

- SUBJECT:** Prohibiting cash purchases of plastic bulk merchandise containers
- COMMITTEE:** Environmental Regulation — favorable, without amendments
- VOTE:** 6 ayes — Harless, Márquez, Lewis, Reynolds, C. Turner, Villalba
1 nay — E. Thompson
2 absent — Isaac, Kacal
- SENATE VOTE:** On final passage, April 11 — 30 - 1 (Fraser)
- WITNESSES:** (*On House companion bill, HB 1910:*)
For — Allen Fischer, Bimbo Bakeries Inc. and Texas Retailers Association; Ronnie Volkening, Texas Retailers Association; (*Registered, but did not testify:* Mary Calcote, Pepsico; Doug DuBois, Jr., Texas Food & Fuel Association; Brenda Eschberger and Sara Kemptner, Texas Beverage Association; Glen Garey, Texas Restaurant Association; Stephanie Gibson, Texas Retailers Association; Jim Reaves, Texas Nursery & Landscape Association; Gary Tittle, Dallas Police Department)

Against — Dana Ambs, Texans for Accountable Government; (*Registered, but did not testify:* Karen Hadden, Sustainable Energy and Economic Development (SEED) Coalition; Amy Driscoll; Mel Mason; Michele Simpson)
- BACKGROUND:** Business and Commerce Code, ch. 204 requires a person in the business of recycling, shredding, or destroying plastic containers to record the following information before purchasing five or more containers from the same seller:
- the seller’s proof of ownership;
 - the seller’s name, address, and telephone number;
 - the buyer’s name and address;
 - a description of the containers and the number to be sold; and
 - the transaction date.

Plastic container buyers must verify the identity of each seller using a

driver's license or other government-issued form of photo identification. The buyer must retain a record of this transaction for one year. A violation of the requirement to gather and record transaction information is subject to a civil penalty of \$10,000 per violation. Falsely documenting a transaction to skirt the provisions of the statute is punishable by a civil penalty of \$30,000 for each violation.

The attorney general or appropriate prosecuting attorney may investigate an alleged violation, sue to collect the civil penalty, and recover reasonable expenses associated with recovering a civil penalty.

Plastic container buyers who violate these conditions commit a class C misdemeanor, punishable by a fine of up to \$350, if the containers are valued less than \$1,000, or up to \$700, if the containers are valued \$1,000 or more. For second offenses, the fine can be double the maximum amount of the fine for the first offense.

DIGEST:

SB 875 would require a person in the business of recycling, shredding, or destroying plastic bulk merchandise containers either to verify the seller's identity via a government-issued document with a photograph or identify the seller as a representative acting on behalf of a corporation, business, government, or government subdivision or agency before purchasing five or more containers.

If the seller did not represent a corporation, business, or government entity, the purchaser could not pay the seller in cash and would have to record the payment method for any transaction involving one or more plastic bulk merchandise containers. This record would have to be attached to the purchaser's other records for the seller.

A person who violated these provisions would be liable for a civil penalty of up to \$10,000 for each violation. Each cash transaction would be considered a separate violation. In determining the amount of the penalty, the court would have to consider the amount necessary to deter future violations.

The bill would permit the attorney general or an appropriate prosecuting attorney to inspect the sales records kept by purchasers of plastic bulk merchandise containers.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 875 would deter the theft of plastic bulk containers by prohibiting certain individuals from receiving cash payments for these items and would add new record keeping requirements. This would close a loophole in current law and provide consequences forceful enough to deter criminals. Plastic bulk merchandise containers used to transport milk and other beverages have been a target for theft because they can be sold to a recycler for cash. A cash transaction spares the seller and the buyer from documenting the sale, which hampers law enforcement investigations since there is no proof of wrongdoing.

Retailers have little room to store these crates, so the expectation that retailers should store them elsewhere to prevent their theft is unrealistic.

**OPPONENTS
SAY:**

SB 875 would create an undue burden on recycling businesses. Current law provides stringent identification and recording requirements, which ensure that businesses do their due diligence to purchase only legally obtained crates. The problem would not be solved by adding more regulation to business.

If the theft of plastic food and beverage containers is a problem serious enough to warrant legislation, retailers should find a better way to store these crates between deliveries from their distributors. Retailers “store” these crates on outside loading and unloading docks, which are accessible to the public and afford little security to deter theft. Retailers should take responsibility for protecting their property instead of placing the burden on other people and entities.

NOTES:

The House companion, HB 1910 by Smith, was left pending in the House Committee on Environmental Regulation after a public hearing on March 26.