

STATE OF TENNESSEE
OFFICE OF THE
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April 20, 2007

Opinion No. 07-54

Whether Senate Bill 1228 is constitutional or violates any ethics laws

QUESTION

Does Senate Bill 1228 (SB1228) violate the Tennessee Constitution or any ethics laws?

OPINION

SB1228 does not appear on its face to violate the Tennessee constitution. Nor does the bill appear, on its face, to run afoul of any ethics laws.

ANALYSIS

SB1228 provides as follows:

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 3 and Title 12, Chapter 4, relative to the enactment of the “Orphaned Information Technology Recovery Act”.

WHEREAS, Information technology devices, as defined in the Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery, and sold in commerce by manufacturers that no longer sell such devices are considered “orphaned”; and

WHEREAS, The Manufacturer Responsibility Act does not address orphaned information technology devices; and

WHEREAS, An incentive is necessary; to encourage manufacturers to recover orphaned devices; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding Sections 2 through 7 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the “Orphaned Information Technology Recovery Act”.

SECTION 3. As used in this part, unless the context otherwise requires, “orphaned information technology device” means electronic devices sold in commerce by manufacturers that no longer sell such devices.

SECTION 4. Any person who submits a bid or proposal for a contract with a state agency for the purchase or lease of orphaned information technology devices must be in compliance with this part.

SECTION 5. A state agency that purchases or leases orphaned information technology devices shall require each prospective bidder to certify compliance with this part. Failure to provide such certification shall render a bidder or proposer ineligible for award of the contract.

SECTION 6. In considering bids for state contracts for orphaned information technology device, in addition to any other preferences provided elsewhere under state law, the state shall give special preference to manufacturers that have programs to recover other manufacturers’ orphaned information technology devices, including but not limited to collection events, recycling grants, and manufacturer initiatives to take back any orphaned information technology devices brand with purchase.

SECTION 7. The commissioner of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. This act shall take effect January 1, 2008, the public welfare requiring it.

Your question apparently addresses Section 6 of SB 1228, which provides that the State, in considering bids for orphaned information technology devices, will give a preference to manufacturers that have programs to recover other manufacturers’ orphaned information technology devices. This question appears to be based upon the premise that this preference to qualifying bidders may give them an unfair advantage over other bidders that cannot offer recycling programs for orphaned information technology devices.

Nothing on the face of this bill suggests it is unconstitutional or in violation of any state ethical law. SB1228 states that its intent is to provide an incentive “to encourage manufacturers to recover orphaned devices.” If used as contemplated, the preference created in SB1228 will be part of the bid specifications and applicable in the same manner to each and every bidder. Every potential bidder will have the opportunity to take advantage of the preference. We, therefore, conclude that SB 1228, on its face, is neither unconstitutional nor in violation of state ethics laws.

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