

SUBJECT: Penalties for improper handling of medical waste

COMMITTEE: Environmental Regulation — favorable, with amendment

VOTE: 7 ayes — Chisum, Jackson, Dukes, Howard, Kuempel, Talton, Yost

0 nays

2 absent — Saunders, Stiles

WITNESSES: For — None

Against — None

On — Catharine Douglass; Patricia Y. Riley, DVM, Texas Natural Resource Conservation Commission; Lee Mathews, Texas Low-Level Radioactive Waste Disposal Authority

DIGEST: HB 1644, as amended, would add Subchapter S to Chapter 361 of the Health and Safety Code creating criminal penalties for the improper handling of medical waste.

HB 1644 would create an offense for large quantity generators, generating more than 50 pounds of waste per month, to intentionally or knowingly generate, store, treat, transport or dispose of medical waste without all required permits or in knowing violation of any material condition of a permit, rule or standard. It would also be an offense for a large quantity generator to knowingly destroy, alter or fail to file any required record, report or manifest.

Medical waste would include animal waste, bulk blood and blood products, microbiological waste, pathological waste, sharps, and special waste from health care related facilities.

A large quantity generator convicted of these offenses would be punishable by:

- a fine between \$1,000 and \$10,000 for each act and day of violation, imprisonment not to exceed 10 years, or both fine and imprisonment against an individual,
- a fine between \$2,000 and \$20,000, imprisonment not to exceed twenty years, or both fine and imprisonment against a previously convicted individual, or
- a fine between \$5,000 and \$50,000 against a person other than an individual, but if previously convicted a fine between \$10,000 and \$100,000.

HB 1644 would make these offenses applicable to small quantity generators who generate 50 pounds or less of medical waste per month, which would be punishable by:

- a fine between \$1,000 and \$20,000 for each act and day of violation, confinement not to exceed two years, or both fine and confinement against an individual,
- a fine between \$1,000 and \$20,000, confinement not to exceed two years, or both fine and confinement against a previously convicted individual, or
- a fine between \$2,000 and \$20,000 against a person other than an individual, but if previously convicted a fine between \$4,000 and \$40,000.

HB 1644 would also create an offense for intentionally or knowingly transporting medical waste to a location that does not have all of its required permits, transporting or permitting transport without a manifest, or operating any vehicle in violation of any rule or regulation which specifically relates to the transportation of medical waste, which would be punishable by:

- a fine between \$1,000 and \$20,000 for each act and day of violation, confinement not to exceed one year, or both fine and confinement against an individual,

- a fine between \$1,000 and \$20,000, confinement not to exceed two years, or both fine and confinement against a previously convicted individual, or
- a fine between \$5,000 and \$50,000 against a person other than an individual, but if previously convicted a fine between \$10,000 and \$100,000.

HB 1644 would create an offense for knowingly making or permitting a false material statement to any preparer of a regulated medical waste label, manifest or other required record and for knowingly omitting or permitting omission of material information from any label, manifest or other required record, which would be punishable by:

- a fine between \$500 and \$10,000 for each act and day of violation, confinement not to exceed one year, or both fine and confinement against an individual,
- a fine between \$1,000 and \$20,000, confinement not to exceed two years, or both fine and confinement against a previously convicted individual, or
- a fine between \$2,000 and \$20,000 against other than an individual, but if previously convicted a fine between \$4,000 and \$40,000.

This bill would also create an offense for intentionally or knowingly transporting, storing, or disposing of (or causing such transport, storage, or disposal) medical waste in violation of this chapter and thereby knowingly placing people in imminent danger of death or serious bodily injury. For this offense a defendant would be responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant could not be attributed to the defendant. Circumstantial evidence could be used to prove the defendant's knowledge, including evidence that the defendant took affirmative steps to be shielded from relevant information. This offense would be punishable by:

- a fine between \$2,500 and \$250,000, imprisonment for not more than 15 years, or both fine and imprisonment against an individual,

- a fine between \$5,000 and \$1,000,000 against a person other than an individual,
- a fine between \$5,000 and \$500,000, imprisonment between two to 30 years, or both, against an individual if actually resulting in death or serious bodily injury, or
- a fine between \$10,000 and \$1,500,000 against a person other than an individual if actually resulting in death or serious bodily injury.

It would also be an offense for a person intentionally or knowingly to transport, store or dispose of medical waste in violation of this chapter, placing people in imminent danger of death or serious bodily injury, unless the conduct charged was done in strict compliance with all required permits or with an effective order, punishable by:

- a fine between \$1,500 and \$150,000, imprisonment of not more than five years, or both fine and imprisonment, against an individual,
- a fine between \$3,000 and \$300,000, against other than an individual,
- a fine between \$3,000 and \$300,000, imprisonment between two and 10 years, or both fine and imprisonment, against an individual if the offense results in death or serious bodily injury, and
- a fine between \$6,000 and \$600,000, against a person other than an individual, if the offense results in death or serious bodily injury.

HB 1644 would create an offense for intentionally or knowingly releasing, causing, or permitting the release of medical waste into the environment placing people in danger of death or serious bodily injury, unless the release was made in strict compliance with all required permits or an effective order, which would be punishable by:

- a fine between \$1,500 and \$150,000, imprisonment for not more than 5 years, or both fine and imprisonment against an individual,
- a fine between \$3,000 and \$300,000 against other than an individual,

- a fine between \$3,000 and \$300,000, imprisonment between two and 10 years, or both fine and imprisonment against an individual if the offense results in death or serious bodily injury, and
- a fine between \$6,000 and \$600,000 against a person other than an individual if the offense results in death or serious bodily injury.

HB 1644 would create an offense for recklessly releasing, causing or permitting the release of medical waste into the environment placing people in danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an effective order, punishable by:

- a fine between \$1,000 and \$100,000, confinement in jail not to exceed one year, or both fine and confinement against an individual,
- a fine between \$2,500 and \$250,000 against other than an individual,
- a fine between \$2,000 and \$200,000, confinement between one and two years, or both fine and confinement against an individual if the offense results in death or serious bodily injury, and
- a fine between \$5,000 and \$500,000 against a person other than an individual if the offense results in death or serious bodily injury.

The bill would create an affirmative defense to a knowing or reckless endangerment offense if the endangered person freely consented to the conduct charged and the danger was a reasonably foreseeable hazard of the endangered person's occupation, business, or profession, or a reasonably foreseeable hazard of a medical treatment or experiment, and the person endangered had been made aware of the risks involved before consenting.

Venue would be in the county of the alleged violation or in Travis County.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 1644 would properly create penalties for the improper handling of medical waste, which poses a significant health hazard. The bill's

provisions are based on the current hazardous waste penalties. Present administrative penalties and criminal penalties regarding medical waste do not serve to deter or punish wrongdoers in line with the significant hazards they create. Six other states, Arkansas, California, Florida, New Jersey, Oklahoma and Pennsylvania, have implemented penalties for improper handling of medical waste, and HB 1644 would fill the gap in Texas law.

Recently a medical waste transporter deposited 50,000 pounds of medical waste in trailers in three cities in Texas. The trailers were unrefrigerated, filled with holes, were unlocked, and in some places parked in residential lots. The trailers contained fetuses, funeral home and surgery products, among other hazardous medical waste. Other trailers have been found in apartment complexes and other inappropriate places, and illegal open medical waste burn pits have also been discovered.

The state usually cleans up these hazards, but if the wrongdoer cannot pay the administrative fine, the wrongdoer walks away, even after endangering the well-being of many people in the community. Sometimes the state can charge the person with tampering with government records for altering medical waste burn receipts or insurance proof, but the crime is much graver than the charge. This bill would impose the proper penalties (prison for major offenses and only fine or confinement for less serious offenses) for the different offenses related to medical waste handling, from improper storage and transport to falsifying a manifest and intentional or knowing endangerment of persons.

The bill makes a proper distinction in the endangerment provisions to penalize less severely those offenders who do not intend to do bodily harm but who do intend to do the illegal conduct that places people in danger, in proposed Section 361.565(f). The offenses related to small and large quantity generators are also dependent on conduct and not on knowing whether the action is illegal or not; however, this would be appropriate since any medical waste transporter or storer should investigate whether or not a permit would be needed.

In addition, this bill properly excludes radioactive medical waste and includes animal waste only to the extent the animal was exposed to a pathogen. Based on this definition, neither farms nor veterinarians should

produce much animal waste for the purpose of this chapter, and this bill does not intend to regulate those activities.

The bill includes other provisions to protect innocent people from being convicted. For example, the affirmative defense would prevent an endangerment conviction of a hospital for employing a person as head of ancillary waste because he or she could reasonably foresee the danger involved with the job. In addition, if the head of ancillary waste were transporting the waste illegally, under the definition of knowledge in the bill, the hospital would not be held to have knowledge of the offense and so could not be prosecuted.

Finally, the prosecutor should have the opportunity to choose Travis County as the venue because most of the administrative and state expert witnesses and attorneys are located in Travis County. Having the trial in Travis County saves the state money.

OPPONENTS
SAY:

HB 1644 would punish small quantity offenders too harshly. Small quantity offenders usually operate in rural or small communities and may not be aware that their actions are illegal, even though they know that the transport of medical waste requires a permit in some cases. It is inappropriate for an offense to be triggered by just knowledge of conduct rather than knowledge of illegal activity. For these situations, administrative rather than criminal penalties would be more appropriate.

The inclusion of animal waste in the definition of medical waste could inappropriately burden farmers and ranchers who dispose of animals regularly.

The venue for prosecution should be in the place of the alleged violation. Prosecutors should not be allowed to choose to prosecute in Travis County, which could place a large burden on someone residing hundreds of miles away.

NOTES:

The committee amendment would clarify the definition of medical waste and add that certain conduct must be done "knowingly."

Floor amendments are planned to clarify that animal waste from farm or ranch land is not included in the definition of medical waste and modify the small quantity generator portion of the bill.