

By: Simpson, Smithee, Raymond, Keffer, Price,  
et al.

H.B. No. 1200

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to civil liability of a person who produces, distributes,  
3 sells, or provides or aids in the production, distribution, sale,  
4 or provision of certain synthetic substances to another person for  
5 damages caused by the other person.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subchapter D, Chapter 481, Health and Safety  
8 Code, is amended by adding Section 481.1191 to read as follows:

9 Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN  
10 PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC  
11 SUBSTANCES. (a) In this section:

12 (1) "Minor" means a person younger than 18 years of  
13 age.

14 (2) "Synthetic substance" means an artificial  
15 substance that produces and is intended to produce when consumed or  
16 ingested an effect similar to or in excess of the effect produced by  
17 the consumption or ingestion of a controlled substance or  
18 controlled substance analogue, as those terms are defined by  
19 Section 481.002.

20 (b) A person is liable for damages proximately caused by the  
21 consumption or ingestion of a synthetic substance by another person  
22 if the actor:

23 (1) produced, distributed, sold, or provided the  
24 synthetic substance to the other person; or

1           (2) aided in the production, distribution, sale, or  
2 provision of the synthetic substance to the other person.

3           (c) A person is strictly liable for all damages caused by  
4 the consumption or ingestion of a synthetic substance by a minor if  
5 the actor:

6           (1) produced, distributed, sold, or provided the  
7 synthetic substance to the minor; or

8           (2) aided in the production, distribution, sale, or  
9 provision of the synthetic substance to the minor.

10          (d) A person who is found liable under this section or other  
11 law for any amount of damages arising from the consumption or  
12 ingestion by another of a synthetic substance is jointly and  
13 severally liable with any other person for the entire amount of  
14 damages awarded.

15          (e) Chapter 33, Civil Practice and Remedies Code, does not  
16 apply to an action brought under this section or an action brought  
17 under Section 17.50, Business & Commerce Code, based on conduct  
18 made actionable under Subsection (f).

19          (f) Conduct for which Subsection (b) or (c) creates  
20 liability is a false, misleading, or deceptive act or practice or an  
21 unconscionable action or course of action for purposes of Section  
22 17.50, Business & Commerce Code, and that conduct is actionable  
23 under Subchapter E, Chapter 17, Business & Commerce Code, and is  
24 subject to any remedy prescribed by that subchapter.

25          (g) An action brought under this section may include a claim  
26 for exemplary damages, which may be awarded in accordance with  
27 Section 41.003, Civil Practice and Remedies Code.

1        (h) Section 41.008, Civil Practice and Remedies Code, does  
2 not apply to the award of exemplary damages in an action brought  
3 under this section.

4        (i) Section 41.005, Civil Practice and Remedies Code, does  
5 not apply to a claim for exemplary damages in an action brought  
6 under this section.

7        (j) It is an affirmative defense to liability under this  
8 section that the synthetic substance produced, distributed, sold,  
9 or provided was approved for use, sale, or distribution by the  
10 United States Food and Drug Administration or other state or  
11 federal regulatory agency with authority to approve a substance for  
12 use, sale, or distribution.

13        (k) It is not a defense to liability under this section that  
14 a synthetic substance was in packaging labeled with "Not for Human  
15 Consumption" or other wording indicating the substance is not  
16 intended to be ingested.

17        SECTION 2. This Act applies only to a cause of action that  
18 accrues on or after the effective date of this Act. A cause of  
19 action that accrued before the effective date of this Act is  
20 governed by the law applicable to the cause of action immediately  
21 before the effective date of this Act, and that law is continued in  
22 effect for that purpose.

23        SECTION 3. This Act takes effect September 1, 2015.