

**SUBJECT:** Revising regulation of hazardous materials

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 6 ayes — Gray, Coleman, Capelo, Longoria, Maxey, Uresti  
1 present, not voting — Wohlgemuth  
1 nay — Delisi  
1 absent — Glaze

**WITNESSES:** For — None  
Against — Kim Brightwell and Joe Bill Watkins, Toy Manufacturers of America  
On — Charles Branton and Carolyn Wright, Texas Department of Health

**BACKGROUND:** Health and Safety Code, ch. 501 regulates hazardous substances, including toxic, corrosive, and flammable substances, irritants, and substances that generate pressure. These substances can cause substantial personal injury or illness as a result of any normal handling or use, including possible ingestion by children. Toys or other articles, other than clothing, that are intended for children and that present an electrical, mechanical, or thermal hazard are considered hazardous substances.

**DIGEST:** HB 3602 would define as a “misbranded hazardous substance” any hazardous substance or toy that contained a hazardous substance that was not packaged properly according to federal law and regulations. Such substances or toys would be subject to a ban by the Texas Board of Health, which can involve detainment and other actions.  
  
HB 3602 would broaden the definition of a hazardous substance to include items that are extremely flammable, flammable, or combustible, and would require the board to define those terms as they are defined by the Federal Hazardous Substances Act and related regulations, unless the board

determined that the health, safety, and welfare of Texans required a different definition. The board would have to establish similar flammability standards for solids, fabrics, children's clothing, household furnishings, and the contents of pressurized containers.

Toys, games, and art materials would have to bear proper labeling consistent with federal regulations. Art materials would have to be reviewed by a toxicologist and bear labeling consistent with federal regulations. The Board of Health could set a separate standard for these terms if it determined that public health and safety required a separate standard. A company could not package a hazardous substance in a food, drug, or cosmetic container.

People who intended to import hazardous materials, as defined by the bill, would have to register with the Texas Department of Health (TDH) in the same way as required of manufacturers, repackers, or distributors. The Board of Health would have to set registration fees to cover administrative costs of the program. If TDH notified a company that it must register and it did not register, TDH could seize and dispose of the hazardous substance. Companies also would have to submit samples of materials, packaging, labels, or finished products to TDH at no charge.

TDH could file for a hearing on the misbranding of a banned substance in Travis County or in the county where the article was located. Any violation of these regulations would be an offense, whether or not it was committed intentionally, knowingly, or recklessly. Any offense would be a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000), rather than subject to a different punishment, depending on evidence of fraud.

In cases where TDH suspected an offense, the department could seek an injunction and could recover expenses associated with that action if TDH prevailed. TDH also could order a recall of the product.

The bill would take effect September 1, 2001. The enforcement changes would apply only to offenses committed on or after that date, including a continuing offense if it continued on or after that date. A criminal offense would be considered to occur before the effective date if any part of that offense occurred before the effective date.

**SUPPORTERS  
SAY:**

HB 3602 would help ensure that Texas children's toys and other products were safe. The bill would toughen Texas regulations to meet federal standards on flammability for products, clothing, packaging, and labeling. While most products meet that standard already, this bill would ensure that they all do.

HB 3602 would give TDH the tools it needs to enforce federal standards. In the course of investigating complaints, when TDH discovers violations of the federal standards, the only action it can take is to alert the federal Consumer Product Safety Commission. TDH is closer to the Texas market than federal regulators are and could take action more quickly, ensuring that dangerous products were recalled from the market before they caused harm.

The bill would not impose unconstitutional regulations. The attorney general has issued an opinion (JC-0093, August 11, 1999) supporting the constitutionality of these state fees as legitimate "user fees" that are not preempted by federal law or in violation of the U.S. Constitution's Commerce clause. Furthermore, the bill would not hinder interstate commerce. Three other states charge a fee for potentially hazardous stuffed animals, so Texas would not be the first or only state to do this.

**OPPONENTS  
SAY:**

HB 3602 would make Texas the only state to impose registration and fees on all toys. The proposed fees could hinder interstate commerce, because most toy manufacturers are national companies. Also, the registration would be duplicative, because most companies already provide the information that the registration would require on product labels.

**NOTES:**

The companion bill, SB 1045 by Moncrief, passed the Senate, as amended, by voice vote on April 24 and reported favorably, without amendments, by the House Public Health Committee on May 5, making it eligible for consideration in lieu of HB 3602.

A similar bill in the 76th Legislature, HB 2638 by Gray, died in the House Public Health Committee.