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S.B. No. 2326

A BILL TO BE ENTITLED

AN ACT

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

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

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

SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971. DEFINITIONS. In this subchapter:

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

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

(3) "Covered television equipment" means a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light emitting diode, or similar technology marketed and intended for consumers.

(4) "Market share allocation" means the quantity of covered television equipment, by weight, that an individual manufacturer is responsible for collecting, transporting, and recycling, as computed by the commission under Section 361.980(f).

(5) "Recycling" means any process by which equipment

1 that would otherwise become solid waste or hazardous waste is  
2 collected, separated, and refurbished for reuse or processed to be  
3 returned to use in the form of raw material or products. The term  
4 does not include incineration.

5 (6) "Retailer" means a person who owns or operates a  
6 business that sells new covered television equipment by any means  
7 directly to a consumer.

8 (7) "Television" means an electronic device that  
9 contains a tuner that locks onto a selected carrier frequency and is  
10 capable of receiving and displaying video programming from a  
11 broadcast, cable, or satellite source.

12 (8) "Television manufacturer" means a person that:

13 (A) manufactures covered television equipment  
14 under a brand the person owns or is licensed to use;

15 (B) manufactures covered television equipment  
16 without affixing a brand;

17 (C) resells covered television equipment  
18 produced by other suppliers under a brand the person owns or is  
19 licensed to use;

20 (D) imports covered television equipment into  
21 the United States for sale, except that if a company from which an  
22 importer purchases the equipment has a presence or assets in the  
23 United States, that company is considered to be the manufacturer of  
24 the television equipment;

25 (E) manufactures covered television equipment,  
26 supplies it to any person within a distribution network that  
27 includes a wholesaler or retailer, and benefits from the sale of the

1 covered television equipment through that distribution network; or  
2 (F) assumes the responsibilities of a television  
3 manufacturer under this subchapter.

4 Sec. 361.972. APPLICABILITY. (a) Except as provided by  
5 this section and Section 361.986, this subchapter applies only to  
6 covered television equipment that is:

7 (1) offered for sale or sold to a consumer in this  
8 state; or

9 (2) used by a consumer in this state and returned for  
10 recycling.

11 (b) This subchapter does not impose an obligation on an  
12 owner or operator of a solid waste facility.

13 (c) This subchapter does not apply to:

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

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

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

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

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

26 (4) a device that is contained in exercise equipment  
27 intended for home use or an appliance intended for home use

1 including a clothes washer, clothes dryer, refrigerator,  
2 refrigerator and freezer, microwave oven, conventional oven or  
3 range, dishwasher, room air conditioner, dehumidifier, and air  
4 purifier;

5 (5) a telephone of any type;

6 (6) a personal digital assistant;

7 (7) a global positioning system;

8 (8) a consumer's lease of covered television equipment  
9 or a consumer's use of covered television equipment under a lease  
10 agreement; or

11 (9) the sale or lease of covered television equipment  
12 to an entity when the television manufacturer and the entity enter  
13 into a contract that effectively addresses the recycling of  
14 equipment that has reached the end of its useful life.

15 Sec. 361.973. SALES PROHIBITION. A person may not offer for  
16 sale in this state new covered television equipment unless the  
17 equipment has been labeled in compliance with Section 361.974.

18 Sec. 361.974. MANUFACTURER'S LABELING REQUIREMENT. A  
19 television manufacturer may sell or offer for sale in this state  
20 only covered television equipment that is labeled with the  
21 television manufacturer's brand. The label must be permanently  
22 affixed and readily visible.

23 Sec. 361.975. MANUFACTURERS' REGISTRATION AND REPORTING.

24 (a) A manufacturer of covered television equipment shall register  
25 with the commission and pay a registration fee of \$2,500. A  
26 registered television manufacturer shall renew the registration  
27 and pay the fee on or before January 31 of each year. The

1 registration or registration renewal must include:

2 (1) a list of all brands the television manufacturer  
3 uses in this state on covered television equipment regardless of  
4 whether the television manufacturer owns or is licensed to use the  
5 brand; and

6 (2) contact information for the person the commission  
7 may contact regarding the television manufacturer's activities to  
8 comply with this subchapter.

9 (b) Not later than January 31 of each year, each registered  
10 television manufacturer of covered television equipment shall  
11 report to the commission:

12 (1) the total weight of covered television equipment  
13 for which the television manufacturer is responsible that was sold  
14 in this state during the preceding calendar year or, if the  
15 manufacturer does not track the weight of covered television  
16 equipment it sells by state, the television manufacturer may report  
17 the total amount of covered television equipment the television  
18 manufacturer sold nationally in the preceding calendar year; and

19 (2) the total weight of covered television equipment  
20 the manufacturer collected and recycled in this state during the  
21 preceding calendar year.

22 Sec. 361.976. MANUFACTURER'S RECOVERY PLAN AND RELATED  
23 RESPONSIBILITIES. (a) Each television manufacturer of covered  
24 television equipment sold in this state shall, individually or as a  
25 member of a group of television manufacturers, submit to the  
26 commission a recovery plan to collect, transport, and recycle  
27 covered television equipment.

1       (b) An individual television manufacturer that submits a  
2 recovery plan under Subsection (a) shall collect, transport, and  
3 recycle covered television equipment. Beginning with the  
4 television manufacturer's second year of registration, the  
5 individual television manufacturer shall collect, transport, and  
6 recycle the quantity of covered television equipment computed by  
7 the commission as the manufacturer's market share allocation.

8       (c) A group of television manufacturers that submits a  
9 recovery plan under Subsection (a) shall collect, transport, and  
10 recycle covered television equipment. Beginning the second year of  
11 registration for a group of television manufacturers, the group of  
12 television manufacturers shall collect, transport, and recycle a  
13 quantity of covered television equipment equal to the sum of the  
14 combined market share allocations of the group's participants.

15       (d) A recovery plan under Subsection (a) must include at a  
16 minimum:

17               (1) a statement of whether the television manufacturer  
18 intends to collect and recycle its market share allocation through  
19 operation of its program, individually or in partnership with other  
20 television manufacturers; and

21               (2) beginning with the television manufacturer's  
22 second year of registration, the total weight of covered television  
23 equipment collected, transported, and recycled by or on behalf of  
24 the television manufacturer during the preceding year.

25       (e) The commission shall review the recovery plan for  
26 satisfaction of the requirements of this subchapter. If the  
27 registration and recovery plan are complete, the commission shall

1 include the television manufacturer on the commission's Internet  
2 website listing as provided by Section 361.980(a). The commission  
3 may reject the recovery plan if it does not meet all requirements of  
4 this subchapter.

5 Sec. 361.977. RETAILER RESPONSIBILITY. (a) A retailer may  
6 sell only products from a television manufacturer that is included  
7 on the list published under Section 361.980(a) that identifies  
8 manufacturers whose recovery plans have been approved by the  
9 commission. A retailer shall consult that list before selling  
10 covered television equipment in this state. A retailer is  
11 considered to have complied with this subsection if, on the date the  
12 product was ordered from the manufacturer, the manufacturer was  
13 listed on the Internet website described by Section 361.980(a) as  
14 having an approved recovery plan.

15 (b) This chapter does not require a retailer to collect  
16 covered television equipment for recycling or reuse.

17 Sec. 361.978. RECYCLER RESPONSIBILITIES. (a) A person who  
18 is engaged in the business of recycling covered television  
19 equipment in this state shall:

20 (1) register with the commission and certify that the  
21 person is in compliance with the standards adopted under Section  
22 361.985;

23 (2) on or before January 31 of each year renew the  
24 registration with the commission and certify the person's continued  
25 compliance with the standards adopted under Section 361.985;

26 (3) recycle all covered television equipment accepted  
27 for recycling in accordance with the standards adopted under

1 Section 361.985;

2 (4) maintain a written log recording the weight of all  
3 covered television equipment received by the person and the  
4 disposition of that equipment;

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

8 (6) annually report to the commission the total weight  
9 of covered television equipment received and recycled by the person  
10 in the preceding 12 months.

11 (b) The commission may impose a fee for registration under  
12 this section in an amount necessary to recover the costs of  
13 registrations under this section.

14 Sec. 361.979. LIABILITY. (a) A television manufacturer,  
15 retailer, or person who recycles covered television equipment is  
16 not liable in any way for information in any form that a consumer  
17 leaves on covered television equipment that is collected, recycled,  
18 or reused under this subchapter.

19 (b) This subchapter does not exempt a person from liability  
20 under other law.

21 Sec. 361.980. COMMISSION RESPONSIBILITIES. (a) The  
22 commission shall publish on a publicly accessible Internet website:

23 (1) a list of television manufacturers who have  
24 registered with the commission; and

25 (2) a list of television manufacturers who are in full  
26 compliance with this subchapter.

27 (b) The commission shall educate consumers regarding the



1 collection, recycling, and reuse of covered television equipment.

2 (c) The commission shall host or designate another person to  
3 host an Internet website providing consumers with information about  
4 the recycling and reuse of covered television equipment, including  
5 best management practices and information about or links to  
6 information about:

7 (1) television manufacturers' collection, recycling,  
8 and reuse programs, including television manufacturers' recovery  
9 plans; and

10 (2) covered television equipment collection events,  
11 collection sites, and community television equipment recycling and  
12 reuse programs.

13 (d) Information about collection, recycling, and reuse on a  
14 television manufacturer's publicly available Internet website does  
15 not constitute a determination by the commission that the  
16 manufacturer's recovery plan or actual practices are in compliance  
17 with this subchapter or other law.

18 (e) Not later than February 15 of each year, the commission  
19 shall establish the state recycling rate by computing the ratio of  
20 the weight of total returns of covered television equipment in this  
21 state to the total weight of covered television equipment sold in  
22 this state during the preceding year.

23 (f) Not later than March 1 of each year, the commission  
24 shall compute and provide to each registered television  
25 manufacturer the manufacturer's market share allocation for  
26 collection, recycling, and transportation for that year. A  
27 television manufacturer's market share allocation equals the

1 weight of the television manufacturer's covered television  
2 equipment sold in this state during the preceding calendar year  
3 multiplied by the state recycling rate determined under Subsection  
4 (e).

5 Sec. 361.981. ENFORCEMENT. (a) The commission may conduct  
6 audits and inspections to ensure compliance with this subchapter  
7 and rules adopted under this subchapter.

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

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

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

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

27 Sec. 361.982. FINANCIAL AND PROPRIETARY INFORMATION.

1 Financial or proprietary information submitted to the commission  
2 under this subchapter is exempt from public disclosure under  
3 Chapter 552, Government Code.

4 Sec. 361.983. FEES. (a) Except as provided by Sections  
5 361.975(a) and 361.978, this subchapter does not authorize the  
6 commission to impose a fee, including a recycling fee, on a  
7 consumer, television manufacturer, retailer, or person who  
8 recycles or reuses covered television equipment.

9 (b) Fees or costs collected under this subchapter may be  
10 used by the commission only to implement this subchapter.

11 Sec. 361.984. CONSUMER RESPONSIBILITIES. (a) A consumer  
12 is responsible for any information in any form left on the  
13 consumer's covered television equipment that is collected,  
14 recycled, or reused.

15 (b) A consumer is encouraged to learn about recommended  
16 methods for recycling and reuse of covered television equipment  
17 that has reached the end of its useful life by visiting the  
18 commission's and television manufacturers' Internet websites.

19 Sec. 361.985. MANAGEMENT OF COLLECTED TELEVISION  
20 EQUIPMENT. (a) Covered television equipment collected under this  
21 subchapter must be disposed of, recycled, or reused in a manner that  
22 complies with federal, state, and local law.

23 (b) The commission shall adopt as standards for recycling or  
24 reuse of covered television equipment in this state the standards  
25 provided by "Electronics Recycling Operating Practices" as  
26 approved by the board of directors of the Institute of Scrap  
27 Recycling Industries, Inc., April 25, 2006, or other standards from

1 a comparable nationally recognized organization.

2 Sec. 361.986. STATE PROCUREMENT REQUIREMENTS. (a) In this  
3 section, "state agency" has the meaning assigned by Section  
4 2052.101, Government Code.

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

8 (c) A state agency that purchases or leases covered  
9 television equipment shall require a prospective bidder to certify  
10 the bidder's compliance with this subchapter before the agency may  
11 accept the prospective bidder's bid.

12 (d) In considering bids for a contract for covered  
13 television equipment, in addition to any other preferences provided  
14 under other laws of this state, the state shall give special  
15 preference to a television manufacturer that has a program to  
16 recycle the covered television equipment of other television  
17 manufacturers, including collection events and television  
18 manufacturer initiatives to accept covered television equipment  
19 labeled with another manufacturer's brand.

20 (e) The comptroller shall adopt rules to implement this  
21 section.

22 Sec. 361.987. FEDERAL PREEMPTION; EXPIRATION. (a) If  
23 federal law establishes a national program for the collection and  
24 recycling of covered television equipment and the commission  
25 determines that the federal law substantially meets the purposes of  
26 this subchapter, the commission may adopt an agency statement that  
27 interprets the federal law as preemptive of this subchapter.

1        (b) This subchapter expires on the date the commission  
2 issues a statement under this section.

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

5        (b-1) The amount of the penalty assessed against a  
6 manufacturer that does not label its computer equipment or covered  
7 television equipment or adopt and implement a recovery plan as  
8 required by Section 361.955 or 361.976, Health and Safety Code, as  
9 applicable, may not exceed \$10,000 for the second violation or  
10 \$25,000 for each subsequent violation. A penalty under this  
11 subsection is in addition to any other penalty that may be assessed  
12 for a violation of Subchapter Y or Z, Chapter 361, Health and Safety  
13 Code.

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

21        SECTION 3. (a) The Texas Commission on Environmental  
22 Quality shall adopt any rules required to implement this Act not  
23 later than May 1, 2010.

24        (b) This Act may not be enforced before September 1, 2010.

25        (c) A report required under Section 361.975, Health and  
26 Safety Code, as added by this Act, is not required to be prepared or  
27 submitted for the first time before the date specified by that

1 section in 2012.

2 (d) Notwithstanding Section 361.981, Health and Safety  
3 Code, as added by this Act, a retailer of television equipment may  
4 sell television equipment inventory that the retailer acquired  
5 before the effective date of this Act without incurring a penalty.

6 SECTION 4. This Act takes effect September 1, 2009.