SUBJECT: Suits for false disparagement of perishable food products

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 5 ayes — Patterson, Finnell, King, Rusling, Walker

0 nays

4 absent — R. Cuellar, Hawley, Rabuck, Swinford

WITNESSES: For — Kathryn Keller, Texas Farm Bureau; Charles Carter, Independent Cattlemen's Association of Texas; Ed Small, Texas and Southwestern Cattle Raisers; Ross Wilson, Texas Cattle Feeders Association; Tommy Engelke, Texas Agricultural Cooperative Council.

Against — Reggie James, Consumers Union Southwest Regional Office.

DIGEST: CSHB 722 would make persons liable for damages and other appropriate relief to producers of perishable food products for disseminating to the public information about a food product that the person knows to be false and that states or implies the food products are not safe for public consumption. It would be presumed that the person knew the information was false if the information was not based on reasonable and reliable scientific inquiry, facts or data. The bill would take effect September 1, 1995.

SUPPORTERS SAY: False and misleading claims about the safety of food products can irreversibly damage agricultural producers. CSHB 722 would help ensure that any claim made about the safety of perishable fruits, vegetables, meat, cheese and other food products is based on facts. CSHB 722 deals only with claims about *food safety*, not issues of taste or preference, and with information concerning a *product*, not an individual food item such as one steak or one apple.

CSHB 722 would not infringe on anyone's right to free speech or to open discussion concerning agricultural products. It would just hold persons responsible for what they say about food products. The right to free speech carries with it a responsibility to speak the truth. False and misleading

claims about the safety of agriculture products can irreversibly damage agriculture producers. The short shelf life of perishable food products means that by the time producers have refuted false claims, their product may be unusable, and they may have suffered large financial losses.

The 1989 Alar apple scare — fueled by celebrity testimony before Congress — financially devastated apple growers in Washington State. By the time apple growers had refuted the unsubstantiated claims about Alar contamination of apples, the growers had substantial suffered losses, with no one to turn to for compensation. Texas growers suffered losses in 1991 due to unsubstantiated news reports about the possibility of salmonella in cantaloupes purportedly coming from Texas. Losses to Texas growers, farm workers and others involved in the industry totaled $12 million, by one estimate. CSHB 722 could be especially important with the emergence of the biotechnology industry, which has been subjected to biased, undocumented attacks.

CSHB 722 — which is similar to laws enacted in Louisiana, Idaho, Georgia, Colorado, Alabama, Florida and South Dakota — would not suppress or stifle research. In fact, it could promote research as more persons and groups seek reliable information to back up their claims.

Special interest groups often have a vested interest — sometimes motivated by their need for publicity — in keeping the public agitated about the safety of food products. The willingness of the news media to disseminate sensational claims about food safety, without investigating the claims, has hurt the agriculture industry. The public tends to believe news reports and often cannot distinguish between scientific fact and hearsay.

CSHB 722 simply states that unless a claim about the safety of a product is based on science, agriculture producers who are harmed can bring lawsuits and recover damages. Under common law on slander of property it can be difficult to recover damages for disparaged crops that have not been harvested; CSHB 722 would fill this gap in the law.

OPPONENTS SAY:

CSHB 722 would have a chilling effect on discussions about the health and safety of agricultural and other food products, potentially harming consumers. The bill could stifle free and open discussion about food

safety. In addition, CSHB 722 is unnecessary because the common law regarding slander of property already covers false, malicious slander that causes damages.

CSHB 722 would require that persons have "reasonable and reliable scientific inquiry, facts or data" before disseminating information about an unsafe perishable food product. The bill does not define these overly broad terms, setting an impossible standard. Because the standards established in CSHB 722 are vague, a scientific study that was not in agreement with the majority of data on a subject could be considered unreasonable and unreliable. For example, while a majority of scientists may say that bovine growth hormone is safe, a significant minority may question its safety.

When a food product is suspected of being unsafe, the public needs and deserves to know any information as soon as possible. If those warning of potential harm have to wait for a consensus concerning the interpretation of scientific data, it could be too late to prevent harm. Members of the public deserve to know about potential public health risks so they can make their own evaluation. Scientific studies are often funded by the food industry, which defines the studies and controls the information that gets released. Science has produced few, if any, definitive facts concerning food product safety.

Agriculture and food industry data might not evaluate the long-term or residual effects of an agricultural safety issue. CSHB 722 could affect the right of consumer advocates, health professionals, citizens and others to discuss these issues. People must be able to freely communicate their experiences without the threat of lawsuits.

CSHB 722 could leave persons open to liability if they discussed ways to avoid becoming sick from a food product. For example, during the salmonella and cantaloupe scare, some groups described possible ways that a cantaloupe could have become tainted and safe ways to handle and prepare this product. In fact, in some cases it can be more harmful to say that a food product is safe than to warn the public of a problem.

The First Amendment constitutional guarantees of free speech should not be curtailed by a special law for agriculture products. Agriculture

producers already are adequately protected under the common law governing slander of property. A person can recover damages for the slander of property if the statements about the quality, purity or value of goods or property were false and malicious and if the person suffered special damages.

CSHB 722 would redefine what is "false." Usually, something is "false" if it is untrue, but under CSHB 722 information would be *presumed* to be false if it is not based on scientific inquiry, facts or data, placing the burden of proof on the defendant. In libel and slander cases, truth is a defense, but under CSHB 722 truth could only be proved by scientific inquiry, facts or data.

OTHER OPPONENTS SAY:

CSHB 722 contains no definition of "dissemination" and could be broadly interpreted to include authors, publishers, transporters of publications and stores.

NOTES:

The committee substitute deleted "unprocessed" from the definition of perishable food product so the bill would apply to both processed and unprocessed food.

The companion bill, SB 811 by Lucio et al., was reported favorably from the Senate Natural Resources Committee on March 14.

A similar bill, HB 2494 by B. Turner, passed the House during the 73rd Legislature in 1993, but died in the Senate when the motion to suspend the regular order to consider the bill failed to get the necessary two thirds vote.