

BILL ANALYSIS

Senate Research Center

C.S.S.B. 338
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Business & Commerce
3/25/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Plastic grocery bags are becoming a large part of Texas' waste and litter. While many stores and municipalities have independently tried to address the issue by entering into campaigns aimed at reducing the amount of plastic bags entering the stream of commerce, no uniform, statewide policy currently exists designed to reduce the number of plastic grocery bags.

C.S.S.B. 338 requires large businesses to sell reusable carryout bags at a reasonable price, provide employee training regarding reusable bags, maintain a recycling program for plastic bags, and maintain records of the amount of bags recycled by the business.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 376.006, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Health and Safety Code, by adding Chapter 376, as follows:

CHAPTER 376. CHECKOUT BAGS

Sec. 376.001. DEFINITIONS. Defines "business," "checkout bag," "commission," and "reusable bag."

Sec. 376.002. APPLICABILITY. Provides that this chapter does not apply to a business with fewer than 51 employees or whose principal business activity is providing prepared food for immediate consumption.

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

(b) Requires a business described by Subsection (a) to provide training to an employee whose position may include offering a plastic checkout bag to a customer. Requires that the training include efficient bagging techniques, offering the sale or distribution of reusable bags, and other procedures intended to reduce the utilization of plastic checkout bags.

Sec. 376.004. RECYCLING PROGRAM. Requires a business that offers a plastic checkout bag to a customer, except as provided by Subsections (b) and (c), to establish a checkout bag recycling program that requires the business to:

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

(2) place in a visible, easily accessible location at or near the entrance of the business a plastic checkout bag to a customer, a plastic checkout bag collection bin clearly marked with information stating that the bin is for the purpose of collecting and recycling plastic checkout bags;

(3) maintain on a yearly basis records describing the collection, transport, and recycling of plastic checkout bags under the program established under this section; and

(4) make the records of the program available to the Texas Commission on Environment Quality (TCEQ) on request.

(b) Authorizes a business with only one opening for both customer entrance and exit to comply with the requirements of Subsection (a)(2) by placing near the entrance one plastic checkout bag collection bin clearly marked with information stating that the bin is for the purpose of collecting and recycling plastic checkout bags.

(c) Provides that a business is exempt from establishing a plastic checkout bag recycling program as required by Subsection (a) if the business is not located in a municipality or a county that operates a recycling program that accepts plastic checkout bags and a private recycling service that accepts plastic checkout bags is not available to the business at a reasonable cost.

(d) Authorizes a business required to maintain records under this section to collect records in a centralized manner.

Sec. 376.005. PREEMPTION OF LOCAL ORDINANCE. Provides that this chapter preempts a local ordinance or rule to the extent of any conflict with this chapter.

Sec. 376.006. RULES. Requires TCEQ to adopt rules to implement this chapter.

SECTION 2. Amends Section 7.052, Water Code, by adding Subsection (b-3), to prohibit the amount of the penalty for a violation of Chapter 376 (Checkout Bags), Health and Safety Code, from exceeding: \$200 for the first violation; \$400 for the second violation, if the violation occurs on or before the first anniversary of the date of the first violation; or \$600 for the third violation or a subsequent violation, if the violation occurs on or before the first anniversary of the date of the preceding violation.

SECTION 3. Amends Subchapter C, Chapter 7, Water Code, by adding Section 7.076, as follows:

Sec. 7.076. AFFIRMATIVE DEFENSE. Provides that it is an affirmative defense to the imposition of an administrative penalty for a violation of Chapter 376, Health and Safety Code, if the business corrects the condition causing the violation in a timely manner. Provides that the affirmative defense is available for a violation of Section 376.004(a)(2) or (b), Health and Safety Code, resulting from the theft of a bin if the business replaces the stolen bin within a reasonable period of time or Section 376.003(a), Health and Safety Code, resulting from the temporary lack of reusable bags for sale if the business restocks the supply of reusable bags within a reasonable period of time.

SECTION 4. Amends Sections 7.102 and 7.103, Water Code, as follows:

Sec. 7.102. MAXIMUM PENALTY. Requires a business that causes, suffers, allows, or permits a violation of a statute, rule, or order relating to Chapter 376, Health and Safety Code, to be assessed a civil penalty not greater than \$100 for each day of each violation as the court or jury considers proper.

Sec. 7.103. CONTINUING VIOLATIONS. (a) Creates an exception under Subsection (b).

(b) Requires the defendant, if it is shown on the trial of a defendant for a violation of Chapter 376, Health and Safety Code, or a rule adopted or an order issued under that chapter that the defendant has previously been assessed a civil penalty for a violation of that chapter or a rule adopted or an order issued under that chapter within the year before the date on which the violation being tried occurred, to be assessed a civil penalty not greater than: \$200 if the violation being tried is the defendant's second violation of that chapter or a rule adopted or an order issued under that chapter; or \$500 if the violation being tried is the defendant's third or a subsequent violation of that chapter or a rule adopted or an order issued under that chapter.

(c) Creates this subsection from existing text.

SECTION 5. Amends Subchapter D, Chapter 7, Water Code, by adding Section 7.112, as follows:

Sec. 7.112. AFFIRMATIVE DEFENSE. Provides that it is an affirmative defense to the imposition of a civil penalty for a violation of Chapter 376, Health and Safety Code, if the business corrects the condition causing the violation in a timely manner. Provides that the affirmative defense is available for a violation of Section 376.004(a)(2) or (b), Health and Safety Code, resulting from the theft of a bin if the business replaces the stolen bin within a reasonable period of time or Section 376.003(a), Health and Safety Code, resulting from the temporary lack of reusable bags for sale if the business restocks the supply of reusable bags within a reasonable period of time.

SECTION 6. Makes application of Section 376.005, Health and Safety Code, as added by this Act, prospective.

SECTION 7. Effective date: January 1, 2010.

Effective date, Section 376.006, Health and Safety Code: September 1, 2009.