

By: Hernandez Luna

H.B. No. 3236

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 checkout 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:

12 (1) make a reusable bag available for sale at a  
13 reasonable price; and

14 (2) display the reusable bag at or near the point of  
15 sale.

16 (b) Before an employee of the business provides a customer  
17 with a plastic checkout bag, the employee shall ask the customer if  
18 the customer would like to purchase a reusable bag.

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

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

25 (2) place in a visible, easily accessible location  
26 near each public entrance of either a business or a shopping mall  
27 that contains a business that offers a plastic checkout bag to a

1 customer a plastic checkout bag collection bin clearly marked with  
2 information stating that the bin is for the purpose of collecting  
3 and recycling plastic checkout bags;

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

7 (4) make the records of the program available to the  
8 commission on request.

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

13 (1) alternatives to plastic checkout bags;  
14 (2) companies that recycle plastic checkout bags;  
15 (3) companies that sell biodegradable checkout bags;

16 and

17 (4) products that are made of recycled plastic from  
18 checkout bags.

19 Sec. 376.006. RULES. The commission shall adopt rules to  
20 implement this chapter.

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

23 (b-3) The amount of the penalty for a violation of Chapter  
24 376, Health and Safety Code, may not exceed \$200, except that, if  
25 the person has previously been determined by the commission to have  
26 violated the chapter:

27 (1) one time during the 12-month period preceding the

1 commission of the instant violation, the fine may not exceed \$400;  
2 or  
3 (2) two or more times during the 24-month period  
4 preceding the commission of the instant violation, the fine may not  
5 exceed \$600.

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

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

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

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

18                   (1) \$200 if the violation being tried is the  
19 defendant's second violation of that chapter, other than Section  
20 376.003, or a rule adopted or an order issued under that chapter; or

21                   (2) \$500 if the violation being tried is the  
22 defendant's third or a subsequent violation of that chapter, other  
23 than Section 376.003, or a rule adopted or an order issued under  
24 that chapter.

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

27           SECTION 4. (a) The Texas Commission on Environmental

1 Quality shall conduct a study to determine:

2 (1) the impact of Chapter 376, Health and Safety Code,  
3 as added by this Act, on businesses and the environment;

4 (2) the effectiveness of the recycling programs  
5 established under Chapter 376, Health and Safety Code, as added by  
6 this Act;

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 January 1, 2013, the Texas Commission on  
13 Environmental Quality shall submit a report regarding the results  
14 of the study to the standing committees of the senate and house of  
15 representatives having primary jurisdiction over environmental  
16 issues.

17 SECTION 5. This Act takes effect January 1, 2012, except  
18 that Section 376.006, Health and Safety Code, as added by this Act,  
19 takes effect September 1, 2011.