

SUBJECT: Establishing consequences for activities related to prostitution, trafficking

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Gutierrez, Laubenberg, Murr, Neave, Rinaldi,
Schofield

0 nays

2 absent — Farrar, Hernandez

WITNESSES: For — Jamey Caruthers, Children at Risk; (*Registered, but did not testify:*
Linda Townsend, Christus Health; Zoe Halfmann, City of Dallas; Claudia
Russell, El Paso County; Jessica Anderson, Houston Police Department;
Jesse Ozuna, Mayor's Office, City of Houston; Jennifer Allmon, The
Texas Catholic Conference of Bishops)

Against — None

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, human trafficking, and massage services in violation of Occupations Code, ch. 455, and knowingly tolerates these activities maintains a common nuisance.

Business and Commerce Code, sec. 17.46 makes unlawful any false, misleading, or deceptive acts or practices in conducting trade or commerce and subjects them to action by the consumer protection division of the Office of the Attorney General.

Concerns have been raised that human trafficking and compelled prostitution are prevalent in Texas and may take place at businesses presenting themselves as massage establishments. Some have called for Texas to respond on various fronts, including adjusting common nuisance

laws, closing legal loopholes, giving landlords the right to quickly evict bad actors on a reasonable belief they are involved with prostitution or trafficking, and collecting data to help in law enforcement and policy decisions.

DIGEST:

CSHB 2552 would make several changes to laws related to prostitution, human trafficking, and the operation of certain massage services, including laws governing common nuisances. It also would establish penalties for people who knowingly provide premises for prostitution and allow landlords to recover commercially leased property that was being used for prostitution or trafficking of persons.

The bill would add owning, operating, maintaining, or advertising of an unlicensed or noncompliant massage business as a false, misleading, deceptive act or practice subject to action by the consumer protection division of the Office of the Attorney General. The bill also would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for a person, other than a person acting as a prostitute and personally rendering prostitution services for pay, to knowingly provide a person or premise for prostitution purposes. The penalty would be enhanced if it was a subsequent offense or if the conduct involved a person younger than 18 years old engaging in prostitution.

CSHB 2552 would establish under common nuisance law that proof in the form of an arrest for prostitution or compelling prostitution at a business advertised or licensed as a massage establishment was prima facie evidence that a defendant knowingly tolerated the activity. The same would be true if a law enforcement agent testified that the activity took place at the business. Proof that a massage therapy or massage services business was in violation of licensing regulations would be prima facie evidence that the defendant both knowingly tolerated the activity and did not reasonably attempt to abate it. Evidence of a previous common nuisance abatement suit that resulted in a judgment against a landlord at his or her property would be admissible in a subsequent common nuisance abatement suit to demonstrate that the landlord both knowingly tolerated the activity and did not make reasonable efforts to abate it.

The bill also would give landlords of commercial property the right to recover possession of a leased property from a tenant without notice if the premises were being used for prostitution, the promotion or compelling of prostitution, or the trafficking of persons. The landlord could file a forcible detainer suit seeking possession of the premises and unpaid rent without the required notice if the landlord reasonably believed the tenant was using the premises for such purposes.

A pending suit alleging a common nuisance was being maintained on the commercially leased premises with respect to prostitution, the promotion or compelling of prostitution, or the trafficking of persons would be prima facie evidence that the tenant's right to possess the property was terminated and that the landlord had a right to recover possession of it. A final non-appealable determination by a court that a common nuisance was being maintained with respect to such activities would create an irrebuttable presumption that the tenant's right of possession had terminated and that the landlord had a right to recover possession of the property.

The bureau of identification and records under the Department of Public Safety would be required to include prostitution and the promotion of prostitution in the offenses on which it collects information about the number and nature of offenses, as well as other information useful for the study of crime and administration of justice.

To the extent of conflict, CSHB 2552 would prevail over other acts of the 85th Legislature relating to the nonsubstantive additions and corrections to codes.

The bill would take effect September 1, 2017, and would apply to a cause of action accrued, offense committed, or lease entered into or renewed on or after that date.

NOTES:

A companion bill, SB 1226 by Huffman, was referred to the Senate Committee on Criminal Justice on March 9.