

AMENDED IN SENATE AUGUST 22, 2008
AMENDED IN SENATE AUGUST 13, 2008
AMENDED IN SENATE AUGUST 4, 2008
AMENDED IN SENATE JULY 1, 2008
AMENDED IN SENATE JUNE 23, 2008
AMENDED IN SENATE JUNE 10, 2008
AMENDED IN ASSEMBLY MAY 23, 2008
AMENDED IN ASSEMBLY APRIL 23, 2008
AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1851

**Introduced by Assembly Member Nava
(Principal coauthor: Assembly Member Leno)**

January 29, 2008

An act to add Division 25.7 (commencing with Section 38700) to the Health and Safety Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

AB 1851, as amended, Nava. Greenhouse gas credits.

Under existing law, a person or entity that represents that a consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of specified environmental terms, is required to maintain in written form in its records information and documentation supporting the validity of the representation, as

specified. Existing law provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. A violation of these requirements is a misdemeanor.

This bill would make it unlawful for a person, as defined, to represent in an advertisement, ~~in promotional material on the Internet~~, or in any other sales or promotional materials made available to the public; for the sale ~~or use~~ of a greenhouse gas credit or emission reduction, that the credit or reduction reduces greenhouse gas emissions unless certain requirements are met. The bill would also require a person ~~or entity~~ that represents in an advertisement, ~~in promotional material on the Internet~~, or in any sales or promotional materials; *made available to the public* for the sale ~~or use~~ of a greenhouse gas credit or emission reduction, that the credit or emission reduction results in a reduction of greenhouse gases to maintain in written form and make available to ~~the public~~ *any member of the public who requests it* certain information and documentation supporting the validity of that representation. A violation of these provisions would be punishable by a specified civil penalty and would create a civil cause of action. Reasonable attorney fees and costs would be available for any such action brought. *These requirements would become operative on January 1, 2010, and would become inoperative if the Federal Trade Commission adopts binding and enforceable trade rules or regulations for claims or representations for greenhouse gas emission reduction credits or reductions to protect consumers.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 25.7 (commencing with Section 38700)
2 is added to the Health and Safety Code, to read:

3
4 DIVISION 25.7. GREENHOUSE GAS REDUCTION
5 REPRESENTATIONS
6

7 38700. The Legislature finds and declares all of the following:
8 (a) Global warming poses a serious challenge to the world's
9 environment and economy.

1 (b) With increasing concern regarding climate change, there
2 has been an increase in the advertising, sale, and transfer of
3 greenhouse gas emission reduction credits, offsets, and similar
4 products designed to allow individuals or entities, or both, to
5 purchase emission reduction credits ~~in lieu of actually making~~
6 ~~those reductions themselves.~~ *to voluntarily offset greenhouse gas*
7 *emissions from the activities of the purchaser.*

8 (c) ~~Consumers~~ *While voluntary greenhouse gas emission*
9 *reductions can contribute to efforts to reduce global warming,*
10 *consumers* and other members of the public have few protections
11 or standardized methods by which to ensure that they are
12 purchasing or obtaining emission reduction credits that actually
13 reduce greenhouse gases, reduce global warming, and improve the
14 environment.

15 (d) ~~The purpose of this division is to provide consumers with~~
16 ~~the protections needed to ensure that they are purchasing credits~~
17 ~~that actually result in emission reductions and that warrant their~~
18 ~~expenditures for those credits.~~

19 (d) *The purposes of this division are to protect the consumer*
20 *and to ensure that the benefits to the environment through the sale*
21 *of legitimate greenhouse gas emission reduction credits, offsets,*
22 *or similar products are realized.*

23 38701. (a) For the purposes of this division, “greenhouse gas
24 credit,” “emission reduction,” “credit,” “offset,” “reduction,” or
25 any similar term, means a voluntary reduction in the ~~production~~
26 *emissions* of greenhouse gases *into the atmosphere* undertaken for
27 the purposes of selling, trading, or otherwise providing the credit
28 or emission reduction to another party.

29 (b) For the purposes of this division, “person” has the same
30 meaning as set forth in subdivision (c) of Section 17577.1 of the
31 Business and Professions Code.

32 38702. It is unlawful for any person to represent in an
33 advertisement, ~~in promotional material on the Internet,~~ or in any
34 other sales or promotional materials made available to the public;
35 for the sale ~~or use~~ of a greenhouse gas credit or emission reduction,
36 that the credit or reduction reduces greenhouse gas emissions unless
37 it meets one or more of the following conditions:

38 (a) The credit or emission reduction ~~has been approved~~ *meets*
39 *methodologies that have been adopted* by the State Air Resources

1 Board as being in compliance with Division 25.5 (commencing
2 with Section 38500), including, but not limited to, Section 38571.

3 (b) The credit or emission reduction complies with one or more
4 protocols for voluntary emission reductions of greenhouse gases
5 adopted by the California Climate Action Registry ~~pursuant to~~
6 *consistent with the requirements in* former Chapter 6 (commencing
7 with Section 42800) of Part 4 of Division 26, as effective on
8 December 31, 2007, *and is registered with the California Climate*
9 *Action Registry.*

10 (c) The person demonstrates, and discloses in any advertising
11 or other sales or promotional material made available to the public,
12 that the credit or emission reduction meets all of the following
13 conditions:

14 (1) The credit or emission reduction is quantifiable and
15 measurable *in a manner that is consistent with the protocols*
16 *developed pursuant to the reporting regulations adopted by the*
17 *State Air Resources Board pursuant to Part 2 (commencing with*
18 *Section 38530) of Division 25.5.*

19 (2) The credit or emission reduction is surplus, and is in addition
20 to any greenhouse gas emission reduction that otherwise would
21 occur.

22 (3) The credit or emission reduction is verifiable ~~and enforceable~~
23 by a state, regional, or local agency within the State of California.

24 (4) The credit or emission reduction ~~does not result in an~~
25 ~~increase in the emission of criteria pollutants or toxic air~~
26 ~~contaminants.~~

27 (5) ~~The credit or emission reduction does not result in adverse~~
28 ~~environmental impacts, including impacts on species, habitat,~~
29 ~~ecosystems, land use, biodiversity, air quality, water supply and~~
30 ~~quality, access to food, and production of food. cause or~~
31 ~~significantly contribute to a violation of any state or federal~~
32 ~~ambient air quality standard or toxic air contaminant standard.~~

33 38703. (a) Any person who represents in an advertisement, ~~in~~
34 ~~promotional material on the Internet, or in any other sales or~~
35 ~~promotional materials, for the sale or use made available to the~~
36 ~~public for the sale of a greenhouse gas credit or emission reduction,~~
37 that the credit or emission reduction results in a reduction in
38 greenhouse gases, shall maintain in written form and make
39 available to ~~the public~~ *any member of the public who requests it*

1 all of the following information and documentation supporting the
2 validity of the representation:

3 (1) The basis for the claim, ~~as provided under Section 38702~~
4 *including documentation that one or more of the conditions*
5 *required by Section 38702 have been met.*

6 (2) Information on any adverse environmental or public health
7 impacts associated with the creation and maintenance of the credit
8 or emission reduction, including impacts on species, habitat,
9 ecosystems, land use, biodiversity, air quality, water supply and
10 quality, access to food, and production of food.

11 (b) A retailer that does not initiate a representation by advertising
12 or through other means available to the public shall not be deemed
13 to be in violation of this section.

14 38704. (a) A violation of this division is punishable by a civil
15 penalty not to exceed two thousand five hundred dollars (\$2,500)
16 per violation, and by the payment of the cost of the purchase of
17 the credit, offset, or reduction as defined pursuant to subdivision
18 (a) of Section 38701.

19 (b) A violation of this division creates a civil cause of action
20 that may be brought by ~~an individual or a district attorney~~ *any*
21 *person who can show harm or any governmental entity.*

22 (c) Reasonable attorney fees and costs shall be available for any
23 action brought pursuant to this section.

24 (d) A violation of this division is not a crime.

25 (e) *The remedies provided in this section are in addition to any*
26 *other rights or remedies under any other provision of law.*

27 38705. *This division shall become operative on January 1,*
28 *2010, and shall become inoperative if the Federal Trade*
29 *Commission adopts binding and enforceable trade rules or*
30 *regulations for claims or representations for greenhouse gas*
31 *emission reduction credits or reductions to protect consumers.*