

By: Cook

H.B. No. 88

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 the following equipment marketed to and intended for consumers:

(A) 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; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(4) "Market share allocation" means the quantity of covered television equipment, by weight, that an individual

1 manufacturer is responsible for collecting, transporting, and
2 recycling, as computed by the commission under Section 361.981(g).

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

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

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

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

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

18 (B) manufactures covered television equipment
19 without affixing a brand;

20 (C) resells covered television equipment
21 produced by other suppliers under a brand the person owns or is
22 licensed to use;

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

1 (E) manufactures covered television equipment,
2 supplies it to any person within a distribution network that
3 includes a wholesaler or retailer, and benefits from the sale of the
4 covered television equipment through that distribution network; or

5 (F) assumes the responsibilities of a television
6 manufacturer under this subchapter.

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

13 Sec. 361.973. APPLICABILITY. (a) Except as provided by
14 this section and Section 361.988, this subchapter applies only to
15 covered television equipment that is:

16 (1) offered for sale or sold to a consumer in this
17 state; or

18 (2) used by a consumer in this state and returned for
19 recycling.

20 (b) This subchapter does not apply to:

21 (1) computer equipment as that term is defined by
22 Section 361.952;

23 (2) any part of a motor vehicle, including a
24 replacement part;

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

27 (A) designed and intended for use in an

1 industrial, governmental, commercial, research and development, or
2 medical setting, including diagnostic monitoring or control
3 equipment; or

4 (B) used for security, sensing, monitoring,
5 antiterrorism, or emergency services purposes;

6 (4) a device that is contained in exercise equipment
7 intended for home use or an appliance intended for home use
8 including a clothes washer, clothes dryer, refrigerator,
9 refrigerator and freezer, microwave oven, conventional oven or
10 range, dishwasher, room air conditioner, dehumidifier, and air
11 purifier;

12 (5) a telephone of any type;

13 (6) a personal digital assistant;

14 (7) a global positioning system;

15 (8) a consumer's lease of covered television equipment
16 or a consumer's use of covered television equipment under a lease
17 agreement; or

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

22 Sec. 361.974. SALES PROHIBITION. A person may not offer for
23 sale in this state new covered television equipment unless the
24 equipment has been labeled in compliance with Section 361.975.

25 Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A
26 television manufacturer may sell or offer for sale in this state
27 only covered television equipment that is labeled with the

1 television manufacturer's brand. The label must be permanently
2 affixed and readily visible.

3 Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING.

4 (a) A manufacturer of covered television equipment shall register
5 with the commission and pay a registration fee of \$2,500. A
6 registered television manufacturer shall renew the registration
7 and pay the fee on or before January 31 of each year. The
8 registration or registration renewal must include:

9 (1) a list of all brands the television manufacturer
10 uses in this state on covered television equipment regardless of
11 whether the television manufacturer owns or is licensed to use the
12 brand; and

13 (2) contact information for the person the commission
14 may contact regarding the television manufacturer's activities to
15 comply with this subchapter.

16 (b) Not later than January 31 of each year, each registered
17 television manufacturer of covered television equipment shall
18 report to the commission:

19 (1) the total weight of covered television equipment
20 for which the television manufacturer is responsible that was sold
21 in this state during the preceding calendar year or, if the
22 manufacturer does not track the weight of covered television
23 equipment it sells by state, the television manufacturer may report
24 the total amount of covered television equipment the television
25 manufacturer sold nationally in the preceding calendar year; and

26 (2) the total weight of covered television equipment
27 the manufacturer collected and recycled in this state during the

1 preceding calendar year.

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

8 (b) An individual television manufacturer that submits a
9 recovery plan under Subsection (a) shall collect, transport, and
10 recycle covered television equipment. Beginning with the
11 television manufacturer's second year of registration, the
12 individual television manufacturer shall collect, transport, and
13 recycle the quantity of covered television equipment computed by
14 the commission as the manufacturer's market share allocation.

15 (c) A group of television manufacturers that submits a
16 recovery plan under Subsection (a) shall collect, transport, and
17 recycle covered television equipment. Beginning the second year of
18 registration for a group of television manufacturers, the group of
19 television manufacturers shall collect, transport, and recycle a
20 quantity of covered television equipment equal to the sum of the
21 combined market share allocations of the group's participants.

22 (d) A recovery plan under Subsection (a) must include at a
23 minimum:

24 (1) a statement of whether the television manufacturer
25 intends to collect and recycle its market share allocation through
26 operation of its program, individually or in partnership with other
27 television manufacturers;

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

5 (3) collection methods that allow a consumer to
6 recycle television equipment without paying a separate fee at the
7 time of recycling.

8 (e) The commission shall review the recovery plan for
9 satisfaction of the requirements of this subchapter. If the
10 registration and recovery plan are complete, the commission shall
11 include the television manufacturer on the commission's Internet
12 website listing as provided by Section 361.981(a). The commission
13 may reject the recovery plan if it does not meet all requirements of
14 this subchapter.

15 Sec. 361.978. RETAILER RESPONSIBILITY. (a) A retailer may
16 order and sell only products from a television manufacturer that is
17 included on the list published under Section 361.981(a) that
18 identifies manufacturers whose recovery plans have been approved by
19 the commission. A retailer shall consult that list before ordering
20 covered television equipment in this state. A retailer is
21 considered to have complied with this subsection and may sell a
22 product in the retailer's inventory if, on the date the product was
23 ordered from the manufacturer, the manufacturer was listed on the
24 Internet website described by Section 361.981(a) as having an
25 approved recovery plan.

26 (b) A person who is a retailer of covered television
27 equipment shall provide to consumers in writing the information

1 published by the commission regarding the legal disposition and
2 recycling of television equipment. The information may be included
3 with the sales receipt or as part of the packaging of the equipment.
4 Alternatively, the retailer may provide the information required by
5 this subsection through a toll-free telephone number and address of
6 an Internet website provided to consumers.

7 (c) This subchapter does not require a retailer to collect
8 covered television equipment for recycling.

9 Sec. 361.979. RECYCLER RESPONSIBILITIES. (a) A person who
10 is engaged in the business of recycling covered television
11 equipment in this state shall:

12 (1) register with the commission and certify that the
13 person is in compliance with the standards adopted under Section
14 361.987;

15 (2) on or before January 31 of each year renew the
16 registration with the commission and certify the person's continued
17 compliance with the standards adopted under Section 361.987;

18 (3) recycle all covered television equipment accepted
19 for recycling in accordance with the standards adopted under
20 Section 361.987;

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

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

27 (6) annually report to the commission the total weight

1 of covered television equipment received and recycled by the person
2 in the preceding 12 months.

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

6 Sec. 361.980. LIABILITY. (a) A television manufacturer,
7 retailer, or person who recycles covered television equipment is
8 not liable in any way for information in any form that a consumer
9 leaves on covered television equipment that is collected or
10 recycled under this subchapter.

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

13 Sec. 361.981. COMMISSION RESPONSIBILITIES. (a) The
14 commission shall publish on a publicly accessible Internet website:

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

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

19 (b) The commission shall remove manufacturers no longer in
20 compliance with this subchapter from the Internet website once each
21 calendar quarter.

22 (c) The commission shall educate consumers regarding the
23 collection and recycling of covered television equipment.

24 (d) The commission shall host or designate another person to
25 host an Internet website and shall provide a toll-free telephone
26 number to provide consumers with information about the recycling of
27 covered television equipment, including best management practices

1 and information about or links to information about:

2 (1) television manufacturers' collection and
3 recycling programs, including television manufacturers' recovery
4 plans; and

5 (2) covered television equipment collection events,
6 collection sites, and community television equipment recycling
7 programs.

8 (e) Information about collection and recycling provided on
9 a television manufacturer's publicly available Internet website
10 and through a toll-free telephone number does not constitute a
11 determination by the commission that the manufacturer's recovery
12 plan or actual practices are in compliance with this subchapter or
13 other law.

14 (f) Not later than February 15 of each year, the commission
15 shall establish the state recycling rate by computing the ratio of
16 the weight of total returns of covered television equipment in this
17 state to the total weight of covered television equipment sold in
18 this state during the preceding year.

19 (g) Not later than March 1 of each year, the commission
20 shall compute and provide to each registered television
21 manufacturer the manufacturer's market share allocation for
22 collection, recycling, and transportation for that year. A
23 television manufacturer's market share allocation equals the
24 weight of the television manufacturer's covered television
25 equipment sold in this state during the preceding calendar year
26 multiplied by the state recycling rate determined under Subsection
27 (f).

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

5 Sec. 361.982. 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
12 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. 361.983. 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. 361.984. ANNUAL REPORT TO LEGISLATURE. (a) The
5 commission shall compile information from manufacturers and issue
6 an electronic report to the committee in each house of the
7 legislature having primary jurisdiction over environmental matters
8 not later than March 1 of each year.

9 (b) The report must include:

10 (1) collection information provided to the commission
11 by each manufacturer's annual report required by Section
12 361.976(b);

13 (2) a summary of comments that have been received from
14 stakeholders such as television manufacturers, electronic
15 equipment recyclers, local governments, and nonprofit
16 organizations;

17 (3) a comparison of the amount of television equipment
18 collected in other states that have television equipment recycling
19 programs to the amount of television equipment collected in this
20 state; and

21 (4) any other information that would assist the
22 legislature in evaluating the effectiveness of this subchapter.

23 Sec. 361.985. FEES. (a) Except as provided by Sections
24 361.976(a) and 361.979(b), this subchapter does not authorize the
25 commission to impose a fee, including a recycling fee, on a
26 consumer, television manufacturer, retailer, or person who
27 recycles covered television equipment.

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

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

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

12 Sec. 361.987. MANAGEMENT OF COLLECTED TELEVISION
13 EQUIPMENT. (a) Covered television equipment collected under this
14 subchapter must be disposed of or recycled in a manner that complies
15 with federal, state, and local law.

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

22 Sec. 361.988. STATE PROCUREMENT REQUIREMENTS. (a) In this
23 section, "state agency" has the meaning assigned by Section
24 2052.101, Government Code.

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

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

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

9 (1) through its recovery plan collects more than its
10 market share allocation; or

11 (2) provides collection sites or recycling events in
12 any county located in a council of governments region in which there
13 are fewer than six permanent collection sites open at least twice
14 each month.

15 (e) The comptroller shall adopt rules to implement this
16 section.

17 Sec. 361.989. FEDERAL PREEMPTION; EXPIRATION. (a) If
18 federal law establishes a national program for the collection and
19 recycling of covered television equipment and the commission
20 determines that the federal law substantially meets the purposes of
21 this subchapter, the commission may adopt an agency statement that
22 interprets the federal law as preemptive of this subchapter.

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

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

27 (b-1) The amount of the penalty assessed against a

1 manufacturer that does not label its computer equipment or covered
2 television equipment or adopt and implement a recovery plan as
3 required by Section 361.955, 361.975, or 361.977, Health and Safety
4 Code, as applicable, may not exceed \$10,000 for the second
5 violation or \$25,000 for each subsequent violation. A penalty
6 under this subsection is in addition to any other penalty that may
7 be assessed for a violation of Subchapter Y or Z, Chapter 361,
8 Health and Safety Code.

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

16 SECTION 3. (a) The Texas Commission on Environmental
17 Quality shall adopt any rules required to implement this Act not
18 later than May 1, 2012.

19 (b) This Act may not be enforced before September 1, 2012.

20 (c) A report required under Section 361.976, Health and
21 Safety Code, as added by this Act, is not required to be prepared or
22 submitted for the first time before the date specified by that
23 section in 2014.

24 (d) Notwithstanding Section 361.982, Health and Safety
25 Code, as added by this Act, a retailer of television equipment may
26 sell television equipment inventory that the retailer acquired
27 before the effective date of this Act without incurring a penalty.

1 (e) A retailer of covered television equipment is not
2 required to provide the information described by Section
3 361.978(b), Health and Safety Code, as added by this Act, before the
4 date on which the Texas Commission on Environmental Quality rules
5 implementing this Act take effect.

6 SECTION 4. This Act takes effect September 1, 2011.