

SUBJECT: Class C misdemeanor offense for illegally recycling plastic crates

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Deshotel, Elkins, Giddings, Keffer, S. Miller, Orr, Quintanilla, S. Turner

0 nays

3 absent — Christian, England, Gattis

WITNESSES: For — Lee Lockard, Coca-Cola Enterprises; David Sords, Texas Beverage Association; (*Registered, but did not testify*, Kathy Barber, Texas Retailers Association; Chuck Girard, Pepsico; Gary Tittle, Dallas Police Department)

Against — None

BACKGROUND: The 80th Legislature in 2007 enacted HB 1871 by Giddings, which created requirements and penalties for the illegal sale of bulk merchandise containers. The statute 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 name, address, and telephone of the seller's authorized representative;
- 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 identify 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 after the containers were purchased or delivered.

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 in an effort to skirt the provisions of the statute is subject to a civil penalty of \$30,000 for each violation.

DIGEST:

HB 2127 would create a class C misdemeanor offense for the unlawful purchasing of plastic containers for recycling. On a first offense, the punishment would be a fine not more than \$350 for up to \$1,000 worth of plastic containers and not more than \$700 for more than \$1,000 worth of plastic containers. For a second or subsequent offense, the fine would double.

The bill would be added to the Business and Commerce Code as either sec. 204.005 or as an addition to sec. 35.63, depending on whether or not the Legislature enacted non-substantive additions and corrections to the code.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 2127 would help curb the theft of plastic bulk containers by discouraging thieves from selling them illegally to plastics re-processors. The illegal sale of plastic bulk merchandise containers is an increasingly 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 often 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 in Texas.

HB 2127 would eliminate the economic incentive that encourages people to steal plastic containers from stores. By assigning a criminal charge, albeit a misdemeanor, to the illegal recycling of plastic containers, HB 2127 would deter thieves from stealing them. Legislation from last session that required recyclers to identify and keep records of their customers was not sufficient in reducing the wave of plastic theft. HB 2127 would put more teeth into the law by establishing a criminal offense.

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 re-processor, it easily could do so by abiding by the recording requirements in current law. 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 HB 2127.

HB 2127 would prevent distributors from asking for a deposit fee from grocery stores. 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 decided to charge a deposit fee in an effort to recover their losses, grocery stores likely would refuse to pay the fee and discontinue business with distributors who charged the fee in favor of those who did not.

**OPPONENTS
SAY:**

HB 2127 would create a disincentive for everyday citizens to dispose of old plastic crates in a responsible manner. Plastic bulk crates are often legally obtained for use in dorm rooms as bookshelves or in garages as storage containers. However, people who use crates might not be able to demonstrate legal ownership and could be thwarted by this bill in their efforts to recycle them.

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 should be punished, not the recyclers. The vast majority of plastic recyclers are operating honest business operations. Those who knowingly accept stolen merchandise are in the minority. HB 2127 would interfere with legitimate businesses and would not address the source of the plastic crate theft problem.

**OTHER
OPPONENTS
SAY:**

The value of stolen plastic crates is high enough that a small fine would not serve as a deterrent. The price of the plastic used in such containers has more than doubled over the past few years, making plastic crate theft an \$80 million per year black market. Assigning a fine of up to \$350 would not be a severe enough punishment to deter recycling illegal plastic.