

SUBJECT: Defining evidence in massage business nuisance suits

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Schofield

1 nay — Rinaldi

WITNESSES: For —James Caruthers, Children at Risk; Heather Cook, City of Houston Mayor's Office; Paul Colbert; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Monty Wynn, Texas Municipal League)

Against — None

On — (*Registered, but did not testify*: Brad Bowman, Texas Department of Licensing and Regulation)

BACKGROUND: Occupations Code, ch. 455 regulates massage therapy and other massage services.

Civil Practice and Remedies Code, sec. 125.0015 establishes that a person who maintains a place where people habitually go for certain enumerated illegal activities, including prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution, and knowingly tolerates the activity, maintains a common nuisance.

Under sec. 125.004, proof that any of the listed activities is committed frequently is prima facie evidence that a defendant knowingly tolerated the activity. Evidence of arrests for those activities is admissible to show a defendant's knowledge of those activities.

DIGEST: Under CSHB 240, if a defendant in a common nuisance suit were a business or owner of a business that provided massage therapy or massage services in violation of Occupations Code, ch. 455, proof that those

services occurred would be prima facie evidence that the defendant knowingly tolerated the activity and that the business was habitually used for that activity.

A person bringing a nuisance abatement suit against a massage therapy business could request that a landowner or landlord provide the contact information of the business or business owner within seven days of the request.

The bill would take effect September 1, 2017, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS
SAY:**

CSHB 240 would create a prima facie evidence standard that would help cities bring nuisance abatement suits against illegal massage establishments acting as fronts for prostitution and human trafficking.

Two elements must be proved to establish that a person or business is maintaining a nuisance: knowingly tolerating the activity, and habitual frequency. Under current law, establishing the frequency of illegal activities has been difficult. The bill would address this by establishing that massage therapy or other massage services occurring in violation of the law were prima facie evidence that a defendant knowingly tolerated the activity and that the activity was habitual. By creating this evidentiary standard, the bill would strengthen a tool to be used against establishments linked to the sex trade, which can attract other criminal activity and drain law enforcement resources.

The bill would hold landlords accountable for providing contact information for business owners, expediting the receipt of this information and allowing for a quicker response by law enforcement. If landlords did not provide the required contact information in a timely manner, it could be an indication of knowingly tolerating an illegal business. By enabling an increase in abatement actions, CSHB 240 would lead to an accumulation of evidence that could help cities go after bad landlords through existing legal remedies.

The bill would not have a negative impact on legitimate massage businesses that were complying with the law. While a massage business that ran afoul of statutory licensing or health and safety requirements might have no connection to the sex trade, it still might pose a risk to public health and safety and could be shut down by a Texas Department of Licensing and Regulation inspection.

OPPONENTS
SAY:

CSHB 240 is overly broad because it would allow a city to bring a nuisance abatement claim against a massage business in violation of any law regulating massage therapy, even if the violation had nothing to do with illegal activity of a sexual nature. This bill could empower cities to unfairly target legitimate businesses that offered legal massages but were in violation of some other, less serious regulation.

Other provisions in the bill would address only small issues. The prima facie evidence of frequency would be minimally helpful because judges are well aware that these businesses can be fronts for prostitution. Requiring landlords to provide contact information within seven days also would not materially speed up resolution of these cases because they already must provide this information at the time a city files suit.

The bill would not address the underlying challenge to stopping illegal prostitution businesses because it would target business operators without changing landlords' level of liability. Landlords benefit from charging these businesses rent and also should be held accountable.

NOTES:

The committee substitute differs from the bill as filed in that CSHB 240 would allow parties bringing a nuisance abatement suit to request that a landowner or landlord provide contact information for the business or business owner. It also would narrow the prima facie evidence standard by specifying its application to a defendant who was a business or a business owner that provided massage therapy services in violation of ch. 455.