

By: Van de Putte

S.B. No. 338

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. PLASTIC 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 that:

(A) is a full-line, self-service retail store with annual sales of \$3 million or more and that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
or

(B) has over 10,000 square feet of retail space that generates sales or use tax and has a licensed pharmacy.

(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

1 made of:

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

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

5 Sec. 376.002. APPLICABILITY. This chapter does not apply
6 to a business:

7 (1) with fewer than 51 employees; or

8 (2) whose principal business activity is providing
9 prepared food for immediate consumption.

10 Sec. 376.003. BUSINESS REQUIRED TO OFFER REUSABLE BAGS AT
11 REASONABLE PRICE. (a) A business that offers a plastic checkout
12 bag to a customer shall make a reusable bag available for sale at a
13 reasonable price and shall display the reusable bag at or near the
14 point of sale or the entrance to the business.

15 (b) A business described by Subsection (a) shall provide
16 training to an employee whose position may include offering a
17 plastic checkout bag to a customer. The training shall include
18 efficient bagging techniques, offering the sale or distribution of
19 reusable bags, and other procedures intended to reduce the
20 utilization of plastic checkout bags.

21 Sec. 376.004. RECYCLING PROGRAM. (a) Except as provided
22 by Subsections (b) and (c), a business that offers a plastic
23 checkout bag to a customer shall establish a plastic checkout bag
24 recycling program that requires the business to:

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

1 similar message to encourage recycling the bag;
2 (2) place in a visible, easily accessible location at
3 or near the entrance of the business a plastic checkout bag
4 collection bin clearly marked with information stating that the bin
5 is for the purpose of collecting and recycling plastic checkout
6 bags;
7 (3) maintain on a yearly basis records describing the
8 collection, transport, and recycling of plastic checkout bags under
9 the program established under this section; and
10 (4) make the records of the program available to the
11 commission on request.
12 (b) A business with only one opening for both customer
13 entrance and exit may comply with the requirements of Subsection
14 (a)(2) by placing near the entrance one plastic checkout bag
15 collection bin clearly marked with information stating that the bin
16 is for the purpose of collecting and recycling plastic checkout
17 bags.
18 (c) A business is exempt from establishing a plastic
19 checkout bag recycling program as required by Subsection (a) if:
20 (1) the business is not located in a municipality or a
21 county that operates a recycling program that accepts plastic
22 checkout bags; and
23 (2) a private recycling service that accepts plastic
24 checkout bags is not available to the business at a reasonable cost.
25 (d) A business required to maintain records under this
26 section may collect records in a centralized manner.
27 Sec. 376.005. PREEMPTION OF LOCAL ORDINANCE. This chapter

1 preempts a local ordinance or rule to the extent of any conflict
2 with this chapter.

3 Sec. 376.006. RULES. The commission shall adopt rules to
4 implement this chapter.

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

7 (b-3) The amount of the penalty for a violation of Chapter
8 376, Health and Safety Code, may not exceed:

9 (1) \$200 for the first violation;

10 (2) \$400 for the second violation, if the violation
11 occurs on or before the first anniversary of the date of the first
12 violation; or

13 (3) \$600 for the third or a subsequent violation, if
14 the violation occurs on or before the first anniversary of the date
15 of the preceding violation.

16 SECTION 3. Subchapter C, Chapter 7, Water Code, is amended
17 by adding Section 7.076 to read as follows:

18 Sec. 7.076. AFFIRMATIVE DEFENSE. It is an affirmative
19 defense to the imposition of an administrative penalty for a
20 violation of Chapter 376, Health and Safety Code, if the business
21 corrects the condition causing the violation in a timely manner.
22 The affirmative defense is available for a violation of:

23 (1) Section 376.004(a)(2) or (b), Health and Safety
24 Code, resulting from the theft of a bin if the business replaces the
25 stolen bin within a reasonable period of time; or

26 (2) Section 376.003(a), Health and Safety Code,
27 resulting from the temporary lack of reusable bags for sale if the

1 business restocks the supply of reusable bags within a reasonable
2 period of time.

3 SECTION 4. Sections 7.102 and 7.103, Water Code, are
4 amended to read as follows:

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

25 Sec. 7.103. CONTINUING VIOLATIONS. (a) Except as provided
26 by Subsection (b), if [~~if~~] it is shown on a trial of a defendant
27 that the defendant has previously been assessed a civil penalty for

1 a violation of a statute within the commission's jurisdiction or a
2 rule adopted or an order or a permit issued under such a statute
3 within the year before the date on which the violation being tried
4 occurred, the defendant shall be assessed a civil penalty not less
5 than \$100 nor greater than \$25,000 for each subsequent day and for
6 each subsequent violation.

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

15 (1) \$200 if the violation being tried is the
16 defendant's second violation of that chapter or a rule adopted or an
17 order issued under that chapter; or

18 (2) \$500 if the violation being tried is the
19 defendant's third or a subsequent violation of that chapter or a
20 rule adopted or an order issued under that chapter.

21 (c) Each day of a continuing violation is a separate
22 violation.

23 SECTION 5. Subchapter D, Chapter 7, Water Code, is amended
24 by adding Section 7.112 to read as follows:

25 Sec. 7.112. AFFIRMATIVE DEFENSE. It is an affirmative
26 defense to the imposition of a civil penalty for a violation of
27 Chapter 376, Health and Safety Code, if the business corrects the

1 condition causing the violation in a timely manner. The
2 affirmative defense is available for a violation of:

3 (1) Section 376.004(a)(2) or (b), Health and Safety
4 Code, resulting from the theft of a bin if the business replaces the
5 stolen bin within a reasonable period of time; or

6 (2) Section 376.003(a), Health and Safety Code,
7 resulting from the temporary lack of reusable bags for sale if the
8 business restocks the supply of reusable bags within a reasonable
9 period of time.

10 SECTION 6. Section 376.005, Health and Safety Code, as
11 added by this Act, applies only to local ordinances or rules adopted
12 on or after the effective date of this Act.

13 SECTION 7. This Act takes effect January 1, 2010, except
14 that Section 376.006, Health and Safety Code, as added by this Act,
15 takes effect September 1, 2009.