

By: Morrison

H.B. No. 4022

A BILL TO BE ENTITLED

AN ACT

relating to public health improvement and pollution reduction through recycling incentives; assessing a fee.

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 375 to read as follows:

CHAPTER 375. TEXAS CLEAN AND HEALTHY PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.0101. DEFINITIONS. In this chapter:

(1) "Beverage" means a nonalcoholic, carbonated, or noncarbonated drink prepared in liquid, ready-to-drink form and intended for human consumption. The term includes:

(A) soda;

(B) water, including mineral water and vitamin water;

(C) carbonated water, including carbonated mineral water;

(D) carbonated soft drinks;

(E) noncarbonated soft drinks and sport drinks;

(F) noncarbonated fruit drinks;

(G) energy drinks;

(H) coffee and tea drinks; and

(I) carbonated fruit drinks.

(2) "Beverage container" means a plastic vessel that:

1 (A) is made of polyethylene terephthalate and has
2 the plastic resin symbol 1 as described by Section 369.002(d);

3 (B) is hermetically sealed or capped; and

4 (C) contains a beverage at the time it is sold or
5 offered for sale.

6 (3) "Consumer" means a person who purchases or
7 receives for the person's own use or consumption a beverage
8 container, single-use bag, or single-use cup.

9 (4) "Council" means the Texas Clean and Healthy
10 Advisory Council.

11 (5) "Eligible material" means a beverage container,
12 single-use bag, single-use cup, plastic film or wrap or other
13 flexible plastic packaging, or other material subject to a fee and
14 eligible for a rebate under this chapter. The term does not include
15 a beverage container that:

16 (A) has a capacity of more than one gallon; or

17 (B) contains medical food or infant formula.

18 (6) "Medical food" means a food or beverage that is
19 formulated to be consumed or administered under the supervision of
20 a physician and that is intended for specific dietary management of
21 diseases or health conditions for which distinctive nutritional
22 requirements, based on recognized scientific principles, are
23 established by medical evaluation. The term also includes any
24 product that meets the definition of "medical food" under Section
25 5(b)(3), the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
26 Section 360ee).

27 (7) "Processor" means an entity that sells eligible

1 material to a recycler, material recovery facility, or baling
2 center.

3 (8) "Program" means the Texas clean and healthy
4 program.

5 (9) "Rebate" means a payment by a rebate center under
6 Section 375.0402 to a person who presents eligible material at the
7 rebate center.

8 (10) "Rebate center" means an operation approved by
9 the council to accept eligible material and issue a cash rebate or a
10 redeemable credit slip with a value not less than the material's
11 rebate value.

12 (11) "Recycler" means an entity that purchases
13 eligible material from a processor for the purposes of recycling.

14 (12) "Retailer" means a person who sells or provides
15 to a consumer a beverage container, single-use bag, or single-use
16 cup. The term includes the owner or operator of a beverage vending
17 machine.

18 (13) "Rural area" means an area that is not designated
19 as urbanized by the Bureau of the Census or under rules adopted by
20 the comptroller.

21 (14) "Single-use bag" means a bag provided by a
22 business establishment to a consumer at the point of sale for the
23 purpose of transporting a purchase. The term does not include a
24 carryout bag that:

25 (A) is specifically designed and manufactured to
26 be used multiple times;

27 (B) displays highly visible language on the

1 exterior of the bag describing the bag's ability to be reused and
2 recycled;

3 (C) has a handle; and

4 (D) is constructed out of cloth or other durable
5 materials whether woven or nonwoven.

6 (15) "Single-use cup" means a cup made of plastic,
7 including polystyrene, paper, or laminate material used to contain
8 a beverage purchased from a retailer.

9 (16) "Urban area" means an area that is designated as
10 urbanized by the Bureau of the Census or under rules adopted by the
11 comptroller.

12 Sec. 375.0102. ADMINISTRATION AND RULES. (a) The
13 comptroller shall administer the program with the advice of the
14 council.

15 (b) In administering the program, the comptroller shall:

16 (1) approve rebate centers under Section 375.0401;

17 (2) enforce compliance with the provisions of this
18 chapter;

19 (3) develop and implement a marketing plan to provide
20 information and educate consumers about the program;

21 (4) develop and maintain a publicly accessible
22 Internet website to provide information about the program,
23 including the location of rebate centers;

24 (5) develop a system for:

25 (A) approval of rebate centers and processors;

26 and

27 (B) reimbursement of deposits and rebates and for

1 distribution of handling fees;

2 (6) develop a system for monitoring the amount of
3 eligible material sold by retailers and the amount of eligible
4 material returned to rebate centers;

5 (7) develop a system to prevent fraudulent use of the
6 program;

7 (8) administer the fund as provided by Section
8 375.0303; and

9 (9) adopt procedures and forms necessary to implement
10 this chapter.

11 (c) After consultation with the council, the comptroller
12 may adopt rules necessary to implement this chapter.

13 (d) The comptroller may delegate to the council duties
14 described by Subsection (b) to the extent authorized by law.

15 Sec. 375.0103. REPORT TO LEGISLATURE. Not later than
16 December 1st of each even-numbered year, the comptroller shall
17 deliver a report to the lieutenant governor, the speaker of the
18 house of representatives, and the committee in each house of the
19 legislature that has primary jurisdiction over environmental
20 matters about the progress and success of the program.

21 SUBCHAPTER B. TEXAS CLEAN AND HEALTHY ADVISORY COUNCIL

22 Sec. 375.0201. TEXAS CLEAN AND HEALTHY ADVISORY COUNCIL.

23 (a) The council is formed to advise the comptroller in
24 administering the program.

25 (b) The council consists of 17 members appointed by the
26 comptroller as follows:

27 (1) one producer of beverage containers;

- 1 (2) one producer of single-use bags;
2 (3) one producer of single-use cups;
3 (4) one retailer who sells beverage containers;
4 (5) one retailer who uses single-use bags;
5 (6) one retailer who uses single-use cups;
6 (7) one processor of beverage containers;
7 (8) one processor of plastic film;
8 (9) one processor of single-use cups;
9 (10) one recycler of beverage containers;
10 (11) one recycler of plastic film;
11 (12) one recycler of single-use cups;
12 (13) one representative of the packaging industry that
13 uses recycled material;
14 (14) one representative of a rural rebate center;
15 (15) one representative of an urban rebate center;
16 (16) one representative of a statewide nonprofit
17 organization devoted to litter prevention; and
18 (17) one member of the public.

19 (b-1) To form the initial council, the comptroller shall
20 appoint members as described by Subsection (b) except that the
21 offices for the representatives described by Subsections (b)(14)
22 and (15) must remain vacant until one or more rural rebate centers
23 and urban rebate centers are formed and operating.

24 (c) The members serve staggered terms of two years with
25 eight or nine members' terms, as applicable, expiring February 1 of
26 each year.

27 (d) The members shall designate one member of the council to

1 serve as presiding officer.

2 Sec. 375.0202. COUNCIL DUTIES. The council shall make
3 recommendations to the comptroller with respect to:

4 (1) additional materials eligible for inclusion in the
5 program;

6 (2) a fee paid by consumers for eligible material;

7 (3) changes to the value of the rebate paid to
8 consumers for eligible material;

9 (4) standards for rebate centers;

10 (5) changes to the value of the handling fee paid to
11 processors;

12 (6) the establishment of a system for approving
13 processors;

14 (7) the establishment of a system for approving
15 recyclers;

16 (8) the education of consumers, rebate centers,
17 processors, and recyclers about the program;

18 (9) eligibility criteria for program development
19 grants; and

20 (10) the establishment of standards for eligible
21 material that contains postconsumer recycled content.

22 Sec. 375.0203. DELEGATION OF COUNCIL DUTIES. The
23 comptroller may delegate council duties to a cooperative
24 organization or commodity board that the comptroller determines
25 represents retailers, processors, and recyclers of eligible
26 material. An entity designated under this section may retain money
27 from the fund established under Section 375.0303 to administer and

1 manage the program, as determined by the comptroller.

2 SUBCHAPTER C. COLLECTION OF FEE

3 Sec. 375.0301. COLLECTION OF FEE BY RETAILER; EXCEPTIONS.

4 (a) Except as provided by Subsections (b), (c), and (d), a retailer
5 shall collect a fee of one cent from a consumer for each item of
6 eligible material that the retailer sells or distributes to the
7 consumer.

8 (b) A retailer is not required to collect a fee for a
9 single-use bag, a single-use cup, or a beverage container if the
10 retailer pays to the comptroller an amount that is equivalent to the
11 fees that would be collected for 95 percent of the single-use bags,
12 single-use cups, or beverage containers purchased by the retailer
13 for sale or distribution to consumers.

14 (c) A retailer may not collect a fee from a consumer under
15 this chapter if the consumer demonstrates that the consumer
16 receives assistance from:

17 (1) the supplemental nutrition assistance program
18 established under Chapter 33, Human Resources Code;

19 (2) the federal special supplemental nutrition
20 program for women, infants, and children authorized by 42 U.S.C.
21 Section 1786; or

22 (3) another food assistance program recognized by the
23 comptroller.

24 (d) The comptroller may suspend the collection of a fee
25 under this chapter during a state of disaster declared by:

26 (1) the president of the United States under the
27 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42

1 U.S.C. Section 5121 et seq.);

2 (2) the governor under Section 418.014, Government
3 Code; or

4 (3) the presiding officer of the governing body of a
5 political subdivision under Section 418.108, Government Code.

6 Sec. 375.0302. REMITTANCE OF FEES BY RETAILER. A retailer
7 shall remit to the comptroller the fees collected by the retailer
8 under Section 375.0301.

9 Sec. 375.0303. TEXAS CLEAN AND HEALTHY PROGRAM FUND. (a)
10 The Texas clean and healthy program fund is a special fund in the
11 treasury outside the general revenue fund. Section 404.071,
12 Government Code, does not apply to the fund. Interest earned and
13 other earnings on the investment of money in the fund are credited
14 to the fund.

15 (b) Fees collected under this chapter and money collected
16 under Section 375.0301(b) shall be deposited to the credit of the
17 Texas clean and healthy program fund maintained by the comptroller.
18 Money in the fund may be allocated only for:

19 (1) reimbursements and handling fees paid to rebate
20 centers or processors, as applicable;

21 (2) administration of this chapter;

22 (3) the provision of information and education of
23 consumers about the program; and

24 (4) the purposes authorized under this chapter.

25 SUBCHAPTER D. REBATE CENTERS AND HANDLING FEES

26 Sec. 375.0401. ESTABLISHMENT OF REBATE CENTER. (a)
27 Subject to Subsection (b), any person may establish, own, and

1 operate a rebate center at which empty eligible material may be
2 returned for rebate value. A rebate center may be located in
3 another business or engage in other forms of business.

4 (b) A person must file an application for approval of a
5 rebate center with the council. The application must provide any
6 information the comptroller requires as necessary or convenient for
7 the implementation of this section.

8 (c) The comptroller shall provide for expedited review and
9 approval of applications for rebate centers associated with a
10 school, school district, or disadvantaged community, including a
11 community without collection systems for eligible material.

12 (d) The council at any time may review its approval of a
13 rebate center.

14 Sec. 375.0402. REBATE FOR ELIGIBLE MATERIAL. (a) Except as
15 provided by Subsection (b), and subject to any additional antifraud
16 requirements developed by the comptroller under Section
17 375.0102(b)(7), a rebate center shall accept eligible material and
18 shall pay the rebate value of the material established by Section
19 375.0403 in cash, check, or, if permitted by rule, voucher to the
20 person presenting the material.

21 (b) A rebate center may refuse to accept eligible material
22 for rebate for reasons established by the comptroller.

23 Sec. 375.0403. REBATE VALUE. All eligible material
24 distributed, sold, or offered for sale in this state has a rebate
25 value of 25 cents per pound or a value set by the comptroller.

26 Sec. 375.0404. REIMBURSEMENT OF REBATE CENTER. On
27 submission of a completed invoice of rebates paid by a rebate center

1 on a form adopted by the comptroller, the comptroller shall pay to
2 the rebate center an amount equal to the rebate value established by
3 Section 375.0403 plus a handling fee, if applicable.

4 Sec. 375.0405. HANDLING FEE TO PROCESSORS. (a) The
5 comptroller shall pay to an approved processor a handling fee of:

6 (1) 60 cents per pound of eligible material processed
7 in an urban area; and

8 (2) 90 cents per pound of eligible material processed
9 in a rural area.

10 (b) The comptroller may adjust the rates provided by
11 Subsection (a) as necessary to reflect changes in market
12 conditions.

13 (c) To receive payment under this section, a processor must
14 submit to the comptroller a report demonstrating the processed
15 material was sold for recycling. Information contained in the
16 report submitted under this section is confidential and may not be
17 disclosed by the comptroller unless required by law.

18 (d) A processor may engage in other forms of business,
19 including the operation of a rebate center.

20 SUBCHAPTER E. OTHER PROGRAMS AND RELATED ACCOUNTS

21 Sec. 375.0501. LITTER ENFORCEMENT AND EDUCATION GRANT
22 PROGRAM AND ACCOUNT. (a) The litter enforcement and education
23 grant program is established to provide grants to counties to
24 develop and implement litter and illegal dumping abatement and
25 enforcement programs.

26 (b) The grant program established by this section is
27 administered by the comptroller. The comptroller may partner with

1 or designate a statewide litter prevention nonprofit organization
2 to administer the program established under this section.

3 (c) The litter enforcement and education account is an
4 account in the Texas clean and healthy program fund established by
5 Section 375.0303. The account consists of:

6 (1) revenue from the program allocated by the
7 comptroller; and

8 (2) interest earned and other earnings on the
9 investment of money in the account.

10 (d) Money in the account may be appropriated only to award
11 grants to counties as provided by this section.

12 (e) The comptroller shall develop an application process
13 for the submission by counties of applications to receive grants
14 provided under this section.

15 (f) The comptroller shall issue to a county receiving a
16 grant under this section:

17 (1) not less than \$100,000 per year; and

18 (2) for every 500,000 persons residing in the county,
19 an additional \$100,000 per year.

20 (g) Grants awarded by the comptroller under this section may
21 be used only for:

22 (1) the abatement and enforcement of violations of
23 Chapters 341, 343, and 365 of this code and Chapter 7, Water Code;

24 (2) the establishment and management of litter
25 control, solid waste management, or recycling systems; and

26 (3) the support of litter prevention, solid waste
27 management, and recycling education programs.

1 (h) A county receiving a grant under the program may
2 coordinate with the appropriate council of government to:

- 3 (1) use personnel to administer this section; and
4 (2) establish training programs to implement this
5 section.

6 Sec. 375.0502. PROGRAM DEVELOPMENT GRANT ACCOUNT. (a) The
7 program development grant account is an account in the Texas clean
8 and healthy program fund established by Section 375.0303. Section
9 404.071, Government Code, does not apply to the account.

10 (b) The account consists of any available funds
11 appropriated for the purposes of this section.

12 (c) The program development grant account shall be used to
13 provide grants for the construction of rebate centers.

14 (d) This section expires and the program development grant
15 account is abolished September 1, 2027.

16 Sec. 375.0503. PUBLIC HEALTH EMERGENCY ACCOUNT. (a) The
17 public health emergency account is an account in the Texas clean and
18 healthy program fund established by Section 375.0303. Section
19 404.071, Government Code, does not apply to the account.

20 (b) The account consists of:

21 (1) the balance of program money not allocated to the
22 litter enforcement and education grant program established by
23 Section 375.0501 or another purpose provided by this chapter; and

24 (2) interest earned and other earnings on the
25 investment of money in the account.

26 (c) The comptroller may disburse money in the account to
27 assist prevention, mitigation, or recovery programs related to

1 public health emergency declarations.

2 (d) The balance of the account may not exceed \$1 billion.
3 Any amount, including interest earned, in excess of \$1 billion
4 shall be deposited to the credit of the Texas clean and healthy
5 program fund established by Section 375.0303.

6 SECTION 2. (a) Not later than September 1, 2022, the
7 comptroller of public accounts shall appoint members of the Texas
8 Clean and Healthy Advisory Council and, after consultation with the
9 Texas Clean and Healthy Advisory Council, shall adopt any rules
10 necessary to implement Chapter 375, Health and Safety Code, as
11 added by this Act.

12 (b) The requirements of Chapter 375, Health and Safety Code,
13 as added by this Act, do not apply to any person before March 1,
14 2023.

15 SECTION 3. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2021.