

SUBJECT: Making certain computer networks, web addresses a common nuisance

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — (*Registered, but did not testify:* Guy Herman, Statutory Probate Courts of Texas; Caroline Joiner, TechNet; Zindia Thomas, Texas Municipal League; Jennifer Allmon, the Texas Catholic Conference of Bishops)

Against — None

On — Kirsta Melton, Office of the Attorney General

BACKGROUND: Under Civil Practice and Remedies Code, sec. 125.0015, a common nuisance is place where persons habitually go for certain criminal activities that are knowingly tolerated by the person maintaining it.

DIGEST: HB 2770 would add under Civil Practice and Remedies Code, sec. 125.0015 that a person operating a web address or computer network in connection with certain sex crimes, organized criminal activity, or employment harmful to a child or for human trafficking was maintaining a common nuisance.

The bill would authorize an individual, the attorney general, or a district, county or city attorney to bring a suit against a person declaring that a person operating a web address or computer network was maintaining a common nuisance.

The sole remedy available for a finding that a web address or computer network was a common nuisance would be a judicial finding issued to the attorney general. The attorney general could post the finding on its

website or notify internet service providers, search engine operators, browsing or hosting companies, or device manufacturers on which applications were hosted of the judicial finding.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

HB 2770 would help combat human trafficking and underage prostitution by expanding what constitutes a "place" under common nuisance law to include websites and computer networks connected to certain crimes. This would give authorities more tools to address the evolving sex crime and human trafficking industries. The bill would enable local and state officials to enjoin and abate these websites and computer networks, cutting off access to their business.

The bill would promote law enforcement cooperation with internet service providers (ISPs) and other internet technology actors to combat trafficking and changing criminal modalities. This cooperation also could encourage greater self-regulation by the ISP industry, which is key in addressing criminal activity in the midst of rapidly expanding technology.

HB 2770 would use an existing law on common nuisances and apply it to the internet to help shut down parts of the human trafficking supply chain. Currently, people throughout Texas can purchase trafficked adults and children on the internet. The bill would help address the easy access customers have to this illegal activity and enable law enforcement to pursue the purveyors with another tool.

Nuisance laws give owners of "places" the opportunity to remedy the nuisance. If the illegal activity is stopped, there is no need for the lawsuit to continue. Those who operate a website where children are sold for sex, even if they are not the ones doing the selling, are in fact bad actors facilitating the sale of children for sex.

The bill would use the common nuisance law appropriately and clearly. The nuisance law is not meant to prosecute people who are committing the specified crimes. Rather, it is designed to go after actors enabling

criminal activity through their facilities. In this case, the facility is virtual, and the bill would affect those actors who supported human trafficking and sex crimes through their "housing" of bad actors.

OPPONENTS
SAY:

HB 2770 could target persons operating a web address or computer network even if it was not the same person engaged in illegal conduct, resulting in a potential overreach of government that could put private property rights at risk. Nuisance laws were developed to address conduct at physical property, and the bill would attempt to treat a computer network in the same manner. However, physical property and a computer network are different in nature, and the bill could lead to ambiguity in the abatement of these activities.

OTHER
OPPONENTS
SAY:

HB 2770 would not go far enough to address trafficking and illegal sexual activity facilitated by the internet. Self-regulation of internet businesses is ideal but unlikely to be sufficient. Directing ISPs to proactively search for websites facilitating human trafficking could be another approach to addressing these businesses. The bill also should include mobile phone networks in its scope as an increasing number of websites have mobile capability.

NOTES:

A companion bill, SB 1196 by Kolkhorst, was approved by the Senate on April 19.