

AMENDED IN SENATE MAY 16, 2024

SENATE BILL

No. 1036

Introduced by Senator Limón

February 6, 2024

An act to add ~~Article 6.5 (commencing with Section 17579) to Chapter 1 of Chapter 7 (commencing with Section 17950)~~ to Part 3 of Division 7 of the Business and Professions Code, relating to greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

SB 1036, as amended, Limón. Voluntary carbon offsets: business regulation.

Under existing law, it is unlawful for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied.

Existing law requires business entities that are marketing or selling voluntary carbon offsets, as defined, within the state, and other entities engaging in specified activities relating to voluntary carbon offsets, to disclose on their internet websites certain information relating to those voluntary carbon offsets, as specified. Under existing law, a violation of those disclosure requirements is subject to a civil penalty.

This bill would make it unlawful for a person to certify or issue a voluntary carbon offset, to maintain on a registry a voluntary carbon offset, or to market, make available or offer for sale, or sell a voluntary carbon offset if the person knows or should know that the greenhouse gas reductions or greenhouse gas removal enhancements of the offset project related to the voluntary carbon offset are unlikely to be quantifiable, real, and additional.

The bill would also make it unlawful for a person to verify an offset project for the purposes of issuing a voluntary carbon offset if the person knows or should know that the greenhouse gas reductions or greenhouse gas removal enhancements of the offset project are unlikely to be quantifiable, real, and additional. The bill would make it unlawful for a ~~person~~ *person, under certain circumstances*, to market, make available or offer for sale, or sell a voluntary carbon offset ~~if the person knows or should know that the durability of the voluntary carbon offset's greenhouse gas reductions or greenhouse gas removal enhancements is less than the atmospheric lifetime of carbon dioxide emissions, except as provided. The bill would make it unlawful for a person to market, make available or offer for sale, or sell a voluntary carbon offset if the person knows or should know that the atmospheric lifetime of the greenhouse gases associated with the voluntary carbon offset's greenhouse gas reductions or greenhouse gas removal enhancements is less than the atmospheric lifetime of carbon dioxide emissions, except as provided.~~ *without explicitly marketing the voluntary carbon offset as not being physically equivalent to the climate impact of carbon dioxide.*

~~A violation of the bill's provisions would not be a crime, but would be subject to enforcement by any available civil remedies.~~

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

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

1 ~~SECTION 1. Article 6.5 (commencing with Section 17579) is~~
 2 ~~added to Chapter 1 of Part 3 of Division 7 of the Business and~~
 3 ~~Professions Code, to read:~~
 4
 5 ~~Article 6.5. Voluntary Carbon Offsets~~
 6
 7 ~~17579.—~~
 8 ~~SECTION 1. Chapter 7 (commencing with Section 17950) is~~
 9 ~~added to Part 3 of Division 7 of the Business and Professions~~
 10 ~~Code, to read:~~

CHAPTER 7. VOLUNTARY CARBON OFFSETS

17950. For purposes of this article, the following definitions apply:

(a) “Activity-shifting leakage” means increased GHG emissions or decreased GHG removals that result from the displacement of activities or resources from inside the offset project’s boundary to locations outside the offset project’s boundary as a result of the offset project activity.

(b) “Additional” means greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation, or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a conservative business-as-usual scenario.

(c) “Business-as-usual scenario” means the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by voluntary carbon offsets, taking into account all current laws and regulations, as well as current economic and technological trends.

(d) “Carbon dioxide equivalent” means the number of metric tons of CO₂ emissions with the same global warming potential as one metric ton of another greenhouse gas.

(e) “Conservative” means utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.

(f) ~~“Durability”~~ “*Durability commitment*” means the duration of time over which an offset project operator commits to ~~maintain~~ *monitor* its GHG reductions and GHG removal ~~enhancements, as applicable, enhancements for the risk of reversal and to report any such reversals that may occur,~~ *exclusive of any aspirational outcomes periods of time* that exceed or extend beyond the mandatory outcomes required of the offset project pursuant to its offset protocol.

(g) “Emissions” means the release of greenhouse gases into the atmosphere from sources and processes within an offset project boundary.

1 (h) “GHG emissions source” means any type of emitting activity
2 that releases greenhouse gases into the atmosphere.

3 (i) “GHG reduction” means a calculated decrease in GHG
4 emissions relative to a project baseline over a specified period of
5 time.

6 (j) “GHG removal” means the calculated total mass of GHG
7 removed from the atmosphere over a specified period of time.

8 (k) “GHG removal enhancement” means a calculated increase
9 in GHG removals relative to a project ~~baseline~~. *baseline over a*
10 *specified period of time*.

11 (l) “GHG reservoir” means a physical unit or component of the
12 biosphere, geosphere, or hydrosphere with the capability to store,
13 accumulate, or release GHG removed from the atmosphere by a
14 GHG sink or GHG captured from a GHG emission source.

15 (m) “GHG sink” means a physical unit or process that removes
16 GHG from the atmosphere.

17 (n) “Greenhouse gas” or “GHG” means all of the greenhouse
18 gases listed in subdivision (g) of Section 38505 of the Health and
19 Safety Code.

20 (o) “Issue” means the creation of voluntary carbon offsets
21 equivalent to the number of verified GHG reductions or GHG
22 removal enhancements for an offset project over a specified period
23 of time.

24 (p) “Market-shifting leakage” means increased GHG emissions
25 or decreased GHG removals outside an offset project’s boundary
26 due to the effects of an offset project on an established market for
27 goods or services.

28 (q) “Offset project” means all equipment, materials, items, or
29 actions that are directly related to or have an impact on GHG
30 reductions, project emissions, or GHG removal enhancements
31 within the offset project boundary.

32 (r) “Offset project boundary” is defined by and includes all
33 GHG emission sources, GHG sinks, or GHG reservoirs that are
34 affected by an offset project and under control of the offset project
35 ~~operator or authorized project designee~~. *operator*. GHG emissions
36 sources, GHG sinks, or GHG reservoirs not under control of the
37 offset project operator are not included in the offset project
38 boundary.

39 (s) “Offset project operator” means the entity with legal
40 authority to implement the offset project.

(t) “Offset protocol” means a documented set of procedures and requirements to quantify ongoing GHG reductions or GHG removal enhancements achieved by an offset project and calculate the project baseline. Offset protocols specify relevant data collection and monitoring procedures, emission factors, and conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.

(u) “Project baseline” means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project’s GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

(v) “Project emissions” means any GHG emissions associated with the implementation of an offset project.

(w) “Quantifiable” means the ability to accurately measure and calculate GHG reductions or GHG removal enhancements relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.

(x) “Real” means that GHG reductions or GHG enhancements result from a demonstrable action or set of actions, are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary, and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage.

(y) “Reversal” means a GHG reduction or GHG removal enhancement for which a voluntary carbon offset has been issued that is subsequently released or emitted back into the atmosphere, or that is later determined to have never occurred.

~~(y)~~

(z) “Verify” means to undertake a systematic, independent, and documented process for evaluation of a potential offset project against an offset protocol.

~~(z)~~

(aa) “Voluntary carbon offset” means a tradeable instrument that is issued to an offset project and that represents a GHG reduction or GHG removal enhancement of a specified amount of

1 carbon dioxide equivalent. *For purposes of this article, a*
2 *“voluntary carbon offset” does not include either of the following:*

3 *(1) An offset credit issued pursuant to subdivision (c) of Section*
4 *38562 of the Health and Safety Code.*

5 *(2) A registry offset credit, as defined in Section 95802 of Title*
6 *17 of the California Code of Regulations, that is removed, retired,*
7 *or canceled pursuant to Section 95981.1 of Title 17 of the*
8 *California Code of Regulations, as those regulations read on*
9 *January 1, 2024.*

10 ~~17579.1.~~

11 17951. It is unlawful for a person to verify an offset project
12 for the purposes of issuing a voluntary carbon offset if the person
13 knows or should know that the GHG reductions or GHG removal
14 enhancements of the offset project are unlikely to be quantifiable,
15 real, and additional.

16 ~~17579.2.~~

17 17952. It is unlawful for a person to certify or issue a voluntary
18 carbon offset if the person knows or should know that the GHG
19 reductions or GHG removal enhancements of the offset project
20 related to the voluntary carbon offset are unlikely to be
21 quantifiable, real, and additional.

22 ~~17579.3.~~

23 17953. It is unlawful for a person to maintain on a registry a
24 voluntary carbon offset if the person knows or should know that
25 the GHG reductions or GHG removal enhancements of the offset
26 project related to the voluntary carbon offset are unlikely to be
27 quantifiable, real, and additional.

28 ~~17579.4.~~

29 17954. It is unlawful for a person to market, make available
30 or offer for sale, or sell a voluntary carbon offset if the person
31 knows or should know that the GHG reductions or GHG removal
32 enhancements of the offset project related to the voluntary carbon
33 offset are unlikely to be quantifiable, real, and additional.

34 ~~17579.5.~~

35 17955. It is unlawful for a person to market, make available
36 or offer for sale, or sell a voluntary carbon offset ~~if the person~~
37 ~~knows or should know that the durability of the voluntary carbon~~
38 ~~offset’s GHG reductions or GHG removal enhancements is less~~
39 ~~than the atmospheric lifetime of carbon dioxide emissions, unless~~
40 ~~the person explicitly markets the voluntary carbon offset as not~~

1 ~~being physically equivalent to the climate impact of carbon dioxide~~
2 ~~emissions; without explicitly marketing the voluntary carbon offset~~
3 ~~as not being physically equivalent to the climate impact of carbon~~
4 ~~dioxide emissions, unless it is reasonably expected, based on~~
5 ~~appropriate technical evidence, that at the end of the durability~~
6 ~~commitment related to the voluntary carbon offset, the voluntary~~
7 ~~carbon offset's GHG reductions or GHG removal enhancements~~
8 ~~are subject to no more than a negligible risk of reversal over a~~
9 ~~period of at least 1,000 years, inclusive of the related durability~~
10 ~~commitment.~~

11 17579.6.

12 17956. It is unlawful for a person to market, make available
13 or offer for sale, or sell a voluntary carbon offset *without explicitly*
14 *marketing the voluntary carbon offset as not being physically*
15 *equivalent to the climate impact of carbon dioxide emissions* if the
16 person knows or should know that the atmospheric lifetime of the
17 *non-carbon dioxide* GHGs associated with the voluntary carbon
18 offset's GHG reductions or GHG removal enhancements is less
19 ~~than the atmospheric lifetime of carbon dioxide emissions, unless~~
20 ~~the person explicitly markets the voluntary carbon offset as not~~
21 ~~being physically equivalent to the climate impact of carbon dioxide~~
22 ~~emissions; 1,000 years.~~

23 17579.7. ~~A violation of this article shall not be a crime,~~
24 ~~notwithstanding Sections 17500 and 17534. However, all available~~
25 ~~civil remedies that are applicable to a violation of this article may~~
26 ~~be employed.~~

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