Each manufacturer shall submit a report to the

1 commission not later than January 31 of each year that includes:

2 (1) the weight of televisions and computer equipment
3 collected, recycled, and reused during the preceding calendar year;
4 and

5 (2) documentation verifying the collection,
6 recycling, and reuse of the televisions and [~~that~~] computer
7 equipment in a manner that complies with Section 361.964 regarding
8 sound environmental management.

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

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

25 SECTION 7. Sections 361.956(a) and (c), Health and Safety
26 Code, are amended to read as follows:

27 (a) A person who is a retailer of televisions or computer

1 equipment may not sell or offer to sell new televisions or computer
2 equipment in this state unless the equipment is labeled with the
3 manufacturer's label and the manufacturer is included on the
4 commission's list of manufacturers that have recovery plans.

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

7 SECTION 8. Section 361.957(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) A manufacturer or retailer of televisions or computer
10 equipment is not liable in any way for information in any form that
11 a consumer leaves on a television or computer equipment that is
12 collected, recycled, or reused under this subchapter.

13 SECTION 9. Section 361.958, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.

16 (a) The commission shall educate consumers regarding the
17 collection, recycling, and reuse of televisions or computer
18 equipment.

19 (b) The commission shall host or designate another person to
20 host an Internet site providing consumers with information about
21 the recycling and reuse of televisions or computer equipment,
22 including best management practices and information about and links
23 to information on:

24 (1) manufacturers' collection, recycling, and reuse
25 programs, including manufacturers' recovery plans; and

26 (2) television or computer equipment collection
27 events, collection sites, and community television or computer

1 equipment recycling and reuse programs.

2 SECTION 10. Sections 361.959(b), (c), and (e), Health and
3 Safety Code, are amended to read as follows:

4 (b) The commission and the attorney general, as
5 appropriate, shall enforce this subchapter and, except as provided
6 by Subsections (d) and (e), take enforcement action against any
7 manufacturer, retailer, or person who recycles or reuses a
8 television or computer equipment for failure to comply with this
9 subchapter.

10 (c) The attorney general may file suit under Section 7.032,
11 Water Code, to enjoin an activity related to the sale of a
12 television or computer equipment in violation of this subchapter.

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

20 SECTION 11. Section 361.962, Health and Safety Code, is
21 amended to read as follows:

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 a television or computer equipment.

26 SECTION 12. Section 361.963, Health and Safety Code, is
27 amended to read as follows:

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

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

9 SECTION 13. Section 361.964, Health and Safety Code, is
10 amended to read as follows:

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

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

21 SECTION 14. Sections 361.965(b), (c), and (d), Health and
22 Safety Code, are amended to read as follows:

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

26 (c) A state agency that purchases or leases a television or
27 computer equipment shall require each prospective bidder to certify

1 the bidder's compliance with this subchapter. Failure to provide
2 that certification renders the prospective bidder ineligible to
3 participate in the bidding.

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

12 SECTION 15. Section 361.966(a), Health and Safety Code, is
13 amended to read as follows:

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

20 SECTION 16. Section 7.052(b-1), Water Code, is amended to
21 read as follows:

22 (b-1) The amount of the penalty assessed against a
23 manufacturer that does not label its televisions or computer
24 equipment or adopt and implement a recovery plan as required by
25 Section 361.955, Health and Safety Code, may not exceed \$10,000 for
26 the second violation or \$25,000 for each subsequent violation. A
27 penalty under this subsection is in addition to any other penalty

1 that may be assessed for a violation of Subchapter Y, Chapter 361,
2 Health and Safety Code.

3 SECTION 17. (a) In this section, "television" has the
4 meaning assigned by Section 361.952, Health and Safety Code.

5 (b) The Texas Commission on Environmental Quality shall
6 adopt any rules required to implement the amendments made by this
7 Act to Subchapter Y, Chapter 361, Health and Safety Code, not later
8 than May 1, 2010.

9 (c) The Texas Commission on Environmental Quality may not
10 enforce the change in law made by this Act applicable to televisions
11 under Subchapter Y, Chapter 361, Health and Safety Code, before
12 September 1, 2010.

13 (d) The reports required under Section 361.955, Health and
14 Safety Code, as amended by this Act, and Section 361.961, Health and
15 Safety Code, to the extent that they apply to televisions, are not
16 required to be prepared or submitted for the first time before the
17 dates specified by those sections in 2012.

18 (e) Notwithstanding the 60-day limit under Section
19 361.959(d) or (e), Health and Safety Code, as amended by this Act, a
20 retailer may sell any television inventory accrued before the
21 effective date of this Act without incurring a penalty.

22 SECTION 18. This Act takes effect September 1, 2009.