SUBJECT: Repealing the "veggie libel law"

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 5 ayes — Bosse, Alvarado, Dutton, Hope, Nixon

2 nays — Smithee, Zbranek

2 absent — Janek, Goodman

WITNESSES: For — Tim Bennett, Harpo Productions; Joseph Jacobsen, ACLU of Texas; Reggie James, Consumers Union; David Donaldson Jr.

Against — Charles Carter, Independent Cattlemen's Association of Texas; Bill Powers, Texas Farm Bureau; Ross Wilson, Texas Cattle Feeders Association

On — Susan Combs, Texas Department of Agriculture

BACKGROUND: HB 722 by B. Turner, enacted in 1995 as chapter 96 of the Civil Practice and Remedies Code, allows producers of perishable food products to sue persons disseminating information to the public about a food product that the person knows to be false and that states or implies that the product is not safe for public consumption. Under this so-called "veggie libel law," it is presumed that the person knew the information was false if the information was not based on reasonable and reliable scientific inquiry, facts, or data. The producer may receive damages or any other appropriate relief from a person found liable of disseminating false information.

DIGEST: HB 126 would repeal Civil Practice and Remedies Code, chapter 96. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house and would apply to any cause of action that accrued on or after the effective date.

SUPPORTERS SAY: The "veggie libel law" has the potential to harm consumers and should be repealed. The law has a chilling effect on discussions about the health and safety of agricultural and other food products. In addition, common-law causes

of action regarding slander of property already cover false, malicious slander that causes damages.

This law has led to absurd results, such as a suit against Oprah Winfrey for discussing the safety of beef on her television talk show and a suit against the automobile maker Honda for making fun of emu meat in a commercial. These suits and other less prominent ones have made Texas a laughing-stock nationally. No suit based on the veggie libel law has prevailed in a court of law, but the law has made people think twice about saying anything negative about perishable food products, even when the safety of such products is in question.

At least one case was filed against a Texas A&M University scientist based on his reports on sod-growing potential. He was sued for saying that a particular type of sod grew better in certain areas than others. Although the suit was dismissed eventually, the state, through the Office of the Attorney General, had to defend the scientist.

Many people who could be sued under this law do not have the financial and legal resources of Oprah Winfrey or Honda and would not necessarily be able to defend themselves as vigorously in court. Winfrey spent nearly $2 million to defend herself against two lawsuits brought under the veggie libel law.

The law requires that persons have “reasonable and reliable scientific inquiry, facts, or data” before disseminating information about an unsafe perishable food product. However, by not defining these overly broad terms, it sets an impossible standard. Because the standard is vague, a scientific study that did not agree with the majority of data on a subject could be considered unreasonable and unreliable. For example, while a majority of scientists may say that bovine growth hormone is safe, a significant minority may question its safety. Such opinions should be available to the public.

When a food product is suspected of being unsafe, the public needs and deserves to know any information as soon as possible. If those warning of potential harm have to wait for a consensus concerning the interpretation of scientific data, it could be too late to prevent harm. Members of the public deserve to know about potential public-health risks so they can make their own evaluations. Scientific studies often are funded by the food industry, which

defines the studies and controls the release of information. Science has produced few, if any, definitive facts concerning food product safety.

Agriculture and food industry data may not evaluate the long-term or residual effects of an agricultural safety issue. Continuing the veggie libel law could affect the right of consumer advocates, health professionals, citizens, and others to discuss these issues. People must be able to communicate their experiences freely without the threat of lawsuits.

Persons who discuss ways to avoid becoming sick from a food product could be held liable under this law. For example, during various *e. coli* outbreaks, some groups have described possible ways that food could have become tainted and safe ways to handle and prepare the product. In fact, in some cases, it can be more harmful to say that a food product is safe than to warn the public of a problem.

The veggie libel law redefines what is "false." Usually, something is false if it is untrue, but under this law, information is *presumed* to be false if it is not based on scientific inquiry, facts, or data. This places the burden of proof on the defendant. In libel and slander cases, truth is a defense, but under the veggie libel law, truth can be proved only by scientific inquiry, facts, or data.

The First Amendment guarantee of free speech should not be curtailed by a special law for agricultural products. Agricultural producers already are protected adequately under the common law governing slander of property. A person can recover damages for the slander of property if statements about the quality, purity, or value of goods or property were false and malicious and if the person suffered special damages.

OPPONENTS SAY:

False and misleading claims about the safety of food products can damage agricultural producers irreversibly. Chapter 96 should remain law because it helps to ensure that any claim made about the safety of perishable fruits, vegetables, meat, cheese, and other food products is based on facts. The law deals only with claims about food *safety*, not issues of taste or preference, and with information concerning a *product*, not an individual food item such as one steak or one apple.

Chapter 96 does not infringe on anyone's right to free speech or open discussion of agricultural products. It simply holds persons responsible for

what they say about food products. The right to free speech carries with it a responsibility to speak the truth. The short shelf life of perishable food products means that by the time producers have refuted false claims, their product may be unusable, and they may have suffered large financial losses.

The 1989 Alar apple scare, fueled by celebrity testimony before Congress, financially devastated apple growers in Washington state. By the time apple growers had refuted the unsubstantiated claims about Alar contamination of apples, the growers had suffered substantial losses, with no one to turn to for compensation. Texas growers suffered losses in 1991 due to unsubstantiated news reports about the possibility of salmonella in cantaloupes purportedly coming from Texas. Losses to Texas growers, farm workers, and others involved in the industry totaled $12 million by one estimate.

Texas cattlemen suffered millions in losses due to Oprah Winfrey's report about the possibility of "mad cow" disease purportedly coming to the United States. The fact that no one has recovered damages yet under this law demonstrates that it is fair and does not unfairly restrict free speech.

Chapter 96 — which is similar to laws enacted in Louisiana, Idaho, Georgia, Colorado, Alabama, Florida and South Dakota — does not suppress or stifle research. In fact, it could promote research as more persons and groups seek reliable information to back up their claims.

Special interest groups often have a vested interest, sometimes motivated by their need for publicity, in keeping the public agitated about the safety of food products. The willingness of the news media to disseminate sensational claims about food safety without investigating the claims has hurt the agriculture industry. The public tends to believe news reports and often cannot distinguish between scientific fact and hearsay.

Chapter 96 simply states that unless a claim about the safety of a product is based on science, agricultural producers who are harmed can bring lawsuits and recover damages. Under common law on slander of property, it is practically impossible to recover damages for disparaged crops because the individual agricultural producer must be disparaged in order to bring a cause of action. At the retail level, these products of multiple farmers and ranchers are sold together. Therefore, the products are disparaged as a whole, not as

individual products produced by individual farmers. As a result, individual farmers or ranchers have no legal standing to file suit under current libel law.

NOTES:

A related bill, HB 902 by Dutton, which would retain Chapter 96 but add the provision that a prevailing party could recover court costs and reasonable attorney's fees from the losing party, is pending in the House Civil Practices Committee.