

BILL ANALYSIS

H.B. 29
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Observers note that the Human Trafficking Prevention Task Force was established in part to develop recommendations on how to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, and prosecute human trafficking offenders. H.B. 29 seeks to assist in the prevention and elimination of human trafficking in Texas by enacting recommendations made by the task force.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 11 and to the Texas Workforce Commission in SECTION 12 of this bill.

ANALYSIS

H.B. 29 amends the Civil Practice and Remedies Code to authorize the attorney general, if the attorney general has reason to believe that a person may be in possession, custody, or control of any documentary material or other evidence or may have any information relevant to a civil racketeering investigation, to issue and serve in writing, before beginning a civil proceeding, a civil investigative demand requiring the person to produce any of the documentary material for inspection and copying, answer in writing any written interrogatories, give oral testimony, or provide any combination of such civil investigative demands. The bill sets out the required contents of a civil investigative demand, a demand for production of documentary material, a demand for answers to written interrogatories, and each demand for the giving of oral testimony. The bill authorizes both the person who has been served and, in the case of a demand for a product of discovery, the person from whom the discovery was obtained, at any time before the return date specified in a civil investigative demand or not later than the 30th day after the date the demand was served, whichever period is shorter, to file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or a district court of Travis County. The bill requires such a petition to specify each ground on which the petitioner relies in seeking the relief sought and authorizes the petition to be based on any failure of a demand to comply with statutory provisions governing procedures and evidence in a civil racketeering case related to trafficking of persons or on any constitutional or other legal right or privilege of the petitioner. The bill requires the petitioner to serve a copy of the petition on the attorney general and authorizes the attorney general to submit an answer to the petition. The bill requires the court, in ruling on the petition, to presume, absent evidence to the contrary, that the attorney general issued the demand in good faith and within the

scope of the attorney general's authority. The bill sets out provisions authorizing specified manners of service of such demands or petitions and establishing that a verified return by the individual so serving such a demand or petition is proof of service. The bill requires a person on whom such a civil investigative demand is properly served to comply with the terms of the demand, unless otherwise provided by court order and establishes that the time for compliance with the demand wholly or partly does not run during the pendency of any petition for an order modifying or setting aside the demand, provided that the petitioner complies with any portions of the demand not sought to be modified or set aside.

H.B. 29 sets out provisions relating to the production of documentary material in response to a civil investigative demand, the answering of an interrogatory in such a demand, and the oral examination of any person pursuant to a demand for oral testimony. The bill authorizes the attorney general, if a person fails to comply with a duly served civil investigative demand, to file in the district court in the county in which the person resides, is found, or transacts business or in a district court of Travis County and to serve on the person a petition for an order of the court for enforcement. The bill creates an offense for a person who, with intent to avoid, evade, or prevent compliance with a civil investigative demand, knowingly removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information. The bill establishes that such an offense is a misdemeanor punishable by a fine of not more than \$5,000, confinement in a county jail for not more than one year, or both a fine and confinement.

H.B. 29 authorizes the attorney general to use information obtained in response to a demand, or any documentary material, product of discovery, or other record derived or created from the information as the attorney general determines necessary in the enforcement of the bill's provisions regarding civil racketeering related to trafficking of persons, including presentation before court. The bill prohibits the attorney general from releasing or disclosing information that is obtained in response to a demand or any documentary material, product of discovery, or other record derived from the information except under certain conditions as described by the bill. The bill exempts the civil investigative demand issued by the attorney general, any information obtained, maintained, or created in response to the demand, or any documentary material, product of discovery, or other record derived or created during an investigation from the information, from state public information law and from disclosure, discovery, subpoena, or other means of legal compulsion for the release.

H.B. 29 grants a district court, if a petition is filed in the district court in any county, jurisdiction to hear and determine the matter presented and to enter any order required to implement provisions regarding civil racketeering related to trafficking of persons. The bill makes any final order subject to appeal and establishes that failure to comply with any such order is punishable by the court as contempt of the order. The bill expressly establishes that nothing in the bill's provisions and statutory provisions regarding civil racketeering related to trafficking of persons precludes the attorney general from using any procedure not specified in those provisions in conducting a racketeering investigation. The bill establishes that such provisions are cumulative of each other and any other provision of law in effect relating to the same subject and that such provisions preserve the constitutional and common law authority of the attorney general to bring any action under state and federal law. The bill establishes that, if any such provisions are held invalid, the remainder of the provisions are not affected as a result and the application of the provision held invalid to persons or circumstances other than those as to which it is held invalid is not affected as a result.

H.B. 29 includes investigation costs among the costs incurred in obtaining injunctive relief or civil remedies or in conducting investigations for which the court may issue an order for recovery following a final determination of liability. The bill includes among the court's considerations in determining the amount of a civil penalty for a person or enterprise found liable for racketeering the consideration of any other matter that justice requires. The bill requires notification to the attorney general of a related pending criminal investigation or

prosecution of racketeering to be in writing and to describe or otherwise identify the defendant or suspect in the criminal investigation or proceeding.

H.B. 29 amends the Code of Criminal Procedure to make eligible for compensation under the Crime Victims Compensation Act the amount of expense reasonably and necessarily incurred as a result of the specialized care for a child who is a victim and is younger than 18 years of age, is not married, or has not had the disabilities of minority duly removed. The bill includes among the reportable convictions or adjudications the basis of which requires registration under the sex offender registration program certain conduct constituting a continuous trafficking of persons offense; an attempt, conspiracy, or solicitation to engage in such conduct; and a violation of the laws of another state, federal law, foreign country, or Uniform Code of Military Justice for an offense containing elements substantially similar to the elements of such conduct. The bill includes a reportable conviction or adjudication for the offense of continuous trafficking of persons, if based partly or wholly on such conduct, among the convictions or adjudications requiring lifetime registration.

H.B. 29 amends the Education Code to require the Texas Higher Education Coordinating Board and the Texas Workforce Commission (TWC) by rule to require each public junior college and each career school or college, respectively, offering a commercial driver's license training program to include as a part of that program, education and training on the recognition and prevention of human trafficking and requires the board and the TWC to adopt rules, as applicable, not later than December 1, 2017. The bill requires the board and the TWC, as applicable, to establish the content of the education and training in collaboration with the office of the attorney general.

H.B. 29 amends the Government Code to include among the offenses for which the trial courts of Texas are required to give preference to hearings and trials a trafficking of persons offense if the actor traffics a child who is younger than 18 years of age and causes the trafficked child to engage in or become the victim of certain sexual offenses or receives a benefit from participating in a venture that involves such an activity or engaging in sexual conduct with such a trafficked child. The bill repeals a provision that sets the expiration of the human trafficking prevention task force on September 1, 2017.

H.B. 29 reenacts Section 126.002(a), Government Code, as transferred and redesignated from Section 169A.002, Health and Safety Code, by Chapters 604 (S.B. 536) and 1236 (S.B. 1296), Acts of the 84th Legislature, Regular Session, 2015, and as amended by Chapters 604 (S.B. 536) and 1273 (S.B. 825), Acts of the 84th Legislature, Regular Session, 2015, to conform to changes made by Chapters 604 (S.B. 536), Acts of the 84th Legislature, Regular Session, 2015, replacing the authorization for the commissioners court or governing body of a municipality to establish a prostitution prevention program for defendants charged with a prostitution offense in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee with the authorization for such a commissioners court or governing body of a municipality to establish a commercially sexually exploited persons court program for such a defendant.

H.B. 29 expands the membership of the human trafficking prevention task force to include one representative from the following agencies appointed by the chief administrative officer of the respective agency: the Texas Department of Licensing and Regulation, the Office of Court Administration of the Texas Judicial System, the office of the secretary of state, and the Texas Commission on Law Enforcement.

H.B. 29 amends the Health and Safety Code to increase from under the age of 13 to under the age of 14 the age of a minor involved in a case of a sexually transmitted disease whose information may not be released, subject to certain exceptions, and to expressly establish that such a prohibition does not affect a person's duty to report child abuse or neglect, except that information made confidential under statutory provisions relating to communicable diseases may not be released.

H.B. 29 amends the Penal Code to revise the conduct constituting the offense of prostitution by specifying an offense for a person who knowingly offers or agrees to receive a fee from another to engage in sexual conduct or who knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another. The bill repeals the specification that the offense of prostitution based on receipt of a fee is established regardless of whether the actor is offered or actually receives the fee and that the offense of prostitution based on the payment of a fee is established regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee.

H.B. 29 specifies that a person who engages in conduct with a child constituting an offense of continuous sexual abuse of a young child or children, indecency with a child, sexual assault, aggravated sexual assault, sexual performance by a child, or employment harmful to children commits such an offense regardless of whether the person knows the age of the child or victim, as applicable, at the time of the offense. The bill establishes that the enhancements of the penalty for the offense of sexual performance by a child or an employment harmful to children offense apply to such an offense regardless of whether the actor knows the age of the victim at the time of the offense. The bill increases the penalty for promotion of prostitution from a Class A misdemeanor to a state jail felony and increases the penalty enhancement for a subsequent conviction of the offense from a state jail felony to a third degree felony. The bill increases the penalty for the offense of aggravated promotion of prostitution from a third degree felony to a second degree felony.

H.B. 29 reenacts and amends provisions of the Family Code to make conforming changes.

H.B. 29 repeals the following provisions:

- Section 402.035(h), Government Code
- Section 43.02(b-1), Penal Code

EFFECTIVE DATE

September 1, 2017.