

- SUBJECT:** Creating a penalty for discarding lighted materials onto rights-of-way
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Hinojosa, Dunnam, Keel, Garcia, Green, Kitchen, Shields  
0 nays  
2 absent — Talton, Martinez Fischer
- WITNESSES:** For — *Registered but did not testify:* Joe Stuchly  
Against — None  
On — Mary Kay Hicks, Texas Forest Service
- BACKGROUND:** Penal Code, ch. 28 sets forth penalties for arson, criminal mischief, and other property damage or destruction. Sec. 28.01 defines “controlled burning” as the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.
- DIGEST:** CSHB 1126 would add sec. 28.09 to the Penal Code to prohibit people from discarding a lit match, cigarette, cigar, or other material onto open-space land, any public or private road or its right-of-way, or any railroad right-of-way. The offense would be a misdemeanor punishable by a fine not to exceed \$100 or confinement in jail for not more than 30 days, or both.
- It would be an affirmative defense to prosecution if the person purposely discarded the lighted material in connection with a controlled burn in the area where the material was discarded.
- The operator of a public conveyance (such as a taxi or a train) in which smoking was permitted would be required to post a copy of this law in a conspicuous place within the conveyance.
- CSHB 1126 would take effect on September 1, 2001.

SUPPORTERS  
SAY:

CSHB 1126 potentially could save lives and taxpayer dollars by preventing some wildfires. The Texas Forest Service estimates that in 1999 almost 15 percent of outside fires originated from either a match or a cigarette. Wildfires caused four civilian fatalities, three fire-service fatalities, 22 fire-service injuries, and 104 civilian injuries. In addition, the estimated loss to property was more than \$14.8 million.

CSHB 1126 would deter accidental fires during Texas' ongoing drought by providing a penalty for throwing lit cigarettes and matches out of car windows. Even after a recent period of wet weather, Texas grass still poses a hazard for accidental fire starts.

CSHB 1126 would hold accountable persons who toss lit cigarettes and matches onto roadsides. When these people unintentionally start fires as a result of their irresponsible actions, current law does not provide for jail time. The threat of up to 30 days in jail would cause many smokers to think twice about throwing lighted items out of their car windows.

OPPONENTS  
SAY:

Because it would allow for jail time, CSHB 1126 would not permit law enforcement officers to issue a ticket to violators of the law. To enforce the law, officers would have to arrest persons discarding a lit cigarette or match and take them to jail. Officers might be hesitant to enforce this law because of its perceived severity in a case where the person did not start a fire. In addition, because the bill does not specify that the violation could be prosecuted either under its provisions or under a more general law, CSHB 1126 could prevent persons who toss lit cigarettes from car windows from being ticketed for littering. The result could be that those persons who did not start a fire would face no punishment at all.

OTHER  
OPPONENTS  
SAY:

While CSHB 1126 would begin to address a very serious problem in Texas, the bill would not go far enough. To create a real deterrent, legislation should impose harsher fines and longer jail time. It is reasonable for these people to be held accountable when they cost lives and cause millions of dollars in damage by starting wildfires.

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NOTES: HB 1126 as filed did not include the affirmative defense to prosecution for persons discarding lighted materials in connection with controlled burning.

During the 76th Legislature, HB 1040 by Rangel, a bill identical to HB 1126 as filed, was reported favorably by the Criminal Jurisprudence Committee, but died in the House Calendars Committee.