

- SUBJECT:** Penalties for illegal sale of plastic bulk merchandise containers
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Giddings, Elkins, Darby, Bohac, Castro, Solomons, Zedler
0 nays
2 absent — Bailey, Martinez
- WITNESSES:** For — Lee Lockhard, Coca-Cola Enterprises (*Registered, but did not testify*: David Cain, Dean Foods; David Sords, Texas Beverage Association)
Against — None
- DIGEST:** CSHB 1871 would create requirements and penalties for people who recycle, shred, or destroy “plastic bulk merchandise containers,” defined as plastic crates or shells used by a producer, distributor or retailer for the transportation or storage of food and beverage products.
- Adding a new sec. 35.63 of the Business and Commerce Code, the bill would regulate the sale of such containers by requiring a person engaged in the business of recycling, shredding, or destroying plastic containers to record the following information prior to purchasing five or more containers from the same seller:
- the seller’s proof of ownership;
 - the name, address, and telephone number of the seller’s authorized representative ;
 - the buyer’s name and address;
 - a description of the containers and the number of containers to be sold; and
 - the transaction date
- Plastic container buyers also would be required to verify the identity of each seller, using a driver’s license or other government-issued form of photo identification. The buyer would have to retain a record of this transaction for one year after the containers were purchased or delivered.

A person who violated the bill's requirements to gather and record the transaction information would be liable for a civil penalty of \$10,000 per violation. A person who falsely documented a transaction in an effort to skirt the provisions of the bill would be liable for a civil penalty of \$30,000 for each violation.

The attorney general or another prosecuting attorney would be able to sue in order to collect either type of civil penalty.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1871 would help curb the theft of plastic bulk containers by preventing thieves from selling them legally to plastics reprocessors. The illegal sale of plastic bulk merchandise containers is an increasingly common and lucrative business. After protecting food and beverage products during the delivery process, plastic containers typically are stacked outside of stores, awaiting pick-up from the rightful owners. However, these containers sometimes are stolen and sold to recycling, processing, or shredding businesses for up to \$1 per container. In 2006, Coca Cola lost an estimated \$5.2 million in replacement costs for missing plastic bulk merchandise containers in Texas alone. Similarly, Dean Foods paid \$4.8 million in 2006 to replace plastic containers lost in Texas.

CSHB 1871 would eliminate the economic incentive that encourages an individual to steal plastic containers from stores. By requiring plastics reprocessors to record certain information from sellers of five or more plastic containers, the bill would assure that only those in rightful possession of the containers could obtain money for them.

The requirement for a seller to produce photo identification would not be excessively intrusive. CSHB 1871 is similar to a law approved in California in 2007, which makes it illegal for a plastics reprocessor to accept bulk merchandise containers unless the seller produces photo identification and proof of ownership.

The bill would not create legal consequences for businesses or individuals in possession of these plastic containers. If a company wanted to sell its damaged containers to a plastics reprocessor, it easily could abide by the identification process specified in the bill. In addition, a person cleaning out a garage or dorm room who simply wished to recycle one or two old plastic crates would not be hampered by the provisions of CSHB 1871.

Grocery stores and other retailers often lack space to keep plastic delivery containers inside the store, and they should not have to accept responsibility for containers waiting outside for pick-up. If distributors of food and beverage products charged a deposit for containers, certain stores could discontinue business with these distributors in favor of others that did not require a plastic container deposit.

**OPPONENTS
SAY:**

This bill is designed to target people who habitually steal and resell plastic merchandise crates. In the process, it would create a disincentive for honest citizens to dispose of old plastic crates in an environmentally responsible manner. Plastic bulk merchandise crates often are legally obtained for use in dorm rooms as bookshelves or in garages as storage containers. However, people who use crates for such purposes might not be able to demonstrate legal ownership and could be thwarted by this bill in their efforts to recycle them.

New administrative burdens and harsh penalties should not be imposed upon businesses that recycle, process, or shred plastics. If the theft of plastic food and beverage containers is a problem serious enough to warrant legislation, the people who illegally sell plastic bulk merchandise containers should be penalized, rather than making plastics reprocessors liable for civil fines of \$10,000 or even \$30,000 per violation.

The bill would be unnecessarily intrusive in requiring photo identification and other information from plastic sellers. Instead of increasing government oversight, this issue should be addressed by simply letting the marketplace work. For instance, companies could charge a deposit on plastic containers if they were truly concerned about having to pay to replace these items.

NOTES:

The bill as introduced would have made a violation of the bill's record-keeping provisions a class C misdemeanor (maximum fine of \$500), rather than the civil penalties of \$10,000 and \$30,000 for violations under CSHB 1871.