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
television manufacturer submitting a recovery plan under Section 361.978 is responsible for collecting, reusing, and recycling, as computed by the commission under Section 361.984(g).

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

(6) "Retailer" means a person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

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

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

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

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

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

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

(E) assumes the responsibilities of a television manufacturer under this subchapter.

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

Sec. 361.973. APPLICABILITY. (a) Except as provided by this section and Section 361.991, this subchapter applies only to covered television equipment that is:

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

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

(b) This subchapter does not apply to:

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

(2) a manufacturer of a display device that is peripheral to a computer and contains a television tuner, if that manufacturer collects and recycles the device in accordance with Subchapter Y;

(3) any part of a motor vehicle, including a
replacement part;

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

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

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

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

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

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

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.
equipment has been labeled in compliance with Section 361.975.

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

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) A television manufacturer of covered television equipment shall register with the commission and, except as provided by Section 361.979, pay a registration fee of $2,500. A registered television manufacturer shall renew the registration and, except as provided by Section 361.979, pay the fee on or before January 31 of each year. The registration or registration renewal must include:

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

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

(b) Except as provided by Section 361.979, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television
equipment it sells by state, the television manufacturer may report
the total amount of covered television equipment the television
manufacturer sold nationally in the preceding calendar year; and
(2) the total weight of covered television equipment
the television manufacturer collected and recycled in this state
during the preceding calendar year.
(c) Fees collected under this section shall be deposited to
the credit of the television recycling account created under
Section 361.977.
Sec. 361.977. TELEVISION RECYCLING ACCOUNT. (a) The
television recycling account is an account in the general revenue
fund that consists of the:
(1) fees collected under Section 361.976; and
(2) interest earned on the money in the account.
(b) Money in the account may be appropriated only to the
commission to be used by the commission to maintain a public
Internet website and toll-free telephone number that provide
consumers with information about covered television equipment
recycling opportunities in this state.
Sec. 361.978. MANUFACTURER'S RECOVERY PLAN AND RELATED
RESPONSIBILITIES. (a) This section does not apply to a television
manufacturer that participates in a recycling leadership program
described by Section 361.979.
(b) Not later than the first January 31 that occurs after
the date the television manufacturer first registers with the
commission under Section 361.976, each television manufacturer of
covered television equipment sold in this state shall, individually
or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under Subsection (b) must include at a minimum:

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

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the
television manufacturer during the preceding year; and
(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet website listing as provided by Section 361.984(a). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

Sec. 361.979. MANUFACTURER RECYCLING LEADERSHIP PROGRAM.
(a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by Subsection (d) where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under Subsection (b) for recycling of covered television equipment include:
(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).

(f) Not later than January 31 of each year, each recycling leadership program must provide to the commission a list of the television manufacturers participating in the program for that year.

(g) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).
equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, such as packaging inserts, television manufacturers' Internet websites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.
Sec. 361.980. RECYCLING LEADERSHIP PROGRAM COLLECTION REPORT. (a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under Section 361.979 shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years; and

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with the program's requirements.
with Section 361.990.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by Subsection (b)(1) may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

Sec. 361.981. RETAILER RESPONSIBILITY. (a) A retailer may order and sell only products from a television manufacturer that is included on the list published under Section 361.984(a). A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet website described by Section 361.984(a).

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

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

Sec. 361.982. RECYCLER RESPONSIBILITIES. (a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) register with the commission and certify that the person is in compliance with the standards adopted under Section 361.990;

(2) on or before January 31 of each year renew the registration with the commission and certify the person's continued compliance with the standards adopted under Section 361.990;

(3) recycle all covered television equipment accepted for recycling in accordance with the standards adopted under Section 361.990;

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

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

Sec. 361.983. LIABILITY. (a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer
leaves on covered television equipment that is collected or recycled under this subchapter.

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

Sec. 361.984. COMMISSION RESPONSIBILITIES. (a) The commission shall publish on a publicly accessible Internet website a list of television manufacturers:

(1) whose recovery plans have been approved by the commission;

(2) whose public education programs are in full compliance with this subchapter; and

(3) who are in compliance with the registration and fee requirements of this subchapter, if applicable.

(b) The commission shall remove television manufacturers no longer in compliance under Subsection (a) from the Internet website once each fiscal quarter.

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

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

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

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

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

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under Section 361.978 to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under Section 361.978 during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under Section 361.978 the television manufacturer's market share allocation for collection, reuse, and recycling for that year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) In any year in which more than one recycling leadership program is implemented under Section 361.979, the commission shall review all active recycling leadership programs established under
this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

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

Sec. 361.985. ENFORCEMENT. (a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

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

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

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

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

Sec. 361.986. FINANCIAL AND PROPRIETARY INFORMATION.
Financial or proprietary information submitted to the commission
under this subchapter is exempt from public disclosure under
Chapter 552, Government Code.

Sec. 361.987. BIENNIAL REPORT TO LEGISLATURE. (a) The
commission shall compile information from television manufacturers
and issue an electronic report to the committee in each house of the
legislature having primary jurisdiction over environmental matters
not later than March 1 of each even-numbered year.

(b) The report must include:

(1) collection information provided to the commission
by each television manufacturer's report required by Section
361.976(b) or 361.980(a), as applicable;

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

(3) any recommendations under Section 361.984(h); and

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

Sec. 361.988. FEES. (a) Except as provided by Section
361.976(a), this subchapter does not authorize the commission to
impose a fee, including a recycling fee, on a consumer, television
manufacturer, retailer, or person who recycles covered television equipment.

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

Sec. 361.989. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

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

Sec. 361.990. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT. (a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of covered television 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, Incorporated, April 25, 2006, or other standards from a comparable nationally recognized organization.

Sec. 361.991. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

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

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

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

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

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

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

Sec. 361.992. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

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

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

(b-1) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed $10,000 for the second violation or $25,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

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

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

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

(c) A report required under Section 361.976, Health and Safety Code, as added by this Act, is not required to be prepared or submitted for the first time before January 31, 2013.

(d) A recovery plan required under Section 361.978, Health and Safety Code, as added by this Act, is not required to be prepared and submitted before January 31, 2013.
A collection report required under Section 361.980, Health and Safety Code, as added by this Act, is not required to be prepared and submitted for the first time before January 31, 2015.

A retailer of covered television equipment is not required to provide the information described by Subsection (b), Section 361.981, Health and Safety Code, as added by this Act, before the date on which the Texas Commission on Environmental Quality rules implementing this Act take effect.

Not later than April 1, 2013, the Texas Commission on Environmental Quality shall prepare and post for the first time the list required under Subsection (a), Section 361.984, Health and Safety Code, as added by this Act.

Not later than November 1, 2013, the Texas Commission on Environmental Quality shall establish for the first time the state recycling rate required under Subsection (f), Section 361.984, Health and Safety Code, as added by this Act.

Not later than December 1, 2013, the Texas Commission on Environmental Quality shall provide for the first time to each applicable television manufacturer the television manufacturer's market share allocation as required under Subsection (g), Section 361.984, Health and Safety Code, as added by this Act.

Notwithstanding Section 361.985, Health and Safety Code, as added by this Act, a retailer of television equipment may sell television equipment inventory that the retailer acquired before September 1, 2012, without incurring a penalty.

The Texas Commission on Environmental Quality is not required to prepare or submit for the first time the report required
under Section 361.987, Health and Safety Code, as added by this Act, before March 1, 2014.

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

S.B. No. 329

President of the Senate
Speaker of the House

I hereby certify that S.B. No. 329 passed the Senate on March 23, 2011, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendment on May 24, 2011, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 329 passed the House, with amendment, on May 19, 2011, by the following vote: Yeas 142, Nays 6, one present not voting.

Chief Clerk of the House

Approved:

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Date

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Governor