

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1540
By: Thompson, Senfronia et al. (Huffman)
Jurisprudence
5/14/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Texas Government Code Section 402.035, the Texas Human Trafficking Prevention Task Force is statutorily required to develop legislative recommendations that will strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, curb economic markets that facilitate human trafficking, and investigate and prosecute human trafficking offenders. Texas has made significant strides in combatting human trafficking, but there is still much work to do. H.B. 1540 codifies unanimous legislative recommendations from the Texas Human Trafficking Prevention Task Force, and it seeks to protect victims and increase the investigatory tools against traffickers.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 1540 amends current law relating to regulation of certain facilities and establishments with respect to, civil remedies for certain criminal activities affecting, and certain criminal offenses involving health, safety, and welfare; creates a criminal offense; and increases criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 19 (Section 42.042, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 20 (Section 42.068, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.44(b), Alcoholic Beverage Code, as follows:

(b) Requires the Texas Alcoholic Beverage Commission (TABC) to deny an application for a permit or license for any location of an applicant who submitted a prior application that expired or was voluntarily surrendered before the hearing on the application was held on a protest involving certain allegations, including allegations of drink solicitation as described by Section 104.01 (Lewd, Immoral, Indecent Conduct), before the third anniversary of the date the prior application expired or was voluntarily surrendered.

SECTION 2. Amends Section 11.46(c), Alcoholic Beverage Code, to make conforming and nonsubstantive changes.

SECTION 3. Amends Section 61.42(c), Alcoholic Beverage Code, as effective September 1, 2021, to make conforming and nonsubstantive changes.

SECTION 4. Amends Chapter 98, Civil Practice and Remedies Code, by adding Section 98.007, as follows:

Sec. 98.007. CONFIDENTIAL IDENTITY IN CERTAIN ACTIONS. (a) Defines "confidential identity."

(b) Requires the court, except as otherwise provided by this section, in an action under Chapter 98 (Liability for Trafficking of Persons), to:

(1) make it known to the claimant as early as possible in the proceedings of the action that the claimant is authorized to use a confidential identity in relation to the action;

(2) allow a claimant to use a confidential identity in all petitions, filings, and other documents presented to the court;

(3) use the confidential identity in all of the court's proceedings and records relating to the action, including any appellate proceedings; and

(4) maintain the records relating to the action in a manner that protects the confidentiality of the claimant.

(c) Provides that in an action under this chapter, only certain persons are entitled to know the true identifying information about the claimant, including the judge, a party to the action, the attorney representing a party to the action, and a person authorized by a written order of a court specific to that person.

(d) Requires the court to order that a person entitled to know the true identifying information under Subsection (c) is prohibited from divulging that information to anyone without a written order of the court. Requires a court to hold a person who violates the order in contempt.

(e) Prohibits the Supreme Court of Texas, notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code, from amending or adopting rules in conflict with this section.

(f) Provides that a claimant is not required to use a confidential identity as provided by this section.

SECTION 5. Amends Section 125.0017, Civil Practice and Remedies Code, as added by Chapter 858 (H.B. 2552), Acts of the 85th Legislature, Regular Session, 2017, as follows:

Sec. 125.0017. New heading: NOTICE BY LAW ENFORCEMENT OF CERTAIN ACTIVITIES. Authorizes a law enforcement agency, if the agency has reason to believe an activity described by certain sections has occurred at property leased to a person operating a massage establishment as defined by Section 455.001 (Definitions), Occupations Code, to provide written notice by certified mail to each person maintaining the property of the alleged activity.

Deletes existing text requiring a law enforcement agency, if the agency makes an arrest related to an activity described by certain sections that occurs at property leased to a person operating a massage establishment as defined by Section 455.001, Occupations Code, not later than the seventh day after the date of the arrest, to provide written notice by certified mail to each person maintaining the property of the arrest.

SECTION 6. Amends Section 125.0025(b), Civil Practice and Remedies Code, as follows:

(b) Provides that 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, except as provided by Section 125.005, rather than except as provided by Section 125.003(d) (relating to authorizing the court to award a prevailing party reasonable attorney's fees in addition to costs).

SECTION 7. Amends Sections 125.004(a-1) and (a-2), Civil Practice and Remedies Code, 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 certain sections 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, after notice, rather than after notice of an arrest, was provided to the defendant in accordance with Section 125.0017, is prima facie evidence that the defendant knowingly tolerated the activity, and did not make a reasonable attempt to abate the activity. Makes nonsubstantive changes.

(a-2) Makes conforming and nonsubstantive changes to this subsection.

SECTION 8. Amends Section 125.004(a-3), Civil Practice and Remedies Code, as added by Chapter 858 (H.B. 2552), Acts of the 85th Legislature, Regular Session, 2017, as follows:

(a-3) Provides that, for purposes of certain subsections, notice is considered to be provided to the defendant the earlier of certain dates, including the date the defendant actually received notice under Section 125.0017.

SECTION 9. Amends Subchapter A, Chapter 125, Civil Practice and Remedies Code, by adding Section 125.005, as follows:

Sec. 125.005. ATTORNEY'S FEES AND COSTS IN ACTION UNDER CHAPTER. Authorizes the court, in an action brought under Chapter 125 (Common and Public Nuisances), to award a prevailing party reasonable attorney's fees in addition to costs incurred in bringing the action. Requires the court, in determining the amount of attorney's fees, to consider the time and labor involved; the novelty and difficulty of the questions; the expertise, reputation, and ability of the attorney; and any other factor considered relevant by the court.

SECTION 10. Amends Section 125.070(d), Civil Practice and Remedies Code, as follows:

(d) Authorizes a state or governmental entity, if the state or a governmental entity prevails in a suit under Section 125.070 (Civil Action for Violation of Injunction), to recover certain fees, including court costs and attorney's fees in accordance with Section 125.005.

SECTION 11. Amends Section 140A.002, Civil Practice and Remedies Code, as follows:

Sec. 140A.002. CIVIL RACKETEERING. Deletes existing text providing that a person or enterprise commits racketeering if, for financial gain, the person or enterprise commits an offense under Chapter 20A (Trafficking of Persons), Penal Code, and the offense or an element of the offense occurs in more than one county in Texas, or is facilitated by the use of United States mail, e-mail, telephone, facsimile, or a wireless communication from one county in Texas to another.

SECTION 12. Amends Section 140A.102(b), Civil Practice and Remedies Code, as follows:

(b) Authorizes the court to issue an appropriate order following a final determination of liability under Chapter 140A (Civil Racketeering Related to Trafficking of Persons), including an order that:

(1)-(6) makes no changes to these subdivisions;

(7) orders payment of damages to the state for racketeering shown to have materially damaged the state; and, rather than or,

(8) makes no changes to this subdivision.

SECTION 13. Amends Section 140A.104(d), Civil Practice and Remedies Code, as follows:

(d) Prohibits an enterprise from being held liable under this chapter based on the conduct of a person, rather than of an agent, unless the finder of fact finds by a preponderance of the evidence that a director or high managerial agent performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct of the person. Makes a conforming change.

SECTION 14. Amends Articles 42A.453(a) and (c), Code of Criminal Procedure, as follows

(a) Defines "general residential operation" for Article 42A.453 (Child Safety Zone).

(c) Requires a judge, if the judge grants community supervision to a defendant described by Subsection (b) (relating to the application of Article 42A.453 to a defendant placed on community supervision for certain offenses) and the judge determines that a child as defined by Section 22.011(c) (relating to the definition of "child"), Penal Code, was the victim of the offense, to establish a child safety zone applicable to the defendant by requiring as a condition of community supervision that the defendant:

(1) not:

(A) makes no changes to this paragraph; or

(B) go in, on, or within 1,000 feet of certain premises where children commonly gather, including a general residential operation operating as a residential treatment center; and

(2) makes no changes to this subdivision.

SECTION 15. Amends Subchapter B, Chapter 301, Government Code, by adding Section 301.0221, as follows:

Sec. 301.0221. USE OF PSEUDONYM BY VICTIMS OF HUMAN TRAFFICKING.

(a) Requires each legislative committee to allow a witness who is the victim of an offense under Section 20A.02 (Trafficking of Persons) or 20A.03 (Continuous Trafficking of Persons), Penal Code, to give testimony to the committee relating to the witness's experience as a victim of trafficking of persons using a pseudonym instead of the witness's name.

(b) Provides that the name of a witness who uses a pseudonym authorized by Subsection (a) is confidential and is prohibited from being included in any public records of the committee.

SECTION 16. Amends Section 481.134(a), Health and Safety Code, by adding Subdivision (8) to define "general residential operation" for Section 481.134 (Drug-Free Zones).

SECTION 17. Amends Sections 481.134(b), (c), (d), (e), and (f), Health and Safety Code, as follows:

(b) Provides that an offense otherwise punishable as a state jail felony under certain sections is punishable as a felony of the third degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed under certain circumstances, including that the offense was committed by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

(c) Provides that the minimum term of confinement or imprisonment for an offense otherwise punishable under certain sections is increased by five years and the maximum

fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed under certain circumstances, including that the offense was committed by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

(d) Provides that an offense otherwise punishable under certain sections is a felony of the third degree if it is shown on the trial of the offense that the offense was committed under certain circumstances, including that the offense was committed by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

(e) Provides that an offense otherwise punishable under certain sections is a state jail felony if it is shown on the trial of the offense that the offense was committed under certain circumstances, including that the offense was committed by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

(f) Provides that an offense otherwise punishable under certain sections is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed under certain circumstances, including that the offense was committed by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

SECTION 18. Amends Section 42.002, Human Resources Code, to define "grounds" for Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies That Provide Child-Care Services).

SECTION 19. Amends Sections 42.042(e), (g), and (g-2), Human Resources Code, as follows:

(e) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will achieve certain goals, including ensuring that a child's health, safety, and welfare are adequately protected on the grounds of a child-care facility or registered family home. Makes nonsubstantive changes.

(g) Authorizes the executive commissioner, in promulgating minimum standards, to recognize and treat differently the types of services provided by and the grounds appurtenant to certain family home and child-care facilities.

(g-2) Requires the executive commissioner, in adopting the minimum standards by rule under this subsection, to consider the special circumstances, needs, and precautions required of victims of trafficking of persons, the role of the general residential operations in assisting, supporting, and protecting victims of trafficking of persons, and the vulnerability of victims of trafficking of persons on the grounds of a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

SECTION 20. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.068, as follows:

Sec. 42.068. REQUIRED POSTING OF NO TRESPASSING NOTICE; CRIMINAL PENALTY. (a) Requires each general residential operation operating as a residential treatment center to post "No Trespassing" notices on the grounds of the general residential operation in certain locations.

(b) Requires that each "No Trespassing" notice posted on the grounds of a general residential operation operating as a residential treatment center meet certain criteria.

(c) Requires the executive commissioner by rule to determine and prescribe the requirements regarding the placement, installation, design, size, wording, and maintenance procedures for the "No Trespassing" notices.

(d) Requires the Health and Human Services Commission (HHSC) to provide without charge to each general residential operation operating as a residential treatment center the number of "No Trespassing" notices required to comply with this section and rules adopted under this section.

(e) Provides that a person who operates a general residential operation operating as a residential treatment center commits an offense if HHSC provides "No Trespassing" notices to the facility and the person fails to display the "No Trespassing" notices on the operation's grounds as required by this section before the end of the 30th business day after the date the operation receives the notices. Provides that an offense under this subsection is a Class C misdemeanor.

SECTION 21. Amends Section 20A.01, Penal Code, by adding Subdivision (1-a) to define "coercion" for Chapter 20A.

SECTION 22. Amends Section 20A.02(b), Penal Code, as follows:

(b) Provides that an offense under Section 20A.02 (Trafficking of Persons) is a felony of the first degree if the offense meets certain criteria, including if the actor recruited, enticed, or obtained the victim of the offense from a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, the homeless, or persons subjected to human trafficking, domestic violence, or sexual assault. Makes nonsubstantive changes.

SECTION 23. Amends Section 30.05(a), Penal Code, as follows:

(a) Provides that a person commits an offense if the person enters or remains on or in a certain property of another without effective consent, including a general residential operation operating as a residential treatment center, and the person had notice that the entry was forbidden, or received notice to depart but failed to do so.

SECTION 24. Amends Section 30.05(b), Penal Code, by adding Subdivision (13) to define "general residential operation" for Section 30.05 (Criminal Trespass).

SECTION 25. Amends Section 30.05(d), Penal Code, as follows:

(d) Provides that an offense under Section 30.05 is a Class A misdemeanor if the offense meets certain criteria, including if the offense is committed on the property of or within a general residential operation operating as a residential treatment center. Makes nonsubstantive changes.

SECTION 26. Amends Section 71.028(a), Penal Code, to define "general residential operation" for Section 71.028 (Gang-Free Zones). Makes nonsubstantive changes.

SECTION 27. Amends Section 71.028(c), Penal Code, to make conforming and nonsubstantive changes.

SECTION 28. (1) Repealer: Section 125.0017 (Notice of Arrest for Certain Activities), Civil Practice and Remedies Code, as added by Chapter 1135 (H.B. 240), Acts of the 85th Legislature, Regular Session, 2017.

(2) Repealer: Section 125.003(d) (relating to authorizing the court to award a prevailing party reasonable attorney's fees in addition to costs), Civil Practice and Remedies Code.

(3) Repealer: Section 125.004(a-3) (relating to the requirements for a notice provided to a defendant accused of committing an act of common nuisance), Civil Practice and Remedies Code, as added by Chapter 1135 (H.B. 240), Acts of the 85th Legislature, Regular Session, 2017.

(4) Repealer: Section 125.068 (Attorney's Fees), Civil Practice and Remedies Code.

(5) Repealer: Section 20A.02(a-1) (relating to the definition of coercion in regards to an offense relating to the trafficking of persons), Penal Code.

SECTION 29. (a) Provides that Sections 11.44(b), 11.46(c), and 61.42(c), Alcoholic Beverage Code, as amended by this Act, apply to an application for an alcoholic beverage permit or license filed on or after the effective date of this Act or pending on the effective date of this Act.

(b) Makes application of Section 98.007, Civil Practice and Remedies Code, as added by this Act, prospective.

(c) Makes application of the change in law made to Chapters 125 and 140A, Civil Practice and Remedies Code by this Act, prospective.

(d) Makes application of the change in law made to Section 481.134, Health and Safety Code, and the Penal Code by this Act, prospective.

SECTION 30. Effective date: September 1, 2021.