

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1305 (Gabriel)
Version: July 3, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
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SUBJECT

Voluntary carbon market disclosures

DIGEST

This bill requires a business entity that is selling voluntary carbon offsets to disclose specified information about the applicable carbon offset project, including details regarding accountability if a project is not completed or does not meet the projected emission reductions or removal benefits. The bill also places obligations on entities making certain claims about their emissions.

EXECUTIVE SUMMARY

Carbon offsetting is an activity that compensates for, or balances out, greenhouse gas emissions generated by an organization through its activities and operations. Essentially, an entity that wants to mitigate its greenhouse gas emissions can pay another entity or person to eliminate, reduce, or refrain from greenhouse gas emissions, *offsetting* the first party's emissions. Verifying that these emissions are actually being offset is core to voluntary carbon offsets. Unlike the state's cap and trade program, the voluntary carbon offset market is largely unregulated. This has driven concerns that there is rampant fraud in the industry and that many of these offsets are essentially worthless.

This bill seeks to provide needed transparency in these markets by requiring those selling voluntary carbon offsets to make certain disclosures on their website about the project as well as accountability and verifiability measures. The bill also requires disclosures from those buying and making claims in connection with such offsets. Finally, the bill requires disclosures from any entity making claims about its emissions. This bill is author-sponsored. The bill is supported by environmental groups and the Office of the San Francisco City Attorney. It is opposed by the Western States Petroleum Association. The bill passed out of the Senate Environmental Quality Committee on a 5 to 2 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Makes it unlawful for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. (Bus. & Prof. Code § 17580.5.)
- 2) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)
- 3) Defines unfair competition for purposes of the UCL to mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. (Bus. & Prof. Code § 17200.)
- 4) Establishes the False Advertising Law (FAL), which proscribes making or disseminating any statement that is known or should be known to be untrue or misleading with intent to directly or indirectly dispose of real or personal property. (Bus. & Prof. Code § 17500 et seq.)
- 5) Provides remedies for individuals who have suffered damages as a result of fraud or deceit, including situations involving fraudulent misrepresentations. (See Civil Code §§ 1709-1710, 1572-1573.)
- 6) Defines “greenhouse gas” to include the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride. (Health & Saf. Code § 38505.)
- 7) Defines terms related to the cap-and-trade program, including CARB’s Compliance Offsets Program. (17 C.C.R. § 95802)

This bill:

- 1) Requires a business entity that is selling voluntary carbon offsets to disclose details on their website regarding the applicable carbon offset project, including all of the following information:
 - a) The specific protocol used to estimate emissions reductions or removal benefits.
 - b) The location of the offset project site.
 - c) The project timeline.

- d) The date when the project started or will start.
 - e) The dates and quantities when a specified quantity of emissions reductions or removals started or will start, or was modified or reversed.
 - f) The type of project including whether the offsets from the project are derived from a carbon removal, an avoided emission, or, in the case of a project with both carbon removals and avoided emissions, the breakdown of offsets from each.
 - g) Whether the project meets any standards established by law or by a nonprofit entity.
 - h) The durability period for any project that the seller knows or should know that the durability of the project's greenhouse gas reductions or greenhouse gas removal enhancements is less than the atmospheric lifetime of carbon dioxide emissions.
 - i) Whether there is independent expert or third-party validation or verification of the project attributes.
- 2) Requires the entity to also disclose details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits, including details regarding what actions the entity shall take if carbon storage projects are reversed or future emissions reductions do not materialize.
 - 3) Requires the entity to also disclose all data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol.
 - 4) Provides the following definitions:
 - a) "Durability" means the duration of time over which an offset project operator commits to maintain its greenhouse gas reductions and greenhouse gas removal enhancements, as applicable, exclusive of any aspirational outcomes that exceed or extend beyond the mandatory outcomes required of the offset project pursuant to its offset protocol.
 - b) "Protocol" means a documented set of procedures and requirements to quantify ongoing greenhouse gas reductions or greenhouse gas removal enhancements achieved by an offset project and to calculate the project baseline, including specification of relevant data collection and monitoring procedures, emission factors, and methodologies used to conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.
 - c) "Voluntary carbon offset" means any product sold or marketed in the state that claims to be a "greenhouse gas emissions offset," a "voluntary emissions reduction," a "retail offset," or any like term, that connotes that the product represents or corresponds to a reduction, not required by any

law or regulation, in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted.

- 5) Requires an entity that purchases or uses voluntary carbon offsets that makes claims regarding the achievement of net zero emissions, “carbon neutral” claims, or other claims implying the entity, related entity, or a product does not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions to disclose on the entity’s website the following information pertaining to each project or program:
 - a) The name of the business entity selling the offset and the offset registry or program.
 - b) The project identification number, if applicable.
 - c) The project name as listed in the registry or program, if applicable.
 - d) The offset project type, including whether the offsets purchased were derived from a carbon removal, an avoided emission, or a combination of both.
 - e) The site location.
 - f) The specific protocol used to estimate emissions reductions or removal benefits.
 - g) Whether there is independent third-party verification of company data and claims listed.
- 6) Requires an entity that makes claims regarding the achievement of net zero emissions, claims that the entity, a related or affiliated entity, or a product is “carbon neutral,” or makes other claims implying the entity, related or affiliated entity, or a product does not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions to disclose on the entity’s website all of the following information pertaining to all greenhouse gas emissions associated with its claims:
 - a) All information documenting each claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured. This information may include disclosure of independent third-party verification of all of the entity’s greenhouse gas emissions, identification of the entity’s science-based targets for its emissions reduction pathway, and disclosure of the relevant sector methodology and third-party verification used for the entity’s science-based targets and emissions reduction pathway.
 - b) Whether there is independent third-party verification of the company data and claims listed.
- 7) Requires each of these disclosures to be updated no less than annually.
- 8) Subjects a person who is in violation to a civil penalty of not more than \$5,000 per day, for each day that information is not available or is inaccurate on their

website, for each violation, not to exceed a total amount of \$500,000. Authorizes these penalties to be sought in an action brought by the Attorney General, a district attorney, county counsel, or city attorney.

COMMENTS

1. Cleaning up the voluntary carbon offset market

Carbon offsets operate where a certain entity absolutely must emit carbon dioxide and so provides for the same amount of the greenhouse gas to be removed from the atmosphere by other means to compensate. Offsets were historically centered on the planting or protection of trees, which absorb carbon dioxide, however, the term has since been applied to a variety of environmental efforts globally:

The vast majority of offsets available fall into a category called “avoided emissions.” These are projects that either protect forests, provide people with alternatives to using fossil fuels, or avert emissions from waste. If done right, such projects can reduce the volume of greenhouse gases being added to the atmosphere while providing other benefits to local communities and promoting biodiversity. Beyond planting or protecting trees, offsets can also be generated by preventing the release of greenhouse gases other than CO₂, like methane or nitrous oxide. Typically, more expensive offsets involve removing carbon dioxide that’s already in the atmosphere and storing it away. That may involve projects like growing a forest or installing machines that vacuum carbon dioxide out of the air. Just 4% of off sets actually remove CO₂ from the atmosphere. . . .¹

The voluntary carbon offsets targeted by this bill are distinct from carbon offsets involved in the state’s cap-and-trade program. Under the cap-and-trade program, industry polluters are legally required to either reduce their emissions by specified amounts over time, or otherwise surrender compliance instruments to cover those emissions. The two available compliance instruments are allowances (which originate from the state providing a set amount each year) and offsets (which originate from entities outside of cap-and-trade offering to reduce or avoid equivalent volumes of emissions). Offsets purchased to comply with cap-and-trade are “compliance offsets”; their use is to comply with mandatory legal obligations.

Voluntary carbon markets are just that, voluntary. Voluntary carbon offsets allow companies, governments, and other organizations to offset their carbon emissions on a

¹ Ashkat Rathi & Ben Elgin, *What Are Carbon Offsets and How Many Really Work?* (June 14, 2022) Bloomberg, <https://www.bloomberg.com/news/articles/2022-06-14/what-are-carbon-offsets-and-how-many-really-work-quicktake?leadSource=uverify%20wall>. All internet citations are current as of June 29, 2023.

voluntary basis, either to meet their own sustainability goals or to demonstrate their commitment to reducing their carbon footprint.

The Federal Trade Commission has issued guidance on appropriate marketing of these products:

- Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.
- It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.
- It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.²

Despite this guidance, this market is largely unregulated and there are concerns about the legitimacy of these offsets.

2. Addressing these concerns with transparency measures

According to the author:

The voluntary carbon offset industry is currently a wild west with all transparency or regulation being entirely voluntary. While offsets used for compliance market are regulated, voluntary carbon offset credits sold to consumers or businesses to voluntarily offset their emissions are completely unregulated. With a variety of recent reports all demonstrating consistent over-crediting and lack of legitimate additionality in voluntary offset projects, there is a clear and pressing need for increased accountability and transparency.

Requiring important details about the offsets being sold and purchased, such as the site location and how the total number of credits to be sold were calculated allows researchers and the public to better evaluate the validity of the credits being sold. By doing this, AB 1305 will combat greenwashing and give consumers a meaningful tool to decide which projects are worth investing in to reduce their carbon footprint.

² *Green Guides*, FTC, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>.

The concerns highlighted by the author are well-documented and widespread:

The brisk sales of meaningless offsets is leading to widespread claims of climate progress that isn't actually happening. As Bloomberg Green previously reported, environmental groups such as the Nature Conservancy and the National Audubon Society have sold credits for protecting trees that weren't in danger of being harvested, leading to misleading claims of emissions reductions by Walt Disney Co., JPMorgan Chase & Co., and other companies. Meanwhile, North America's largest carbon reforestation project, Green Trees, has sold credits for trees that were already planted through government programs, sometimes more than a decade earlier, resulting in inflated carbon reduction claims by Bank of America Corp. and many others. (The Nature Conservancy, Audubon, and Green Trees all said their projects followed the market's rules, while Disney, JPMorgan, and Bank of America each declined to comment.) "There's a distinct possibility that a great deal of existing carbon offsets are effectively fake," says Robert Mendelsohn, professor of forest policy and economics at Yale.³

These "junk offsets" inflict two major harms. First, buyers of offsets who sincerely believe that purchasing an offset will finance projects that generate carbon benefits are defrauded when they are sold a junk offset that fails to deliver such benefits. Second, corporate buyers of junk offsets may greenwash their activities (intentionally or unintentionally) if they use the offsets in their accounting of the corporation's carbon footprint, which may result in claims to customers, employees, and investors that are inaccurate and can constitute a form of unfair competition.

This bill seeks to shine some light on this market by requiring a series of disclosures by those selling and buying these products, as well as those making certain claims about their net emissions. All disclosures are required to be updated no less than annually.

The bill defines "voluntary carbon offset" as any product sold or marketed in the state that claims to be a "greenhouse gas emissions offset," a "voluntary emissions reduction," a "retail offset," or any like term, that connotes that the product represents or corresponds to a reduction, not required by any law or regulation, in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted.

³ Ben Elgin, *This Timber Company Sold Millions of Dollars of Useless Carbon Offsets* (Mar. 17, 2022) Bloomberg, <https://www.bloomberg.com/news/articles/2022-03-17/timber-ceo-wants-to-reform-flawed-carbon-offset-market>.

a. Entities selling voluntary carbon offsets

This bill first requires a series of disclosures to be placed on the websites of business entities that sell voluntary carbon offsets. It requires them to disclose certain details regarding the applicable carbon offset projects. This includes basic information regarding the type, location, and relevant timing of the project. They must also disclose the specific protocol used to estimate emissions reductions or removal benefits. It also requires information regarding certain metrics and validation, including whether the project meets established legal or industry standards and whether there is third-party validation or verification.

These entities selling offsets must also post details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits. This includes details about what the entity plans to do if the carbon storage projects are reversed or if the future emissions reductions do not materialize.

Finally, these entities must post all data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol.

The author explains the need for these disclosures:

For the provisions relating to methodology, data, and calculation methods needed to reproduce the number of credits issued, we intend to give researchers and the public the ability to check the claims that these companies are making about the amount of carbon that they are selling. As mentioned above, the routine over-crediting of projects and overstatements of their efficacy is extremely concerning. These provisions would give researchers the ability to run independent analyses of the number of credits that a project is generating and compare it to project details that are also required to be disclosed to evaluate efficacy.

By opening this door for additional state and private research, AB 1305 could help inform and direct future legislative action on this topic as the industries continue to grow in size and utilization.

b. Entities buying or using voluntary carbon offsets

The bill also requires each entity that purchases or uses voluntary carbon offsets that makes claims regarding the achievement of net zero emissions, claims that the entity, related entity, or a product is “carbon neutral,” or makes other claims implying they do not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions to disclose specified information on their website. This includes basic information about the entity that sold

the offset and identifying information about the project. In addition, and similar to above, the purchasing entity must detail the specific protocol used to estimate emissions reductions or removal benefits and whether there is independent third-party verification of company data and claims listed.

c. Entities making certain emissions claims

The bill also requires similar postings be made by each entity that makes claims regarding the achievement of net zero emissions, claims that the entity, a related or affiliated entity, or a product is “carbon neutral,” or makes other claims implying they do not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions. These entities must post all information documenting how, if at all, a “carbon neutral,” “net zero emission,” or other similar claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured, for all greenhouse gas emissions associated with its claims.

Again, the entity must document whether there is independent third-party verification of the company data and claims listed.

d. Enforcement

Enforcement is tasked to public prosecutors, namely the Attorney General, district attorneys, county counsel, or city attorneys. They may seek civil penalties of not more than \$5,000 per day, for each day that information is not available or is inaccurate on the relevant website, for each violation, not to exceed a total amount of \$500,000.

3. Stakeholder positions

The Office of the San Francisco City Attorney writes in support:

Outside of California’s compliance market exists a voluntary offset market where consumers or businesses purchase credits to offset their emissions voluntarily. Unfortunately, researchers have grown increasingly concerned with the efficacy of this voluntary market, with a recent investigation by The Guardian finding greater than 90% of rainforest offset projects listed on one of the largest voluntary offset standards bodies did not represent genuine carbon reductions. With no central regulations currently existing in this market, there is a clear need to ensure that consumers are not misled to believe that credits represent legitimate reductions or removals of emissions when they do not.

AB 1305 would establish disclosure requirements for both buyers and sellers of voluntary offset credits. These disclosures would include

important information regarding details specific to the offset projects, how the number of offset credits offered for sale was calculated, and other important information about how these credits factor into claims buyers make relating to emission reduction achievements.

By making this information publicly available, AB 1305 will crack down on corporate greenwashing and give researchers and the public the information they need to determine the validity of these products being sold to businesses and consumers.

Writing in opposition, the Western States Petroleum Association argues:

The bill lacks a clear definition of business entity that will be subject to this law – it is unclear whether these requirements are only for in-state project developers and voluntary offsets purchasers. The bill would create duplicative reporting requirements for entities interested in generation and purchase of voluntary carbon credits – a business entity who is interested in development of a project to generate high quality and verified voluntary carbon credits must follow rigorous protocols developed by carbon registries such as the American Carbon Registry or Climate Action Reserve. Protocols developed by these registries ensure that the project is delivering promised carbon dioxide (CO₂) reduction or removal benefits by ensuring high standards are followed in measurement, monitoring, verification, and reporting of avoided or removed CO₂ emissions from the project. This ensures project developers are accountable during and after generation of credits. In addition, once the project is verified, it is listed on the respective registry's website for public view and includes all the information that AB 1305 is asking project developing entities to list on their internet website (Section 1 Part 10 44475 (a) 1-7). This is a redundant and duplicative requirement that, in case of failure to complete, carries a civil penalty.

It should be noted that the bill applies to voluntary carbon offsets that are sold or marketed in California.

Writing in support, the San Fernando Valley and Los Angeles Chapters of the Climate Reality Project assert:

AB 1305 would establish disclosure standards for both buyers and sellers of voluntary offset credits. Sellers of voluntary carbon offsets would be required to disclose specific information about the carbon offset project to include projected emission reductions, the type of project and its timeline, and all data and calculation methods used determine the number of credits issued. Purchasers of voluntary carbon offsets shall disclose information such as the project type and site, the specific methodology to

estimate emissions reductions or removals, and how a claim of “carbon-neutral or “net-zero emission” is achieved.

The information that would be disclosed as per AB 1305 ensures accurate information to evaluate the validity and effectiveness of the volunteer carbon offset market.

SUPPORT

Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley Chapter
Office of the San Francisco City Attorney
Sierra Club California

OPPOSITION

Western States Petroleum Association

RELATED LEGISLATION

Pending Legislation: SB 390 (Limón, 2023) makes it unlawful to engage in specified unfair, deceptive, or fraudulent practices in the market related to voluntary carbon offsets, including verifying an offset project for the purposes of issuing a voluntary carbon offset if the person knows or should know that the GHG reductions or GHG removal enhancements of the offset project are unlikely to be quantifiable, real, and additional. SB 390 is currently in the Assembly Appropriations Committee.

Prior Legislation: SB 343 (Allen, Ch. 507, Stats. 2022) tightened the requirements around the permissible use of the “chasing arrows” recycling symbol to avoid deceptive uses in marketing and otherwise.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 5, Noes 2)
Assembly Floor (Ayes 61, Noes 17)
Assembly Appropriations Committee (Ayes 11, Noes 4)
Assembly Judiciary Committee (Ayes 8, Noes 2)
Assembly Natural Resources Committee (Ayes 8, Noes 1)
