

SUBJECT: Reporting of tobacco product ingredients

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Wolens, S. Turner, Alvarado, Counts, Danburg, Hilbert, Hunter, D. Jones, McCall, Ramsay, Stiles

1 nay — Carter

3 absent — Brimer, Craddick, Longoria

WITNESSES: For — Julies Graves Moy, M.D.; Mike Dany, American Cancer Society; Massachusetts state Sen. Warren Tolman; Tom Smith, Public Citizen

Against — Clausen Ely, Tobacco Institute

On — John Grabowski, M.D.; Philip Huang, M.D., Texas Department of Health; Thomas Perkins, Office of the Attorney General

DIGEST: CSHB 119 would require tobacco manufacturers to file with the Department of Health an annual report for each cigarette or tobacco product manufactured or distributed in Texas that states the identity of each ingredient in the cigarette or tobacco product, except for water or tobacco, listed in descending order according to weight, measure or numerical count and a nicotine yield rating.

Manufacturers would not have to disclose the specific amount of any ingredient that has been approved as safe when burned and inhaled by the U.S. Food and Drug Administration.

Nicotine yield ratings would have to be assigned according to standards developed by the department and would have to reflect as accurately as possible the nicotine intake for an average consumer of the cigarette or tobacco product.

Information included in the annual reports would be considered public information unless the attorney general advised that the disclosure of information would constitute an unconstitutional taking of property or if the

department determined that there was no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health. Annual reports would not have to be filed before January 1, 1998.

The department could petition a district court to prohibit by injunction the sale or distribution of a tobacco product manufactured by the manufacturer that failed to file the required annual report or petition the court to grant other injunctive relief. A suit for injunctive relief would have to be brought in Travis County.

The bill would take effect immediately if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

CSHB 119 would require from tobacco product manufacturers the same duty to report ingredients as imposed on other manufacturers of food products and would include provisions to protect trade secrets. A person cannot buy a bag of corn chips without being able to read the list of ingredients on the bag, so similar information should be available to those who purchase cigarettes and tobacco products.

State regulation in this area is more than justified on the ground of protecting public health and safety. There is reason to believe that additives used in the manufacture of cigarettes and tobacco products, even if considered safe for ingesting, may be harmful when burned and inhaled into the lungs. Cigarette smoking has been linked to cancer and bronchitis since 1964 in a report issued by the U.S. surgeon general. In December 1992 the Environmental Protection Agency (EPA) even found "secondhand smoke" to be a Class A carcinogen — a class that also includes such substances as asbestos and arsenic. Tobacco use accounts for an estimated 26,000 deaths in Texas per year, according to the Texas Department of Health.

Tobacco products should be held to more stringent reporting standards than food and drink products because their ingredients change chemical properties while burning and inhaled into the lungs. Flavorings should have to be reported because toxic chemicals such as formaldehyde, arsenic and ammonia are allegedly used by manufacturers to improve tobacco product taste and burning and the nicotine high.

Trade secrets would not be revealed by the reporting requirements in this bill. CSHB 119 would specifically require the department to keep confidential reported information if the attorney general advised that the disclosure of information would constitute an unconstitutional taking of property. The tobacco industry has been reporting ingredient lists to the federal government since 1984, also with confidentiality protections.

Texas would not be breaking new ground by requiring ingredient reporting. Massachusetts passed the first disclosure law last year, which was challenged by the tobacco industry but recently upheld in federal court, and this bill is patterned after the Massachusetts legislation. The federal government also requires tobacco firms to disclose their product additives to the U.S. Department of Health and Human Services while also protecting trade secrets.

OPPONENTS
SAY:

CSHB 119 would conflict with federal law and would result in the public disclosure of manufacturer trade secrets. The bill also is unnecessary to protect public health because ingredient lists and nicotine ratings are already developed and required by the federal government.

The bill would subject tobacco products to ingredient disclosure requirements that are far more extensive than those that apply to foods. Food manufacturers are not required to divulge fragrances, colors and other additives, as this bill would require from tobacco manufacturers, and the vast majority of non-tobacco ingredients used in cigarettes are flavorings. Food and drink manufacturers are allowed under federal law to use generic references like “natural flavors” to disclose many ingredients.

Specific flavorings in food products, as well as the particular combinations of such ingredients, are valuable trade secrets for which disclosure should not be required. Tobacco companies have spent millions of dollars in research and development to create markets for specific brands. This bill could open the door for competitors worldwide to unfairly compete by making imitation products.

Federal law only requires manufacturers to submit one ingredient list that covers all of their tobacco products, not a list for each tobacco product, which would reveal trade secrets and conflict with federal prohibitions on

states requiring tobacco companies to disclose information that the federal government does not require. Although a federal district court recently ruled against the manufacturers who challenged the Massachusetts reporting law, a motion to appeal this ruling has been filed, and the manufacturers' constitutional claims remain to be addressed. Any action on CSHB 119 would be pointless until the legal issues involving the Massachusetts law are fully resolved.

OTHER
OPPONENTS
SAY:

This bill should require ingredients to be listed on the tobacco product package. Tobacco products are no more safe than other food products, and, as in all manufactured products, they can vary in mix of ingredients and additives. Also, other food products are able to openly list ingredients without loss of "trade secret" recipes.

NOTES:

The original version of the bill would have required reports to be filed for products that were manufactured *and* distributed in Texas; the committee substitute would require report filing for products manufactured *or* distributed in Texas.