

## **BILL ANALYSIS**

Senate Research Center  
76R4846 GWK-D

S.B. 275  
By: Ellis  
Criminal Justice  
3/5/1999  
As Filed

### **DIGEST**

Currently, the Texas hate crimes statute, which increases penalties by one level of offense if a crime is proven to be “motivated by bias or prejudice,” has not been widely used because prosecutors and legal experts have warned that the statute is too vague to be enforced properly and may not hold up to a constitutional challenge. S.B. 275 would establish conditions relating to the investigation and prosecution of an offense motivated by bias or prejudice and to other remedies for and prosecutions against certain hateful acts.

### **PURPOSE**

As proposed, S.B. 275 establishes conditions and ramifications regarding the investigation and prosecution of an offense motivated by bias or prejudice and includes other remedies for and protections against certain hateful acts.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1

SECTION 1.01. Amends Section 12.47, Penal Code, to establish that this section does not apply to the trial of an offense of injury to a disabled individual under Section 22.04, if the affirmative finding in the case under Article 42.014, Code of Criminal Procedure, shows that the defendant intentionally selected the victim because the victim was disabled. Authorizes the attorney general, upon request by a prosecuting attorney, to assist the prosecuting attorney in the investigation or prosecution of an offense committed because of bias or prejudice. Requires the attorney general to designate one individual in the division of the attorney general’s office that assists in prosecuting criminal cases to coordinate responses to requests made under this subsection.

SECTION 1.02. Amends Article 42.014, Code of Criminal Procedure, to require the court to make an affirmative finding of the fact and enter the finding in the judgment of the case, if in the punishment phase of a trial of an offense under Title 5 (offenses against the person) or Section 28.02 or 28.03, Penal Code, if the court determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed or intentionally selected property damaged or affected as a result of the offense because of race, color, disability, religion, national origin or ancestry, or sexual orientation of the person against whom the offense was committed or the owner or occupant of the property, rather than selected the victim because of the defendant’s bias or prejudice against a group.

SECTION 1.03. Makes application of this article prospective.

#### ARTICLE 2

SECTION 2.01. Amends Chapter 104, Code of Criminal Procedure, by adding Article 104.004, as follows:

Art. 104.004. EXTRAORDINARY PROSECUTION COSTS. Requires the criminal justice division of the governor’s office (division) to distribute grants as provided by this Article. Provides that a county with a population of less than 50,000 is eligible to apply to the division for

a grant under this article if, during the preceding fiscal year, the total amount of county expenditures or funds exceeded certain amounts. Requires the commissioners court to submit with an application a financial statement of the county that shows the total amount of funds, expenditures, and expenses of the county for the fiscal year for which the application is made. Authorizes the division to make a grant only to an eligible county for the reimbursement of expenses incurred by the county during the fiscal year for which the application is made for the investigation or prosecution of an offense described by Subsection(b)(1). Prohibits the amount of the grant to an eligible county from exceeding an amount equal to five percent of the difference between the total amount of funds received by the county and the total expenditures during the fiscal year for which the application is made. Authorizes the division to adopt a budget and rules for the making of grants under this article. Provides that all grants made to a county under this article and its expenditure by the county are subject to audit by the state auditor.

SECTION 2.02. Authorizes the commissioners court of a county to apply to the division for a grant, on or after September 1, 1999.

### ARTICLE 3

SECTION 3.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 140, as follows:

#### CHAPTER 140. REMEDIES FOR AND PROTECTIONS AGAINST HATEFUL ACTS

Sec. 140.001. DEFINITIONS. Defines “claimant” and “defendant.”

Sec. 140.002. RIGHT TO BE FREE FROM HATEFUL ACTS. Provides that an individual in this state has the right to be free from an act of violence, or intimidation by threat of violence, committed against the person or property of the individual, because of certain personal characteristics, or another person receives the individual to have one or more of those characteristics.

Sec. 140.003. ACTION BY INDIVIDUAL. Authorizes an individual to commence certain legal actions, if the individual’s exercise or enjoyment of the rights secured by Section 140.002 is interfered with by a person, whether or not acting under color of law, by threat, intimidation, or coercion, or by an attempt to interfere by threat, intimidation, or coercion. Requires a court to award a claimant who prevails in an action under this chapter reasonable attorney’s fees incurred in bringing the action.

Sec. 140.004. ACTION BY STATE OR LOCAL ATTORNEY. Authorizes certain attorneys to bring an action for injunctive relief or other appropriate relief, including attorney’s fees, to protect the peaceable exercise or enjoyment by an individual of the right secured by Section 140.002.

Sec. 140.005. CONTENT OF SPEECH. Prohibits an action under this chapter from being based solely on the contents of the speech of the defendant unless it is shown that certain threats exist. Prohibits the court from issuing an order under this chapter that restricts the content of any defendant’s speech. Sets forth the extent to which a court is authorized to issue an order that restricts the time, place, or manner of the defendant’s speech.

Sec. 140.006. FORUM. Authorizes an action under this chapter to be brought in a district or county court.

Sec. 140.007. ENFORCEMENT. Establishes that an order issued under this chapter is enforceable by contempt, prosecution under Section 22.11, Penal Code, or both.

Sec. 140.008. WARNING. Requires an order for temporary or permanent relief under this chapter to include a warning statement, and sets forth the text of the statement.

Sec. 140.009. NOTIFICATION OF LAW ENFORCEMENT AGENCIES. Requires a court that issues an order for temporary or permanent relief to order the claimant or the claimant’s attorney to deliver, or the clerk of the court to mail, two copies of the order before the end of the day on which the order was granted to certain entities. Sets forth requirements for a law

enforcement agency that receives an order. Defines “order.”

Sec. 140.010. INDEPENDENT REMEDY. Establishes that an action under this chapter is independent of any other remedy or procedure that may be available to the claimant.

SECTION 3.02. Amends Chapter 22, Penal Code, by adding Section 22.11, as follows:

Sec. 22.11. VIOLATION OF ORDER ENJOINING HATEFUL ACTS. Establishes that a person commits an offense if, in violation of an order for certain injunctive relief, if the person knowingly violates an order. Establishes that an offense committed under this section is a Class B misdemeanor, unless it is shown that a person has been convicted under this section two or more times, in which case it is a Class A misdemeanor.

SECTION 3.03. Makes application of this article prospective.

#### ARTICLE 4

SECTION 4.01. Amends Section 415.032(b), Government Code, to require the Commission on Law Enforcement Officer Standards and Education to require courses and programs to provide training in the investigation and documentation of cases that involve offenses committed because of bias or prejudice. Makes conforming changes.

SECTION 4.02. Amends Section 415.034, Government Code, by adding Subsection (j), to require the course provided to a peace officer to include education and training in the recognition of offenses that are committed because of bias or prejudice, unless the agency head determines that the education and training is inconsistent with the officer’s assigned duties.

#### ARTICLE 5

SECTION 5.01. Effective date: September 1, 1999.

SECTION 5.02. Emergency clause.