

- SUBJECT:** Creating civil liability for production and sale of synthetic substances
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson
- 0 nays
- WITNESSES:** For — Eric Brown; (*Registered, but did not testify*: Scott Bradford)
- Against — (*Registered, but did not testify*: Mike Hull, Texans for Lawsuit Reform)
- On — (*Registered, but did not testify*: Bryan Blevins, Texas Trial Lawyers Association)
- BACKGROUND:** The distribution of certain synthetic substances that mimic the physiological effects of controlled substances has increased in recent years. These substances are considered more dangerous than their natural counterparts because the substances are designed to better fit the receptors of the brain and intensify the effects.
- Legislators and law enforcement have attempted to solve the problem by treating the products as contraband, but this approach has not been effective because the producers of synthetic substances simply alter the chemical makeup of their product once the chemical has been identified as a controlled substance.
- DIGEST:** CSHB 1200 would create civil liability for damages proximately caused by the consumption or ingestion of a synthetic substance by another person if the actor:
- produced, distributed, sold, or provided the synthetic substance to another person; or
 - aided in the production, distribution, sale, or provision of the

synthetic substance to the other person.

The actor would be strictly liable for all damages caused by the consumption or ingestion of the synthetic substance if the person consuming or ingesting the substance was a minor.

The bill would define a synthetic substance as an artificial substance that produced and was intended to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance.

Conduct for which this bill creates liability would be considered a false, misleading, or deceptive act or practice or an unconscionable action under the Deceptive Trade Practices Act.

Under the bill, any person found liable for any amount of damages arising from the provisions of the bill would be jointly and severally liable with any other person for the entire amount of the damages awarded. A claim could include a claim for exemplary damages. Exemplary damages under this bill would not be capped at \$200,000 or two times the amount of economic damages plus noneconomic damages. The criminal act of another would not bar a plaintiff from recovering exemplary damages from a defendant.

The bill would create an affirmative defense to liability if the synthetic substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the U.S. Food and Drug Administration or other state or federal regulatory agency. It would not be a defense to liability if the substance were in packaging labeled with wording indicating that the substance was not intended to be ingested.

This bill would take effect September 1, 2015, and would apply only to cause of actions that accrue on or after that date.