



SENATE JUDICIARY COMMITTEE
Senator Joseph L. Dunn, Chair
2005-2006 Regular Session

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| AB 2289 | A |
| Assembly Member Ruskin | B |
| As Amended June 15, 2006 | |
| Hearing Date: June 20, 2006 | 2 |
| Business and Professions Code | 2 |
| GWW:rm | 8 |
| | 9 |

SUBJECT

Plastic Bulk Merchandise Containers
-Proof of Ownership Needed for Recycling-

DESCRIPTION

This bill would require a person involved in the recycling, shredding, or destruction of a plastic bulk merchandise container to obtain a proof of ownership from the person selling or otherwise transferring the container to the recycler. The bill would specify the information required in the proof of ownership and would require the recycler to retain the information for one year from the date of purchase or delivery of the plastic materials. A violation of these provisions would be a misdemeanor punishable by a 6-month county jail term and/or a \$1,000 fine.

(This analysis reflects an author's amendment to be offered in committee.)

BACKGROUND

This bill seeks to deter the theft of plastic crates commonly used for the bulk transportation or storage of egg, milk and soda products by making it unlawful for a plastics reprocessor (i.e., recycler) to accept the plastic crate for recycling unless accompanied by a proof of ownership. According to the author's office, these containers are often stolen from the back areas of supermarkets and retailers where they are placed for pickup by the product producer. The thieves in turn take the

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AB 2289 (Ruskin)

stolen crates to the plastics recycler, where they may be paid 80 cents to a dollar for each crate.

Originally, the bill was drafted to meld itself into the current law making it unlawful and potentially punishable as a felony or a misdemeanor for a person to possess a shopping or laundry cart, a bakery tray or basket, or a merchandise pallet without authorization. However, due to significant distinctions between dairy crates and shopping carts, including but not limited to its cost, manner of usage and storage, and the fact that some crates may be sold as part of the retail transaction, the measure was pared back significantly in the Senate to its amended form.

As so amended, on the one hand, innocent possessors would not face potential misdemeanor or felony penalties for mere possession; and on the other hand, thieves would not be able to profit from their crime because they would not be able to sell the stolen containers without proof of ownership documents.

CHANGES TO EXISTING LAW

Existing law makes it punishable as a misdemeanor or felony for an unauthorized person, as defined, to possess a bakery tray, bakery basket, or merchandise pallet. [Business and Professions (B & P) Code Section 22753.]

Existing law requires a purchaser or lessee of a bakery tray, bakery basket or merchandise pallet to retain a copy of the bill of sale or other evidence that supports the sale. [B & P Code Section 22751.]

This bill would require any person involved in the recycling, shredding, or destruction of a plastic bulk merchandise container to obtain a proof of ownership record from the person selling or otherwise transferring the container to the recycler. This bill would require the proof of ownership record to include all of the following information:

- 1) The name, address, telephone number, and signature of the seller or transferor or the seller's or transferor's authorized representative.
- 2) The name and address of the buyer or consignee if not sold.
- 3) A description of the product including number of units.

4) The date of transaction.

This bill, would require the recycler to keep this record for one year from the date of purchase or delivery, whichever is later.

The bill, as amended by author's amendment would apply to a "plastic bulk merchandise container," which would be defined as a "plastic crate used by a distributor, retailer, or an agent of the distributor or retailer as a means to transport, store, or carry milk, eggs, or bottled beverages."

COMMENT

1. Stated need for bill

According to the author, this bill is needed to address a growing problem of plastic crates and shells being stolen from grocery store docks and then being taken to recyclers to be shredded. The sponsor, Rockview Farms, reportedly lost 424,000 milk crates in 2005 at a cost of \$1.6 million, up from 350,000 lost in 2004. (It is not known whether these losses were solely in California or nationwide.)

According to the author's office, the cost of a new milk crate is around \$4.80 to \$5.00 and that the cash return on recycling one of these containers is \$0.80 to \$1.00. The author contends that his bill will significantly reduce the theft of crates and shells by requiring recyclers to obtain proof of ownership before accepting these containers for recycling. Since thieves will not be able to provide the proof of ownership to sell the stolen materials, this bill should eliminate the economic incentive for thefts of these plastic bulk containers.

In support, the Dairy Institute of California supports this bill asserting that "dairy processors throughout California are suffering losses in the tens of millions of dollars each year due to theft of plastic milk cases and other equipment. The provisions of [this bill] would go far in enhancing the enforcement tools of regulators and local police and sheriff agencies to aid in stemming these losses."

2. Opposition from recycling industry

The California Refuse Removal Council (CRRC) opposes AB 2289, contending that the bill unfairly exposes innocent solid waste recyclers to threat of criminal sanctions and stifles materials recycling. CRRC writes:

not all materials that enter a recycling facility are accompanied by a bill of sale. In fact, it is often the case that milk cases, milk crates, or similar items are placed in the trash and collected in the ordinary course of business. Our members understandably treat these items as having been discarded?. In most cases, the recycling facility operator has no way of knowing the origin of the case or crate, or whether the material was stolen.

CRRC concludes that AB 2289 fails to distinguish between containers that are discarded into the waste stream, and those which are acquired through a "buy-back" process involving actual sales transactions. As a consequence, CRRC asserts, innocent waste recyclers would be subject to criminal liability even though the person has not committed a crime.

3. Should the bill distinguish between waste materials and "buy-back" materials?

CRRC appears to raise a legitimate issue with respect to the public policy need for its members to obtain proof of ownership from the transferring party when the materials are being or were collected as part of a waste collection (including recycled waste) program. Indeed, it would be the height of bureaucracy to have to fill out paperwork to discard waste (except, of course in cases involving hazardous waste). Further, public policy should encourage the recycling of discarded plastic containers, and a policy requiring seemingly needless paperwork would discourage some who would find it easier to just discard the plastic crate randomly along the side of the road or as part of regular garbage.

In contrast, there appears to be sound public policy reasons requiring proof of ownership in the sale of these

plastic crates to a recycler for recycling. A proof of ownership requirement should deter non-owners from being able to sell their stolen wares. This elimination of the economic incentive might even stop the stealing of the material in the first instance, thus allowing the owner to retain his or her property.

SHOULD NOT THE BILL DISTINGUISH BETWEEN PLASTIC CRATES THAT ARE PURCHASED THROUGH A BUY-BACK OR OTHER SIMILAR PROGRAM, AND CRATES THAT ARE OBTAINED THROUGH THE COLLECTION OF WASTE MATERIALS?

Suggested amendment:

The following amendments would limit the bill to situations where the recycler is purchasing the plastic containers for recycling.

On page 3, in lines 5 and 6, strike out "or otherwise transferring"

On page 3, line 9, strike out "or transferor" in the two places it appears.

4. Other suggested amendments

- a) Definition of plastic bulk merchandise container may need tightening

The following revision of proposed subdivision (a) on page 2, line 7, is suggested for greater completeness and clarity.

(a) For purposes of this section, a plastic bulk merchandise container means a plastic crate or shell used by a product producer, distributor, retailer, or agent of the product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, eggs, and bottled beverage products.

The proposed revision includes the product producer, who actually owns and determines the uses of the crates, within the definition. It also seeks to clearly distinguish between these bulk plastic

containers from the retail plastic containers, such as the plastic soda bottle, which consumers regularly purchase and less regularly recycle.

b) Should the person selling the recycled materials also be required to furnish his or her name and a driver's license or identification number?

AB 2289 would require the person selling the plastic crates for recycling to provide a proof of ownership that includes the name, address, telephone number, and signature of the seller or seller's authorized representative, and the name and address of the buyer.

A potential problem with this scheme is that the seller need not be the named owner on the proof of ownership. Thus, a sophisticated thief could potentially forge the proof of ownership papers to show to the recycler. Also, the current language does not require the seller to show he or she is the lawful owner or possessor of the materials being sold. Moreover, the current scheme would not even require the seller to furnish his or her own identification, thereby making the loophole even easier to exploit.

Suggested amendments to close potential loophole

On page 3, line 6, after "container" insert: that shows that the person selling the container has lawful possession or ownership of the container

Suggested amendment to require seller to furnish license or ID number

On page 3, line 5, after "record" insert: and driver's license or identification number and

Support: Alta Dena; California Dairy Campaign; California Nevada Soft Drink Association; Dairy Institute of California; Producers Dairy

Opposition: California Refuse Removal Council

HISTORY

Source: Rockview Farms

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote: On previous bill

Assembly Floor (45 - 26)

Assembly Appropriations Comm. (12 - 5)

Assembly Business and Professions Comm. (7 - 3)
