

By: Watson

S.B. No. 761

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. Section 361.952, Health and Safety Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (3-a) to read as follows:

(3) "Consumer" means an individual who uses electronic [~~computer~~] equipment that is purchased primarily for personal or home business use.

(3-a) "Electronic equipment" means computer equipment or televisions.

(4) "Manufacturer" means a person:

(A) who manufactures or manufactured electronic [~~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 electronic ~~[computer]~~ equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold electronic ~~[computer]~~ equipment manufactured by others 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 electronic ~~[computer]~~ equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured electronic ~~[computer]~~ equipment without affixing a brand;

(D) who manufactures or manufactured electronic ~~[computer]~~ equipment to which the person affixes or affixed a brand that:

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

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

(E) who imports or imported electronic ~~[computer]~~ equipment manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the electronic ~~[computer]~~ equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

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

1           Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE.     (a)  
2   Computers and other electronic [~~related display~~] devices are  
3   critical elements to the strength and growth of this state's  
4   economic prosperity and quality of life. Many of those products can  
5   be refurbished and reused, and many contain valuable components  
6   that can be recycled.

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

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

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

21          (b) This subchapter does not apply to:

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

24               (2) a consumer's lease of electronic [~~computer~~]  
25   equipment or a consumer's use of electronic [~~computer~~] equipment  
26   under a lease agreement; or

27               (3) the sale or lease of electronic [~~computer~~]

1 equipment to an entity when the manufacturer and the entity enter  
2 into a contract that effectively addresses the collection,  
3 recycling, and reuse of electronic ~~[computer]~~ equipment that has  
4 reached the end of its useful life.

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

8 (a) Before a manufacturer may offer electronic ~~[computer]~~  
9 equipment for sale in this state, the manufacturer must:

- 10 (1) adopt and implement a recovery plan; and  
11 (2) affix a permanent, readily visible label to the  
12 electronic ~~[computer]~~ equipment with the manufacturer's brand.

13 (b) The recovery plan must enable a consumer to recycle  
14 electronic ~~[computer]~~ equipment without paying a separate fee at  
15 the time of recycling and must include provisions for:

- 16 (1) the manufacturer's collection from a consumer of  
17 any electronic ~~[computer]~~ equipment that has reached the end of its  
18 useful life and is labeled with the manufacturer's brand; and  
19 (2) recycling or reuse of electronic ~~[computer]~~  
20 equipment collected under Subdivision (1).

21 (c) The collection of electronic ~~[computer]~~ equipment  
22 provided under the recovery plan must be:

- 23 (1) reasonably convenient and available to consumers  
24 in this state; and  
25 (2) designed to meet the collection needs of consumers  
26 in this state.

27 (d) Examples of collection methods that alone or combined

1 meet the convenience requirements of this section include:

2 (1) a system by which the manufacturer or the  
3 manufacturer's designee offers the consumer a system for returning  
4 electronic [~~computer~~] equipment by mail;

5 (2) a system using a physical collection site that the  
6 manufacturer or the manufacturer's designee keeps open and staffed  
7 and to which the consumer may return electronic [~~computer~~]  
8 equipment; and

9 (3) a system using a collection event held by the  
10 manufacturer or the manufacturer's designee at which the consumer  
11 may return electronic [~~computer~~] equipment.

12 (e) Collection services under this section may use existing  
13 collection and consolidation infrastructure for handling  
14 electronic [~~computer~~] equipment and may include electronic  
15 recyclers and repair shops, recyclers of other commodities, reuse  
16 organizations, not-for-profit corporations, retailers, recyclers,  
17 and other suitable operations.

18 (f) The recovery plan must include information for the  
19 consumer on how and where to return the manufacturer's electronic  
20 [~~computer~~] equipment. The manufacturer:

21 (1) shall include collection, recycling, and reuse  
22 information on the manufacturer's publicly available Internet  
23 site;

24 (2) shall provide collection, recycling, and reuse  
25 information to the commission; and

26 (3) may include collection, recycling, and reuse  
27 information in the packaging for or in other materials that

1 accompany the manufacturer's electronic [~~computer~~] equipment when  
2 the equipment is sold.

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

5 (1) the weight of electronic [~~computer~~] equipment  
6 collected, recycled, and reused during the preceding calendar year;  
7 and

8 (2) documentation verifying the collection,  
9 recycling, and reuse of that electronic [~~computer~~] equipment in a  
10 manner that complies with Section 361.964 regarding sound  
11 environmental management.

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

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

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

(a) A person who is a retailer of electronic ~~[computer]~~ equipment may not sell or offer to sell new electronic ~~[computer]~~ equipment in this state unless the equipment is labeled with the manufacturer's label and the manufacturer is included on the commission's list of manufacturers that have recovery plans.

(c) A retailer is not required to collect electronic ~~[computer]~~ equipment for recycling or reuse under this subchapter.

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

(a) A manufacturer or retailer of electronic ~~[computer]~~ equipment is not liable in any way for information in any form that a consumer leaves on electronic ~~[computer]~~ equipment that is collected, recycled, or reused under this subchapter.

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

Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES.

(a) The commission shall educate consumers regarding the collection, recycling, and reuse of electronic ~~[computer]~~ equipment.

(b) The commission shall host or designate another person to host an Internet site providing consumers with information about the recycling and reuse of electronic ~~[computer]~~ equipment, including best management practices and information about and links to information on:

(1) manufacturers' collection, recycling, and reuse

1 programs, including manufacturers' recovery plans; and

2 (2) electronic [~~computer~~] equipment collection  
3 events, collection sites, and community electronic [~~computer~~]  
4 equipment recycling and reuse programs.

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

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

12 (c) The attorney general may file suit under Section 7.032,  
13 Water Code, to enjoin an activity related to the sale of electronic  
14 [~~computer~~] equipment in violation of this subchapter.

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

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

24 Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does  
25 not authorize the commission to impose a fee, including a recycling  
26 fee or registration fee, on a consumer, manufacturer, retailer, or  
27 person who recycles or reuses electronic [~~computer~~] equipment.



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

Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's electronic [~~computer~~] equipment that is collected, recycled, or reused.

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of electronic [~~computer~~] equipment that has reached the end of its useful life by visiting the commission's and manufacturers' Internet sites.

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

Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All electronic [~~computer~~] equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of electronic [~~computer~~] 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.

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

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of electronic [~~computer~~] equipment must be in compliance with this subchapter.

1 (c) A state agency that purchases or leases electronic  
2 ~~[computer]~~ equipment shall require each prospective bidder to  
3 certify the bidder's compliance with this subchapter. Failure to  
4 provide that certification renders the prospective bidder  
5 ineligible to participate in the bidding.

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

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

16 (a) If federal law establishes a national program for the  
17 collection and recycling of electronic ~~[computer]~~ equipment and the  
18 commission determines that the federal law substantially meets the  
19 purposes of this subchapter, the commission may adopt an agency  
20 statement that interprets the federal law as preemptive of this  
21 subchapter.

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

24 (b-1) The amount of the penalty assessed against a  
25 manufacturer that does not label its electronic ~~[computer]~~  
26 equipment or adopt and implement a recovery plan as required by  
27 Section 361.955, Health and Safety Code, may not exceed \$10,000 for

1 the second violation or \$25,000 for each subsequent violation. A  
2 penalty under this subsection is in addition to any other penalty  
3 that may be assessed for a violation of Subchapter Y, Chapter 361,  
4 Health and Safety Code.

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

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

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

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

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

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