

By: Hernandez

H.B. No. 3427

A BILL TO BE ENTITLED

AN ACT

relating to requirements for businesses that offer plastic checkout bags to customers; providing civil and administrative penalties.

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

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 376 to read as follows:

CHAPTER 376. CHECKOUT BAGS

Sec. 376.001. DEFINITIONS. In this chapter:

(1) "Business" means a commercial enterprise or establishment, including a sole proprietorship, joint venture, partnership, corporation, or other legally recognizable entity, whether for profit or not for profit.

(2) "Checkout bag" means a carryout bag that is provided by a store to a customer at the point of sale.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of:

(A) cloth or other machine-washable fabric; or

(B) other durable material suitable for reuse, including plastic that is at least 2.25 millimeters thick.

(5) "Shopping mall" means an enclosed public walkway or hall area that connects retail, service, or professional

1 establishments.

2 Sec. 376.002. APPLICABILITY. This chapter does not apply
3 to a business:

4 (1) with fewer than 51 employees;

5 (2) that provides plastic carryout bags to less than
6 10 percent of the business's customers; or

7 (3) whose principal business activity is providing
8 prepared food for immediate consumption.

9 Sec. 376.003. BUSINESS REQUIRED TO OFFER REUSABLE BAGS AT
10 REASONABLE PRICE. (a) A business that offers a plastic checkout
11 bag to a customer shall make a reusable bag available for sale at a
12 reasonable price.

13 (b) Before an employee of a business described by Subsection
14 (a) provides a customer with a plastic checkout bag, the employee
15 shall ask the customer if the customer would like to purchase a
16 reusable bag.

17 Sec. 376.004. RECYCLING PROGRAM. A business that offers a
18 plastic checkout bag to a customer shall establish a checkout bag
19 recycling program that requires the business to:

20 (1) print or display in a highly visible manner on the
21 outside of a plastic checkout bag provided by the business the words
22 "Please Return to a Participating Business for Recycling";

23 (2) place in a visible, easily accessible location
24 near each public entrance of either a business or a shopping mall
25 that contains a business that offers a plastic checkout bag to a
26 customer a plastic checkout bag collection bin clearly marked with
27 information stating that the bin is for the purpose of collecting

1 and recycling plastic checkout bags;

2 (3) maintain records describing the collection,
3 transport, and recycling of plastic checkout bags under the program
4 established under this section; and

5 (4) make the records of the program available to the
6 commission on request.

7 Sec. 376.005. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
8 INFORMATION. The commission shall establish an online
9 clearinghouse of information relating to the use and recycling of
10 plastic checkout bags, including information on:

11 (1) alternatives to plastic checkout bags;

12 (2) companies that recycle plastic checkout bags;

13 (3) companies that sell biodegradable checkout bags;

14 and

15 (4) products that are made of recycled plastic from
16 checkout bags.

17 Sec. 376.006. RULES. The commission shall adopt rules to
18 implement this chapter.

19 SECTION 2. Section 7.052, Water Code, is amended by adding
20 Subsection (b-3) to read as follows:

21 (b-3) For a violation of Chapter 376, Health and Safety
22 Code, other than Section 376.003, the commission shall:

23 (1) issue a written warning for the first violation;

24 (2) impose an administrative penalty not to exceed
25 \$100 for the second violation, if the violation occurs on or before
26 the first anniversary of the date of the first violation;

27 (3) impose an administrative penalty not to exceed

1 \$200 for the third violation, if the violation occurs on or before
2 the first anniversary of the date of the preceding violation; or
3 (4) impose an administrative penalty not to exceed
4 \$400 for the fourth or subsequent violation, if the violation
5 occurs on or before the first anniversary of the date of the
6 preceding violation.

7 SECTION 3. Sections 7.102 and 7.103, Water Code, are
8 amended to read as follows:

9 Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers,
10 allows, or permits a violation of a statute, rule, order, or permit
11 relating to Chapter 37 of this code, Chapter 366, 371, or 372,
12 Health and Safety Code, Subchapter G, Chapter 382, Health and
13 Safety Code, or Chapter 1903, Occupations Code, shall be assessed
14 for each violation a civil penalty not less than \$50 nor greater
15 than \$5,000 for each day of each violation as the court or jury
16 considers proper. A business that causes, suffers, allows, or
17 permits a violation of a statute, rule, or order relating to Chapter
18 376, Health and Safety Code, other than Section 376.003, shall be
19 assessed a civil penalty not greater than \$100 for each day of each
20 violation as the court or jury considers proper. A person who
21 causes, suffers, allows, or permits a violation of a statute, rule,
22 order, or permit relating to any other matter within the
23 commission's jurisdiction to enforce, other than violations of
24 Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health
25 and Safety Code, shall be assessed for each violation a civil
26 penalty not less than \$50 nor greater than \$25,000 for each day of
27 each violation as the court or jury considers proper. Each day of a

1 continuing violation is a separate violation.

2 Sec. 7.103. CONTINUING VIOLATIONS. (a) Except as provided
3 by Subsection (b), if [~~If~~] it is shown on a trial of a defendant that
4 the defendant has previously been assessed a civil penalty for a
5 violation of a statute within the commission's jurisdiction or a
6 rule adopted or an order or a permit issued under such a statute
7 within the year before the date on which the violation being tried
8 occurred, the defendant shall be assessed a civil penalty not less
9 than \$100 nor greater than \$25,000 for each subsequent day and for
10 each subsequent violation.

11 (b) If it is shown on the trial of a defendant for a
12 violation of Chapter 376, Health and Safety Code, other than
13 Section 376.003, or a rule adopted or an order issued under that
14 chapter that the defendant has previously been assessed a civil
15 penalty for a violation of that chapter or a rule adopted or an
16 order issued under that chapter within the year before the date on
17 which the violation being tried occurred, the defendant shall be
18 assessed a civil penalty not greater than:

19 (1) \$200 if the violation being tried is the
20 defendant's second violation of that chapter, other than Section
21 376.003, or a rule adopted or an order issued under that chapter; or

22 (2) \$500 if the violation being tried is the
23 defendant's third or a subsequent violation of that chapter, other
24 than Section 376.003, or a rule adopted or an order issued under
25 that chapter.

26 (c) Each day of a continuing violation is a separate
27 violation.

1 SECTION 4. (a) The Texas Commission on Environmental
2 Quality shall conduct a study to determine:

3 (1) the impact of Chapter 376, Health and Safety Code,
4 on businesses and the environment;

5 (2) what happens to the plastic checkout bags after
6 they are collected in the collection bins;

7 (3) the number of businesses collecting the plastic
8 checkout bags from the collection bins and recycling the bags; and

9 (4) the feasibility and costs to businesses of using
10 checkout bags that are made from biodegradable plastic and other
11 alternate materials.

12 (b) Not later than September 1, 2010, the Texas Commission
13 on Environmental Quality shall submit a report regarding the
14 results of the study to the standing committees of the senate and
15 house of representatives having primary jurisdiction over
16 environmental issues.

17 SECTION 5. This Act takes effect January 1, 2010, except
18 that Section 376.006, Health and Safety Code, as added by this Act,
19 takes effect September 1, 2009.