

1-1 By: Leibowitz, et al. (Senate Sponsor - Watson) H.B. No. 821
1-2 (In the Senate - Received from the House May 15, 2009;
1-3 May 18, 2009, read first time and referred to Committee on Business
1-4 and Commerce; May 22, 2009, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; May 22, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the sale, recovery, and recycling of certain television
1-9 equipment; providing administrative penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 361, Health and Safety Code, is amended
1-12 by adding Subchapter Z to read as follows:

1-13 SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

1-14 Sec. 361.971. DEFINITIONS. In this subchapter:

1-15 (1) "Brand" has the meaning assigned by Section
1-16 361.952.

1-17 (2) "Consumer" means an individual who uses covered
1-18 television equipment that is purchased primarily for personal or
1-19 home business use.

1-20 (3) "Covered television equipment" means the
1-21 following equipment marketed to and intended for consumers:

1-22 (A) a direct view or projection television with a
1-23 viewable screen of nine inches or larger whose display technology
1-24 is based on cathode ray tube, plasma, liquid crystal, digital light
1-25 processing, liquid crystal on silicon, silicon crystal reflective
1-26 display, light-emitting diode, or similar technology; or

1-27 (B) a display device that is peripheral to a
1-28 computer that contains a television tuner.

1-29 (4) "Market share allocation" means the quantity of
1-30 covered television equipment, by weight, that an individual
1-31 manufacturer is responsible for collecting, transporting, and
1-32 recycling, as computed by the commission under Section 361.981(g).

1-33 (5) "Recycling" means any process by which equipment
1-34 that would otherwise become solid waste or hazardous waste is
1-35 collected, separated, and refurbished for reuse or processed to be
1-36 returned to use in the form of raw material or products. The term
1-37 does not include incineration.

1-38 (6) "Retailer" means a person who owns or operates a
1-39 business that sells new covered television equipment by any means
1-40 directly to a consumer.

1-41 (7) "Television" means an electronic device that
1-42 contains a tuner that locks onto a selected carrier frequency and is
1-43 capable of receiving and displaying video programming from a
1-44 broadcast, cable, or satellite source.

1-45 (8) "Television manufacturer" means a person that:

1-46 (A) manufactures covered television equipment
1-47 under a brand the person owns or is licensed to use;

1-48 (B) manufactures covered television equipment
1-49 without affixing a brand;

1-50 (C) resells covered television equipment
1-51 produced by other suppliers under a brand the person owns or is
1-52 licensed to use;

1-53 (D) imports covered television equipment into
1-54 the United States for sale, except that if a company from which an
1-55 importer purchases the equipment has a presence or assets in the
1-56 United States, that company is considered to be the manufacturer of
1-57 the television equipment;

1-58 (E) manufactures covered television equipment,
1-59 supplies it to any person within a distribution network that
1-60 includes a wholesaler or retailer, and benefits from the sale of the
1-61 covered television equipment through that distribution network; or

1-62 (F) assumes the responsibilities of a television
1-63 manufacturer under this subchapter.

1-64 Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. The

2-1 purpose of this subchapter is to establish a comprehensive,
 2-2 convenient, and environmentally sound program for the collection
 2-3 and recycling of television equipment. The program is based on
 2-4 individual manufacturer responsibility and shared responsibility
 2-5 among consumers, retailers, and the government of this state.

2-6 Sec. 361.973. APPLICABILITY. (a) Except as provided by
 2-7 this section and Section 361.988, this subchapter applies only to
 2-8 covered television equipment that is:

2-9 (1) offered for sale or sold to a consumer in this
 2-10 state; or

2-11 (2) used by a consumer in this state and returned for
 2-12 recycling.

2-13 (b) This subchapter does not apply to:

2-14 (1) computer equipment as that term is defined by
 2-15 Section 361.952;

2-16 (2) any part of a motor vehicle, including a
 2-17 replacement part;

2-18 (3) a device that is functionally or physically part
 2-19 of or connected to another system or piece of equipment:

2-20 (A) designed and intended for use in an
 2-21 industrial, governmental, commercial, research and development, or
 2-22 medical setting, including diagnostic monitoring or control
 2-23 equipment; or

2-24 (B) used for security, sensing, monitoring,
 2-25 antiterrorism, or emergency services purposes;

2-26 (4) a device that is contained in exercise equipment
 2-27 intended for home use or an appliance intended for home use
 2-28 including a clothes washer, clothes dryer, refrigerator,
 2-29 refrigerator and freezer, microwave oven, conventional oven or
 2-30 range, dishwasher, room air conditioner, dehumidifier, and air
 2-31 purifier;

2-32 (5) a telephone of any type;

2-33 (6) a personal digital assistant;

2-34 (7) a global positioning system;

2-35 (8) a consumer's lease of covered television equipment
 2-36 or a consumer's use of covered television equipment under a lease
 2-37 agreement; or

2-38 (9) the sale or lease of covered television equipment
 2-39 to an entity when the television manufacturer and the entity enter
 2-40 into a contract that effectively addresses the recycling of
 2-41 equipment that has reached the end of its useful life.

2-42 Sec. 361.974. SALES PROHIBITION. A person may not offer for
 2-43 sale in this state new covered television equipment unless the
 2-44 equipment has been labeled in compliance with Section 361.975.

2-45 Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A
 2-46 television manufacturer may sell or offer for sale in this state
 2-47 only covered television equipment that is labeled with the
 2-48 television manufacturer's brand. The label must be permanently
 2-49 affixed and readily visible.

2-50 Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING.

2-51 (a) A manufacturer of covered television equipment shall register
 2-52 with the commission and pay a registration fee of \$2,500. A
 2-53 registered television manufacturer shall renew the registration
 2-54 and pay the fee on or before January 31 of each year. The
 2-55 registration or registration renewal must include:

2-56 (1) a list of all brands the television manufacturer
 2-57 uses in this state on covered television equipment regardless of
 2-58 whether the television manufacturer owns or is licensed to use the
 2-59 brand; and

2-60 (2) contact information for the person the commission
 2-61 may contact regarding the television manufacturer's activities to
 2-62 comply with this subchapter.

2-63 (b) Not later than January 31 of each year, each registered
 2-64 television manufacturer of covered television equipment shall
 2-65 report to the commission:

2-66 (1) the total weight of covered television equipment
 2-67 for which the television manufacturer is responsible that was sold
 2-68 in this state during the preceding calendar year or, if the
 2-69 manufacturer does not track the weight of covered television

3-1 equipment it sells by state, the television manufacturer may report
 3-2 the total amount of covered television equipment the television
 3-3 manufacturer sold nationally in the preceding calendar year; and

3-4 (2) the total weight of covered television equipment
 3-5 the manufacturer collected and recycled in this state during the
 3-6 preceding calendar year.

3-7 Sec. 361.977. MANUFACTURER'S RECOVERY PLAN AND RELATED
 3-8 RESPONSIBILITIES. (a) Each television manufacturer of covered
 3-9 television equipment sold in this state shall, individually or as a
 3-10 member of a group of television manufacturers, submit to the
 3-11 commission a recovery plan to collect, transport, and recycle
 3-12 covered television equipment.

3-13 (b) An individual television manufacturer that submits a
 3-14 recovery plan under Subsection (a) shall collect, transport, and
 3-15 recycle covered television equipment. Beginning with the
 3-16 television manufacturer's second year of registration, the
 3-17 individual television manufacturer shall collect, transport, and
 3-18 recycle the quantity of covered television equipment computed by
 3-19 the commission as the manufacturer's market share allocation.

3-20 (c) A group of television manufacturers that submits a
 3-21 recovery plan under Subsection (a) shall collect, transport, and
 3-22 recycle covered television equipment. Beginning the second year of
 3-23 registration for a group of television manufacturers, the group of
 3-24 television manufacturers shall collect, transport, and recycle a
 3-25 quantity of covered television equipment equal to the sum of the
 3-26 combined market share allocations of the group's participants.

3-27 (d) A recovery plan under Subsection (a) must include at a
 3-28 minimum:

3-29 (1) a statement of whether the television manufacturer
 3-30 intends to collect and recycle its market share allocation through
 3-31 operation of its program, individually or in partnership with other
 3-32 television manufacturers;

3-33 (2) beginning with the television manufacturer's
 3-34 second year of registration, the total weight of covered television
 3-35 equipment collected, transported, and recycled by or on behalf of
 3-36 the television manufacturer during the preceding year; and

3-37 (3) collection methods that allow a consumer to
 3-38 recycle television equipment without paying a separate fee at the
 3-39 time of recycling.

3-40 (e) The commission shall review the recovery plan for
 3-41 satisfaction of the requirements of this subchapter. If the
 3-42 registration and recovery plan are complete, the commission shall
 3-43 include the television manufacturer on the commission's Internet
 3-44 website listing as provided by Section 361.981(a). The commission
 3-45 may reject the recovery plan if it does not meet all requirements of
 3-46 this subchapter.

3-47 Sec. 361.978. RETAILER RESPONSIBILITY. (a) A retailer may
 3-48 order and sell only products from a television manufacturer that is
 3-49 included on the list published under Section 361.981(a) that
 3-50 identifies manufacturers whose recovery plans have been approved by
 3-51 the commission. A retailer shall consult that list before ordering
 3-52 covered television equipment in this state. A retailer is
 3-53 considered to have complied with this subsection and may sell a
 3-54 product in the retailer's inventory if, on the date the product was
 3-55 ordered from the manufacturer, the manufacturer was listed on the
 3-56 Internet website described by Section 361.981(a) as having an
 3-57 approved recovery plan.

3-58 (b) A person who is a retailer of covered television
 3-59 equipment shall provide to consumers in writing the information
 3-60 published by the commission regarding the legal disposition and
 3-61 recycling of television equipment. The information may be included
 3-62 with the sales receipt or as part of the packaging of the equipment.
 3-63 Alternatively, the retailer may provide the information required by
 3-64 this subsection through a toll-free telephone number and address of
 3-65 an Internet website provided to consumers.

3-66 (c) This chapter does not require a retailer to collect
 3-67 covered television equipment for recycling.

3-68 Sec. 361.979. RECYCLER RESPONSIBILITIES. (a) A person who
 3-69 is engaged in the business of recycling covered television

4-1 equipment in this state shall:

4-2 (1) register with the commission and certify that the
4-3 person is in compliance with the standards adopted under Section
4-4 361.987;

4-5 (2) on or before January 31 of each year renew the
4-6 registration with the commission and certify the person's continued
4-7 compliance with the standards adopted under Section 361.987;

4-8 (3) recycle all covered television equipment accepted
4-9 for recycling in accordance with the standards adopted under
4-10 Section 361.987;

4-11 (4) maintain a written log recording the weight of all
4-12 covered television equipment received by the person and the
4-13 disposition of that equipment;

4-14 (5) obtain and retain documentation in accordance with
4-15 commission rules that covered television equipment received for
4-16 recycling was last used by a consumer in this state; and

4-17 (6) annually report to the commission the total weight
4-18 of covered television equipment received and recycled by the person
4-19 in the preceding 12 months.

4-20 (b) The commission may impose a fee for registration under
4-21 this section in an amount necessary to recover the costs of
4-22 registrations under this section.

4-23 Sec. 361.980. LIABILITY. (a) A television manufacturer,
4-24 retailer, or person who recycles covered television equipment is
4-25 not liable in any way for information in any form that a consumer
4-26 leaves on covered television equipment that is collected or
4-27 recycled under this subchapter.

4-28 (b) This subchapter does not exempt a person from liability
4-29 under other law.

4-30 Sec. 361.981. COMMISSION RESPONSIBILITIES. (a) The
4-31 commission shall publish on a publicly accessible Internet website:

4-32 (1) a list of television manufacturers who have
4-33 registered with the commission; and

4-34 (2) a list of television manufacturers who are in full
4-35 compliance with this subchapter.

4-36 (b) The commission shall remove manufacturers no longer in
4-37 compliance with this subchapter from the Internet website once each
4-38 calendar quarter.

4-39 (c) The commission shall educate consumers regarding the
4-40 collection and recycling of covered television equipment.

4-41 (d) The commission shall host or designate another person to
4-42 host an Internet website and shall provide a toll-free telephone
4-43 number to provide consumers with information about the recycling of
4-44 covered television equipment, including best management practices
4-45 and information about or links to information about:

4-46 (1) television manufacturers' collection and
4-47 recycling programs, including television manufacturers' recovery
4-48 plans; and

4-49 (2) covered television equipment collection events,
4-50 collection sites, and community television equipment recycling
4-51 programs.

4-52 (e) Information about collection and recycling provided on
4-53 a television manufacturer's publicly available Internet website
4-54 and through a toll-free telephone number does not constitute a
4-55 determination by the commission that the manufacturer's recovery
4-56 plan or actual practices are in compliance with this subchapter or
4-57 other law.

4-58 (f) Not later than February 15 of each year, the commission
4-59 shall establish the state recycling rate by computing the ratio of
4-60 the weight of total returns of covered television equipment in this
4-61 state to the total weight of covered television equipment sold in
4-62 this state during the preceding year.

4-63 (g) Not later than March 1 of each year, the commission
4-64 shall compute and provide to each registered television
4-65 manufacturer the manufacturer's market share allocation for
4-66 collection, recycling, and transportation for that year. A
4-67 television manufacturer's market share allocation equals the
4-68 weight of the television manufacturer's covered television
4-69 equipment sold in this state during the preceding calendar year

5-1 multiplied by the state recycling rate determined under Subsection
5-2 (f).

5-3 (h) The commission shall provide to each county and
5-4 municipality of this state information regarding the legal disposal
5-5 and recycling of covered television equipment. The information
5-6 must be provided in writing.

5-7 Sec. 361.982. ENFORCEMENT. (a) The commission may conduct
5-8 audits and inspections to ensure compliance with this subchapter
5-9 and rules adopted under this subchapter.

5-10 (b) The commission and the attorney general, as
5-11 appropriate, shall enforce this subchapter and, except as provided
5-12 by Subsections (d) and (e), take enforcement action against a
5-13 television manufacturer, a retailer, or a person who recycles
5-14 covered television equipment.

5-15 (c) The executive director or the attorney general may
5-16 institute a suit under Section 7.032, Water Code, to enjoin an
5-17 activity related to the sale of covered television equipment in
5-18 violation of this subchapter.

5-19 (d) The commission shall issue a warning notice to a person
5-20 on the person's first violation of this subchapter. The person must
5-21 comply with this subchapter not later than the 60th day after the
5-22 date the warning notice is issued.

5-23 (e) A retailer who receives a warning notice from the
5-24 commission that the retailer's inventory violates this subchapter
5-25 because it includes covered television equipment from a television
5-26 manufacturer that is not in compliance with this subchapter must
5-27 bring the inventory into compliance with this subchapter not later
5-28 than the 60th day after the date the warning notice is issued.

5-29 Sec. 361.983. FINANCIAL AND PROPRIETARY INFORMATION.
5-30 Financial or proprietary information submitted to the commission
5-31 under this subchapter is exempt from public disclosure under
5-32 Chapter 552, Government Code.

5-33 Sec. 361.984. ANNUAL REPORT TO LEGISLATURE. (a) The
5-34 commission shall compile information from manufacturers and issue
5-35 an electronic report to the committee in each house of the
5-36 legislature having primary jurisdiction over environmental matters
5-37 not later than March 1 of each year.

5-38 (b) The report must include:

5-39 (1) collection information provided to the commission
5-40 by each manufacturer's annual report required by Section
5-41 361.976(b);

5-42 (2) a summary of comments that have been received from
5-43 stakeholders such as television manufacturers, electronic
5-44 equipment recyclers, local governments, and nonprofit
5-45 organizations;

5-46 (3) a comparison of the amount of television equipment
5-47 collected in other states that have television equipment recycling
5-48 programs to the amount of television equipment collected in this
5-49 state; and

5-50 (4) any other information that would assist the
5-51 legislature in evaluating the effectiveness of this subchapter.

5-52 Sec. 361.985. FEES. (a) Except as provided by Sections
5-53 361.976(a) and 361.979, this subchapter does not authorize the
5-54 commission to impose a fee, including a recycling fee, on a
5-55 consumer, television manufacturer, retailer, or person who
5-56 recycles covered television equipment.

5-57 (b) Fees or costs collected under this subchapter may be
5-58 used by the commission only to implement this subchapter.

5-59 Sec. 361.986. CONSUMER RESPONSIBILITIES. (a) A consumer
5-60 is responsible for any information in any form left on the
5-61 consumer's covered television equipment that is collected or
5-62 recycled.

5-63 (b) A consumer is encouraged to learn about recommended
5-64 methods for recycling of covered television equipment that has
5-65 reached the end of its useful life by visiting the commission's and
5-66 television manufacturers' Internet websites or calling their
5-67 toll-free telephone numbers.

5-68 Sec. 361.987. MANAGEMENT OF COLLECTED TELEVISION
5-69 EQUIPMENT. (a) Covered television equipment collected under this

6-1 subchapter must be disposed of or recycled in a manner that complies
 6-2 with federal, state, and local law.

6-3 (b) The commission shall adopt as standards for recycling of
 6-4 covered television equipment in this state the standards provided
 6-5 by "Electronics Recycling Operating Practices" as approved by the
 6-6 board of directors of the Institute of Scrap Recycling Industries,
 6-7 Inc., April 25, 2006, or other standards from a comparable
 6-8 nationally recognized organization.

6-9 Sec. 361.988. STATE PROCUREMENT REQUIREMENTS. (a) In this
 6-10 section, "state agency" has the meaning assigned by Section
 6-11 2052.101, Government Code.

6-12 (b) A person who submits a bid for a contract with a state
 6-13 agency for the purchase or lease of covered television equipment
 6-14 must be in compliance with this subchapter.

6-15 (c) A state agency that purchases or leases covered
 6-16 television equipment shall require a prospective bidder to certify
 6-17 the bidder's compliance with this subchapter before the agency may
 6-18 accept the prospective bidder's bid.

6-19 (d) In considering bids for a contract for covered
 6-20 television equipment, in addition to any other preferences provided
 6-21 under other laws of this state, the state shall give special
 6-22 preference to a manufacturer that:

6-23 (1) through its recovery plan collects more than its
 6-24 market share allocation; or

6-25 (2) provides collection sites or recycling events in
 6-26 any county located in a council of governments region in which there
 6-27 are fewer than six permanent collection sites open at least twice
 6-28 each month.

6-29 (e) The comptroller shall adopt rules to implement this
 6-30 section.

6-31 Sec. 361.989. FEDERAL PREEMPTION; EXPIRATION. (a) If
 6-32 federal law establishes a national program for the collection and
 6-33 recycling of covered television equipment and the commission
 6-34 determines that the federal law substantially meets the purposes of
 6-35 this subchapter, the commission may adopt an agency statement that
 6-36 interprets the federal law as preemptive of this subchapter.

6-37 (b) This subchapter expires on the date the commission
 6-38 issues a statement under this section.

6-39 SECTION 2. Sections 7.052(b-1) and (b-2), Water Code, are
 6-40 amended to read as follows:

6-41 (b-1) The amount of the penalty assessed against a
 6-42 manufacturer that does not label its computer equipment or covered
 6-43 television equipment or adopt and implement a recovery plan as
 6-44 required by Section 361.955 or 361.977, Health and Safety Code, as
 6-45 applicable, may not exceed \$10,000 for the second violation or
 6-46 \$25,000 for each subsequent violation. A penalty under this
 6-47 subsection is in addition to any other penalty that may be assessed
 6-48 for a violation of Subchapter Y or Z, Chapter 361, Health and Safety
 6-49 Code.

6-50 (b-2) Except as provided by Subsection (b-1), the amount of
 6-51 the penalty for a violation of Subchapter Y or Z, Chapter 361,
 6-52 Health and Safety Code, may not exceed \$1,000 for the second
 6-53 violation or \$2,000 for each subsequent violation. A penalty under
 6-54 this subsection is in addition to any other penalty that may be
 6-55 assessed for a violation of Subchapter Y or Z, Chapter 361, Health
 6-56 and Safety Code.

6-57 SECTION 3. (a) The Texas Commission on Environmental
 6-58 Quality shall adopt any rules required to implement this Act not
 6-59 later than May 1, 2010.

6-60 (b) This Act may not be enforced before September 1, 2010.

6-61 (c) A report required under Section 361.976, Health and
 6-62 Safety Code, as added by this Act, is not required to be prepared or
 6-63 submitted for the first time before the date specified by that
 6-64 section in 2012.

6-65 (d) Notwithstanding Section 361.982, Health and Safety
 6-66 Code, as added by this Act, a retailer of television equipment may
 6-67 sell television equipment inventory that the retailer acquired
 6-68 before the effective date of this Act without incurring a penalty.

6-69 (e) A retailer of covered television equipment is not

7-1 required to provide the information described by Section
7-2 361.978(b), Health and Safety Code, as added by this Act, before the
7-3 date on which the Texas Commission on Environmental Quality rules
7-4 implementing this Act take effect.

7-5 SECTION 4. This Act takes effect September 1, 2009.

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