

1-1 By: Van de Putte S.B. No. 338  
1-2 (In the Senate - Filed December 5, 2008; February 11, 2009,  
1-3 read first time and referred to Committee on Business and Commerce;  
1-4 March 30, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 30, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 338 By: Van de Putte

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to requirements for businesses that offer plastic checkout  
1-11 bags to customers; providing civil and administrative penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle B, Title 5, Health and Safety Code, is  
1-14 amended by adding Chapter 376 to read as follows:

1-15 CHAPTER 376. PLASTIC CHECKOUT BAGS

1-16 Sec. 376.001. DEFINITIONS. In this chapter:

1-17 (1) "Business" means a commercial enterprise or  
1-18 establishment, including a sole proprietorship, joint venture,  
1-19 partnership, corporation, or other legally recognizable entity,  
1-20 whether for profit or not for profit that:

1-21 (A) is a full-line, self-service retail store  
1-22 with annual sales of \$3 million or more and that sells a line of dry  
1-23 grocery, canned goods, or nonfood items and some perishable items;  
1-24 or

1-25 (B) has over 10,000 square feet of retail space  
1-26 that generates sales or use tax and has a licensed pharmacy.

1-27 (2) "Checkout bag" means a carryout bag that is  
1-28 provided by a store to a customer at the point of sale.

1-29 (3) "Commission" means the Texas Commission on  
1-30 Environmental Quality.

1-31 (4) "Reusable bag" means a bag with handles that is  
1-32 specifically designed and manufactured for multiple reuse and is  
1-33 made of:

1-34 (A) cloth or other machine-washable fabric; or

1-35 (B) other durable material suitable for reuse,  
1-36 including plastic that is at least 2.25 millimeters thick.

1-37 Sec. 376.002. APPLICABILITY. This chapter does not apply  
1-38 to a business:

1-39 (1) with fewer than 51 employees; or

1-40 (2) whose principal business activity is providing  
1-41 prepared food for immediate consumption.

1-42 Sec. 376.003. BUSINESS REQUIRED TO OFFER REUSABLE BAGS AT  
1-43 REASONABLE PRICE. (a) A business that offers a plastic checkout  
1-44 bag to a customer shall make a reusable bag available for sale at a  
1-45 reasonable price and shall display the reusable bag at or near the  
1-46 point of sale or the entrance to the business.

1-47 (b) A business described by Subsection (a) shall provide  
1-48 training to an employee whose position may include offering a  
1-49 plastic checkout bag to a customer. The training shall include  
1-50 efficient bagging techniques, offering the sale or distribution of  
1-51 reusable bags, and other procedures intended to reduce the  
1-52 utilization of plastic checkout bags.

1-53 Sec. 376.004. RECYCLING PROGRAM. (a) Except as provided  
1-54 by Subsections (b) and (c), a business that offers a plastic  
1-55 checkout bag to a customer shall establish a plastic checkout bag  
1-56 recycling program that requires the business to:

1-57 (1) print or display in a highly visible manner on the  
1-58 outside of a plastic checkout bag provided by the business the words  
1-59 "Please Return to a Participating Business for Recycling" or a  
1-60 similar message to encourage recycling the bag;

1-61 (2) place in a visible, easily accessible location at  
1-62 or near the entrance of the business a plastic checkout bag  
1-63 collection bin clearly marked with information stating that the bin

2-1 is for the purpose of collecting and recycling plastic checkout  
2-2 bags;  
2-3 (3) maintain on a yearly basis records describing the  
2-4 collection, transport, and recycling of plastic checkout bags under  
2-5 the program established under this section; and  
2-6 (4) make the records of the program available to the  
2-7 commission on request.  
2-8 (b) A business with only one opening for both customer  
2-9 entrance and exit may comply with the requirements of Subsection  
2-10 (a)(2) by placing near the entrance one plastic checkout bag  
2-11 collection bin clearly marked with information stating that the bin  
2-12 is for the purpose of collecting and recycling plastic checkout  
2-13 bags.  
2-14 (c) A business is exempt from establishing a plastic  
2-15 checkout bag recycling program as required by Subsection (a) if:  
2-16 (1) the business is not located in a municipality or a  
2-17 county that operates a recycling program that accepts plastic  
2-18 checkout bags; and  
2-19 (2) a private recycling service that accepts plastic  
2-20 checkout bags is not available to the business at a reasonable cost.  
2-21 (d) A business required to maintain records under this  
2-22 section may collect records in a centralized manner.  
2-23 Sec. 376.005. PREEMPTION OF LOCAL ORDINANCE. This chapter  
2-24 preempts a local ordinance or rule to the extent of any conflict  
2-25 with this chapter.  
2-26 Sec. 376.006. RULES. The commission shall adopt rules to  
2-27 implement this chapter.  
2-28 SECTION 2. Section 7.052, Water Code, is amended by adding  
2-29 Subsection (b-3) to read as follows:  
2-30 (b-3) The amount of the penalty for a violation of Chapter  
2-31 376, Health and Safety Code, may not exceed:  
2-32 (1) \$200 for the first violation;  
2-33 (2) \$400 for the second violation, if the violation  
2-34 occurs on or before the first anniversary of the date of the first  
2-35 violation; or  
2-36 (3) \$600 for the third or a subsequent violation, if  
2-37 the violation occurs on or before the first anniversary of the date  
2-38 of the preceding violation.  
2-39 SECTION 3. Subchapter C, Chapter 7, Water Code, is amended  
2-40 by adding Section 7.076 to read as follows:  
2-41 Sec. 7.076. AFFIRMATIVE DEFENSE. It is an affirmative  
2-42 defense to the imposition of an administrative penalty for a  
2-43 violation of Chapter 376, Health and Safety Code, if the business  
2-44 corrects the condition causing the violation in a timely manner.  
2-45 The affirmative defense is available for a violation of:  
2-46 (1) Section 376.004(a)(2) or (b), Health and Safety  
2-47 Code, resulting from the theft of a bin if the business replaces the  
2-48 stolen bin within a reasonable period of time; or  
2-49 (2) Section 376.003(a), Health and Safety Code,  
2-50 resulting from the temporary lack of reusable bags for sale if the  
2-51 business restocks the supply of reusable bags within a reasonable  
2-52 period of time.  
2-53 SECTION 4. Sections 7.102 and 7.103, Water Code, are  
2-54 amended to read as follows:  
2-55 Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers,  
2-56 allows, or permits a violation of a statute, rule, order, or permit  
2-57 relating to Chapter 37 of this code, Chapter 366, 371, or 372,  
2-58 Health and Safety Code, Subchapter G, Chapter 382, Health and  
2-59 Safety Code, or Chapter 1903, Occupations Code, shall be assessed  
2-60 for each violation a civil penalty not less than \$50 nor greater  
2-61 than \$5,000 for each day of each violation as the court or jury  
2-62 considers proper. A business that causes, suffers, allows, or  
2-63 permits a violation of a statute, rule, or order relating to Chapter  
2-64 376, Health and Safety Code, shall be assessed a civil penalty not  
2-65 greater than \$100 for each day of each violation as the court or  
2-66 jury considers proper. A person who causes, suffers, allows, or  
2-67 permits a violation of a statute, rule, order, or permit relating to  
2-68 any other matter within the commission's jurisdiction to enforce,  
2-69 other than violations of Chapter 11, 12, 13, 16, or 36 of this code,

3-1 or Chapter 341, Health and Safety Code, shall be assessed for each  
3-2 violation a civil penalty not less than \$50 nor greater than \$25,000  
3-3 for each day of each violation as the court or jury considers  
3-4 proper. Each day of a continuing violation is a separate  
3-5 violation.

3-6 Sec. 7.103. CONTINUING VIOLATIONS. (a) Except as provided  
3-7 by Subsection (b), if ~~it~~ it is shown on a trial of a defendant  
3-8 that the defendant has previously been assessed a civil penalty for  
3-9 a violation of a statute within the commission's jurisdiction or a  
3-10 rule adopted or an order or a permit issued under such a statute  
3-11 within the year before the date on which the violation being tried  
3-12 occurred, the defendant shall be assessed a civil penalty not less  
3-13 than \$100 nor greater than \$25,000 for each subsequent day and for  
3-14 each subsequent violation.

3-15 (b) If it is shown on the trial of a defendant for a  
3-16 violation of Chapter 376, Health and Safety Code, or a rule adopted  
3-17 or an order issued under that chapter that the defendant has  
3-18 previously been assessed a civil penalty for a violation of that  
3-19 chapter or a rule adopted or an order issued under that chapter  
3-20 within the year before the date on which the violation being tried  
3-21 occurred, the defendant shall be assessed a civil penalty not  
3-22 greater than:

3-23 (1) \$200 if the violation being tried is the  
3-24 defendant's second violation of that chapter or a rule adopted or an  
3-25 order issued under that chapter; or

3-26 (2) \$500 if the violation being tried is the  
3-27 defendant's third or a subsequent violation of that chapter or a  
3-28 rule adopted or an order issued under that chapter.

3-29 (c) Each day of a continuing violation is a separate  
3-30 violation.

3-31 SECTION 5. Subchapter D, Chapter 7, Water Code, is amended  
3-32 by adding Section 7.112 to read as follows:

3-33 Sec. 7.112. AFFIRMATIVE DEFENSE. It is an affirmative  
3-34 defense to the imposition of a civil penalty for a violation of  
3-35 Chapter 376, Health and Safety Code, if the business corrects the  
3-36 condition causing the violation in a timely manner. The  
3-37 affirmative defense is available for a violation of:

3-38 (1) Section 376.004(a)(2) or (b), Health and Safety  
3-39 Code, resulting from the theft of a bin if the business replaces the  
3-40 stolen bin within a reasonable period of time; or

3-41 (2) Section 376.003(a), Health and Safety Code,  
3-42 resulting from the temporary lack of reusable bags for sale if the  
3-43 business restocks the supply of reusable bags within a reasonable  
3-44 period of time.

3-45 SECTION 6. Section 376.005, Health and Safety Code, as  
3-46 added by this Act, applies only to local ordinances or rules adopted  
3-47 on or after the effective date of this Act.

3-48 SECTION 7. This Act takes effect January 1, 2010, except  
3-49 that Section 376.006, Health and Safety Code, as added by this Act,  
3-50 takes effect September 1, 2009.

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