

SUBJECT: Civil liability for producers of illegal methamphetamine

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 9 ayes — Bosse, Janek, Clark, Dutton, Hope, Martinez Fischer, Nixon, Smithee, Zbranek
0 nays

WITNESSES: For — Richard Ferguson, Grayson County Sheriff’s Office
Against — None

BACKGROUND: Health and Safety Code, sec. 481.112 makes it a criminal offense to knowingly or intentionally manufacture certain controlled substances, including various types of methamphetamine, unless the production is specifically authorized under the code.

Civil Practice and Remedies Code, ch. 33 provides rules for apportioning liability when both the plaintiff and the defendant are partially responsible and between co-defendants who are partially responsible. It also specifies how a defendant who pays a judgment may seek contributions from co-defendants for their portion of the judgment.

DIGEST: CSHB 2087 would create a civil cause of action against a person who produced methamphetamine in violation of the Health and Safety Code. A person could sue the manufacturer for any personal injury, death, or property damage that arose from the illegal manufacture or from exposure to the methamphetamine, one of its constituent chemicals, or a byproduct of the drug’s manufacture. Liability for the harm would be strict — i.e., without regard to whether the producer acted negligently or intentionally — and without regard to whether the producer actually had been convicted of a criminal offense involving methamphetamine.

The bill would set the minimum damages for a producer found liable at the greater of the plaintiff’s actual damages or \$10,000 per incident of exposure.

It would allow the plaintiff to seek punitive damages without being subject to the caps on punitive damages that generally apply to civil actions.

The bill would remove the suits it would authorize from the normal rules for apportioning liability between plaintiffs, defendants, and co-defendants under the Civil Practice and Remedies Code. All defendants found liable under the new provisions would be jointly liable with the other defendants for all of the plaintiff's damages, regardless of their own level of responsibility for the damages.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. It would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS
SAY:**

CSHB 2087 would discourage illegal methamphetamine production and would provide relief to innocent people harmed by the noxious precursor and byproduct chemicals involved in that production.

Producing methamphetamine involves using and creating hazardous chemicals that can cause severe burns, respiratory distress, and even death to those who breathe or come into close contact with the chemicals. Vapors from the chemicals also seep into walls, rugs, and other porous materials with which the chemicals come in contact. This puts law enforcement officials at great risk when they attempt to "bust" a methamphetamine lab. It also causes damage to the property of innocent third parties, such as motel and apartment owners, when these drug producers set up shop in a rented space.

By imposing strict liability on those who engage in this illegal activity for the harm that their actions cause, CSHB 2087 would raise the stakes for drug producers and give those harmed by their illegal conduct the right to recover damages for their injuries. Under the bill, normal concepts of civil liability would apply, so the owners of a drug lab could be liable even if they hired others to conduct the actual manufacturing.

Penal Code, sec. 7.02(b) makes a person responsible for another person's criminal offense if the first person intentionally aids the commission of the

offense by the second. Thus, a seller of the precursor chemicals could be responsible for a drug producer's illegal manufacture of methamphetamine. CSHB 2087 would allow those harmed by methamphetamine manufacture to sue the retailers of the substances needed to make methamphetamine if those retailers sold the substances knowing that they would be used to make illegal drugs. The bill's provision for joint and several liability would mean that all of the plaintiff's damages could be collected from any defendant found liable, helping to ensure that the plaintiff was made whole.

OPPONENTS
SAY:

CSHB 2087 could subject agricultural suppliers and drug stores that sold the precursor chemicals for methamphetamine manufacture — which are legal products with legitimate uses — to suits based on the drug producer's conduct. Even though the sellers of the precursor chemicals would have to know that they were aiding the crime to be liable, the issue of whether they had reason to know typically would be a factual question. As a result, the sellers of the chemicals probably would not be able to have claims against them dismissed before trial through summary judgment. Defending these suits could be a significant burden to legitimate businesses.

Furthermore, if the case went to a jury and the jury found that the seller of the precursor chemical had some minor portion of the responsibility for the harm, under the bill's joint and several liability provision, the seller could be liable for the entire amount of damages, including uncapped exemplary damages. This would be unfair and overly burdensome for legitimate businesses that sold legal products that could be used to make methamphetamine.

NOTES:

The committee substitute added the provision that would allow a civil suit regardless of whether the defendant had been convicted criminally. It also rewrote the new civil liability chapter so that certain definitions became unnecessary and thus were deleted in the substitute.

A related bill, HB 3351 by Keffer, would make it an offense to possess or transport a chemical precursor with intent to manufacture a controlled substance such as methamphetamine. HB 3351 was set on the General State Calendar for April 26.