

SUBJECT: Requiring disclosure of use of home to manufacture methamphetamine.

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Giddings, Darby, Bailey, Castro, Martinez, Solomons
0 nays
1 present not voting — Elkins
2 absent — Bohac, Zedler

WITNESSES: For — Tom Morgan, Texas Association of Realtors; (*Registered, but did not testify*): Daniel Gonzalez, Texas Association of Realtors
Against — None

BACKGROUND: Property Code, sec. 5.008(b) includes a list of conditions that a seller of residential real property with no more than one dwelling unit must disclose about the property being sold. The list includes disclosures such as termites, previous flooding, hazardous or toxic waste, asbestos, radon, aluminum wiring, and lead-based paint.

DIGEST: CSHB 271 would amend Property Code, sec. 5.008(b) to require a seller of residential real property with no more than one dwelling unit to disclose whether the seller was aware of previous use of the premises for manufacture of methamphetamine.

The bill would take effect January 1, 2008, and apply to disclosure notices executed on or after that date.

SUPPORTERS SAY: CSHB 271 would continue the policy of protecting the innocent public from methamphetamine exposure. The 79th Legislature in 2005 enacted HB 164 by Berman to toughen methamphetamine-related laws, allowing the Department of Family and Protective Services to remove a child from a home used to manufacture methamphetamine and adding methamphetamine manufacturing in the presence of a child to the criminal offense of child endangerment. CSHB 271 would be another step in recognizing the danger to public health from meth labs in residences and

ensure that buyers of these properties are on notice of any past use of the property for this purpose.

Sellers should have to disclose whether they are aware of any previous use of a residence as a meth lab. Methamphetamine production leaves lingering effects in the home where production took place, and common remedial actions do not remove the chemicals from the home environment. Iodine, phosphine, and hydrogen chloride are released upon manufacture of methamphetamine in the home. Iodine in particular persists in walls, carpeting, and draperies, creating a likelihood of exposing children crawling on floors to a highly damaging respiratory irritant. These chemicals cause respiratory and pulmonary problems that can plague people with weaker immune systems, particularly the elderly and children. Methamphetamine itself lingers in the home, contaminating all surfaces. Studies show that prenatal exposure to methamphetamine causes an increase in pre-term labor, placental abruption, fetal distress, and postpartum hemorrhage. Infants exposed also have developmental problems.

Protecting the health of buyers and the liability of banks and realtors involved in a real estate transaction is a pressing need, given the 269 methamphetamine labs busted in Texas in 2005 alone. Requiring disclosure would provide realtors and sellers an extra layer of protection from unknown illegal activity in the home's history. The disclosure also would help buyers realize the actual condition of the property being purchased and the potential health hazards associated with it. Requiring disclosure in the Property Code would increase the likelihood of a seller being aware of potential liability for non-disclosure. The disclosure would give equal knowledge to buyer and seller and lead to informed discussions among interested parties regarding decontamination and other details.

OPPONENTS
SAY:

The goal of CSHB 271 to protect and inform interested parties in a home sale transaction concerning past use of a residence to manufacture methamphetamine is worthy, but the method provided in the bill may not be as effective nor as far-reaching as needed. Enforcing disclosure would be difficult. The incentive for a seller to disclose methamphetamine production in the home may be weaker than the incentive to avoid the possible repercussions of disclosing an illegal activity committed by the seller.

The bill would provide only for the checking of a box that indicated previous methamphetamine production in the home. The unintended consequence of this brief disclosure could be that the value of the home was significantly decreased, without further explanation of the extent of the previous use or whether the home was fit for habitability. Any law regarding disclosure should address habitability and fitness for use to protect the interested parties.

Oregon's approach, for example, is more effective in avoiding health consequences of methamphetamine-laced homes and putting interested parties on notice. Oregon provides a method for certification of fitness for use by the Director of Human Services, state fire marshal, or a law enforcement agency. The law provides procedures for owners of unfit-for-use properties, including decontamination, notice, and subsequent sale of the property. Once a site is deemed not fit for use, Oregon law provides for notice to residents within a certain distance of the property that the property has been determined to be an illegal drug manufacturing site and not fit for use. Upon sale or transfer of the illegal drug manufacturing site, the owner must provide detailed disclosure to the buyer or transferee of whether the home has been certified as fit for habitability.

NOTES:

The committee substitute removed from the disclosure requirement a citation indicating that the manufacture of methamphetamine in the home was a violation of the Health and Safety Code.