

## **BILL ANALYSIS**

Senate Research Center

H.B. 2552  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Human trafficking is prevalent throughout Texas and the United States but often goes unreported. Due to the clandestine nature of the crime, identifying victims is notoriously difficult. A recent report by The University of Texas at Austin's Institute on Domestic Violence & Sexual Assault estimates that there are over 300,000 victims of human trafficking in Texas. Texas is second only to California in human trafficking incidents reported to the National Human Trafficking Hotline; 670 cases were reported in 2016.

Additionally, all across Texas, thousands of businesses claiming to offer massage services are actually fronts for human trafficking and compelling prostitution. These illicit massage parlors attract crime to those locations and many times are unlicensed.

H.B. 2552 strengthens Texas' response to the ongoing problems of human and sex trafficking by building upon current nuisance and abatement law. This helps local governments shut down illicit massage parlors. The bill also provides a means for collecting data on prostitution arrests and outcomes, closes a loophole in the promotion of prostitution statute, and provides a means for property owners to evict businesses that are engaging in human trafficking.

H.B. 2552 amends current law relating to measures to address and deter certain criminal or other unlawful activity, including trafficking of persons, sexual offenses, prostitution, and activity that may constitute a public nuisance; increases criminal penalties; and creates a criminal offense.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 11 (Section 245.025, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 13 (Section 1602.408, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Reenacts Section 17.46(b), Business & Commerce Code, as amended by Chapters 1023 (H.B. 1265) and 1080 (H.B. 2573), Acts of the 84th Legislature, Regular Session, 2015, and amends it to redefine "false, misleading, or deceptive acts or practices."

SECTION 2. Amends Section 125.001, Civil Practice and Remedies Code, by adding Subdivisions (1-a) and (4) to define "computer network" and "web address."

SECTION 3. Amends Section 125.0015, Civil Practice and Remedies Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that a person operating a web address or computer network in connection with a certain activity maintains a common nuisance.

(d) Provides that Subsection (c) does not apply to certain providers and manufacturers.

(e) Provides that this section does not apply to an activity exempted, authorized, or otherwise lawful activity regulated by federal law.

SECTION 4. Amends the heading to Section 125.002, Civil Practice and Remedies Code, to read as follows:

Sec. 125.002. SUIT TO ABATE CERTAIN COMMON NUISANCES; BOND.

SECTION 5. Amends Sections 125.002(a), (g), and (h), Civil Practice and Remedies Code, as follows:

(a) Authorizes a suit to enjoin and abate a common nuisance described by Section 125.0015(a) (relating to a person who maintains a place to which persons habitually go for certain purposes and who tolerates the activity and fails to take reasonable attempts to abate the activity maintains a common nuisance) or (b) (relating to a person maintaining a common nuisance if the person maintains a certain multiunit residential property) to be brought by an individual, by the Texas attorney general (attorney general), or by a district, county, or city attorney.

(g) Authorizes the petitioner, in an action brought under this chapter, other than an action brought under Section 125.0025, to file a notice of lis pendens and a certified copy of an order of the court in the office of the county clerk in each county in which the land is located.

(h) Requires a person who may bring a suit under Subsection (a), rather than Section 125.0015 (Common Nuisance), to consider certain factors.

SECTION 6. Amends Subchapter A, Chapter 125, Civil Practice and Remedies Code, by adding Section 125.0025, as follows:

Sec. 125.0025. SUIT TO DECLARE CERTAIN COMMON NUISANCES. (a) Authorizes a suit to declare that a person operating a web address or computer network is maintaining a common nuisance to be brought by an individual, by the attorney general, or by a district, county, or city attorney.

(b) Provides that, except as provided by Section 125.003(d) (relating to the authority of the court to award a prevailing party reasonable attorney's fees), on a finding that a web address or computer network is a common nuisance, the sole remedy available is a judicial finding issued to the attorney general.

(c) Authorizes the attorney general to:

(1) notify Internet service providers, search engine operators, browsing or hosting companies, or device manufacturers on which applications are hosted of the judicial finding issued to the attorney general under Subsection (b) to determine if the persons notified are able to offer technical assistance to the attorney general in a manner consistent with 47 U.S.C. Section 230; or

(2) post the judicial finding issued to the attorney general under Subsection (b) on the attorney general's Internet website.

SECTION 7. Amends Section 125.004, Civil Practice and Remedies Code, by adding Subsections (a-1), (a-2), and (e), as follows:

(a-1) Provides that proof in the form of a person's arrest or the testimony of a law enforcement agent that an activity described by Section 125.0015(a)(6) (relating to certain prostitution in a place constituting common nuisance) or (7) (relating to compelling prostitution in a certain area constituting common nuisance) is committed at a place licensed as a massage establishment under Chapter 455 (Massage Therapy),

Occupations Code, or advertised as offering massage therapy or massage services is prima facie evidence that the defendant knowingly tolerated the activity.

(a-2) Provides that proof that an activity described by Section 125.0015(a)(18) (relating to certain massage therapy in a certain area constituting common nuisance) is committed at a place maintained by the defendant is prima facie evidence that the defendant knowingly tolerated the activity and did not make a reasonable attempt to abate the activity.

(e) Provides that evidence of a previous suit filed under this chapter that resulted in a judgment against a landowner with respect to an activity described by Section 125.0015 at the landowner's property is admissible in a subsequent suit filed under this chapter to demonstrate that the landowner knowingly tolerated the activity and did not make a reasonable attempt to abate the activity.

SECTION 8. Amends Subchapter C, Chapter 11, Education Code, by adding Section 11.066, as follows:

Sec. 11.066. ELIGIBILITY FOR SERVICE BY TRUSTEE CONVICTED OF CERTAIN OFFENSE. Provides that a person is ineligible to serve as a member of the board of trustees of a school district if the person has been convicted of an offense under Section 43.02(b) (relating to a person committing the offense of prostitution if the person knowingly takes certain actions), Penal Code.

SECTION 9. Amends Section 411.042(b), Government Code, to require the bureau of identification and records to collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of offenses under certain sections, including Sections 43.02(a) (relating to a person committing the offense of prostitution if in return for receipt of a fee the person engages in certain behavior), 43.02(b), and 43.03 (Promotion of Prostitution), Penal Code.

SECTION 10. Amends Subchapter A, Chapter 241, Health and Safety Code, by adding Section 241.011, as follows:

Sec. 241.011. HUMAN TRAFFICKING SIGNS REQUIRED. Requires an emergency department of a hospital to display separate signs, in English and Spanish, that comply with Section 245.025 as if the hospital is an abortion facility.

SECTION 11. Amends Chapter 245, Health and Safety Code, by adding Section 245.025, as follows:

Sec. 245.025. HUMAN TRAFFICKING SIGNS REQUIRED. (a) Requires an abortion facility to display separate signs, in English, Spanish, and any additional language as required by Subsection (b), side by side in accordance with this section in each restroom and patient consulting room. Requires that the signs include certain information.

(b) Requires that signs required under this section be in English and Spanish. Requires the facility, if an abortion facility is located in a political subdivision required to provide election materials in a language other than English or Spanish under Section 272.011 (Bilingual Election Materials Required in Certain Political Subdivisions), Election Code, to display a separate sign in that language.

(c) Requires that signs required under this section be at least 8-1/2 by 11 inches in size and displayed in a conspicuous manner clearly visible to the public and employees of an abortion facility. Requires that the notice cover at least four-fifths of the sign.

(d) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules as necessary to implement and enforce this section.

SECTION 12. Amends Section 1602.354, Occupations Code, by adding Subsection (c), as follows:

(c) Requires the Texas Commission of Licensing and Regulation (TCLR) to require continuing education programs under this chapter (Cosmetologists) to include information on activities commonly associated with human trafficking, recognition of potential victims of human trafficking, and methods for assisting victims of human trafficking, including how to report human trafficking.

SECTION 13. Amends Subchapter I, Chapter 1602, Occupations Code, by adding Section 1602.408, as follows:

Sec. 1602.408. POSTING OF CERTAIN NOTICES REQUIRED. (a) Defines "licensed facility."

(b) Requires a licensed facility to display a sign approved by or acceptable to TCLR or the Texas Department of Licensing and Regulation concerning services and assistance available to victims of human trafficking.

(c) Requires that the sign required by this section be in English, Spanish, and Vietnamese and include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

(d) Requires TCLR, by rule, to establish requirements regarding the posting of signs under this section.

SECTION 14. Amends Section 20A.02(b), Penal Code, as follows:

(b) Provides that an offense under this section is a felony of the first degree if:

(1) and (2) makes nonsubstantive changes to these subdivisions;

(3) the commission of the offense results in the death of an unborn child of the person who is trafficked.

SECTION 15. (a) Provides that this section takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Amends Section 21.16(g), Penal Code, as added by Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015, to provide that an offense under this section is a state jail felony, rather than a Class A misdemeanor.

(c) Amends Chapter 21, Penal Code, by adding Section 21.18, as follows:

Sec. 21.18. SEXUAL COERCION. (a) Defines "intimate visual material" and "sexual conduct."

(b) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, certain benefits.

(c) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense

to obtain, in return for not committing the threatened offense or in connection with the threatened offense, certain benefits.

(d) Provides that this section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(e) Provides that an offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

SECTION 16. (a) Provides that this section takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Amends Section 21.16(g), Penal Code, as added by Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015, to provide that an offense under this section is a state jail felony, rather than a Class A misdemeanor.

(c) Amends Chapter 21, Penal Code, by adding Section 21.18, as follows:

Sec. 21.18. SEXUAL COERCION. (a) Defines "intimate visual material" and "sexual conduct."

(b) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, certain benefits.

(c) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, certain benefits.

(d) Provides that this section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(e) Provides that an offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

SECTION 17. Amends Sections 22.01(b) and (c), Penal Code, as follows:

(b) Provides that an offense under Subsection (a)(1) (relating to a person committing an offense for bodily injury to another) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) through (3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes; or

(6) a pregnant individual to force the individual to have an abortion.

(c) Provides that a certain offense is a Class C misdemeanor, except that the offense is:

(1) and (2) makes no changes to these subdivisions;

(3) a Class A misdemeanor if the offense is committed against a pregnant individual to force the individual to have an abortion.

SECTION 18. Amends Section 43.03, Penal Code, as follows:

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) Provides that a person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the actor, rather than he or she, knowingly:

(1) and (2) makes nonsubstantive changes;

(3) provides a person or premises for prostitution purposes; or

(4) publishes or distributes on an Internet website that is owned or operated by the actor an advertisement that contains an offer to engage in sexual conduct in return for receipt of a fee.

(b) Changes a reference to Subsection (a)(1) or (2) to Subsection (a).

SECTION 19. Amends Chapter 93, Property Code, by adding Section 93.013, as follows:

Sec. 93.013. CERTAIN UNLAWFUL USES OF PREMISES; TERMINATION OF TENANT'S RIGHT OF POSSESSION. (a) Provides that, notwithstanding a provision in a lease to the contrary, a tenant's right of possession terminates and the landlord has a right to recover possession of the leased premises if the tenant is using the premises or allowing the premises to be used for the purposes of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution, as prohibited by the Penal Code, or trafficking of persons as described by Section 20A.02 (Trafficking of Persons), Penal Code.

(b) Authorizes a landlord who reasonably believes a tenant is using the leased premises or allowing the leased premises to be used for a purpose described by Subsection (a) to file a forcible detainer suit under Chapter 24 (Forcible Entry and Detainer) seeking possession of the premises and unpaid rent, including rent for any period of occupancy after the tenant's right of possession terminates.

(c) Provides that, notwithstanding Section 24.005 (Notice to Vacate Prior to Filing Eviction Suit) or 91.001 (Notice for Terminating Certain Tenancies) or any other law or a provision in the lease to the contrary, the landlord is not required for purposes of a forcible detainer suit authorized by this section to give a notice of proposed eviction or a notice of termination before giving notice to vacate or to give the tenant more than three days' notice to vacate before filing the suit.

(d) Provides that a pending suit brought by the attorney general or a district, county, or city attorney under Chapter 125 (Common and Public Nuisances), Civil Practice and Remedies Code, alleging that a common nuisance is being maintained on the leased premises with respect to an activity described by Subsection (a) is prima facie evidence that the tenant's right of possession has terminated and the landlord has a right to recover possession of the premises under Subsection (a).

(e) Provides that a final, nonappealable determination by a court under Chapter 125, Civil Practice and Remedies Code, that a common nuisance is being maintained on the leased premises with respect to an activity described by Subsection (a) creates an irrebuttable presumption that the tenant's right of possession has terminated and the landlord has a right to recover possession of the premises under Subsection (a).

SECTION 20. Makes application of Section 17.46(b), Business & Commerce Code, as amended by this Act, prospective.

SECTION 21. (a) Requires the executive commissioner, not later than December 1, 2017, to adopt the rules necessary to implement Sections 241.011 and 245.025, Health and Safety Code, as added by this Act.

(b) Provides that a hospital or an abortion facility is not required to comply with Section 241.011 or 245.025, Health and Safety Code, as added by this Act, before January 1, 2018.

SECTION 22. (a) Requires TCLR, not later than March 1, 2018, to adopt rules as necessary to comply with Section 1602.354, Occupations Code, as amended by this Act.

(b) Provides that Section 1602.354(c), Occupations Code, as added by this Act, and the rules adopted under Subsection (a) of this section apply only to a continuing education program provided on or after September 1, 2018.

SECTION 23. (a) Requires TCLR, not later than January 1, 2018, to adopt rules as necessary to implement Section 1602.408, Occupations Code, as added by this Act.

(b) Requires a licensed facility as defined by Section 1602.408(a), Occupations Code, as added by this Act, to comply with Section 1602.408, Occupations Code, as added by this Act, not later than February 1, 2018.

SECTION 24. Makes application of Sections 20A.02 and 22.01, Penal Code, as amended by this Act, prospective.

SECTION 25. Makes application of Section 43.03, Penal Code, as amended by this Act, prospective.

SECTION 26. Makes application of Section 93.013, Property Code, as added by this Act, prospective.

SECTION 27. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 28. Effective date: September 1, 2017.