

BILL ANALYSIS

Senate Research Center

H.B. 29
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Criminal Justice
5/11/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas human trafficking task force was established in 2009 through H.B. 4009 and is coordinated through the Office of the Attorney General. It is a collaborative effort between state agencies, local law enforcement entities, district attorneys, and non-governmental organizations to address human trafficking from multiple perspectives.

H.B. 29 codifies the 11 recommendations of the Texas human trafficking task force. These include recommendations to improve Texas' response to human trafficking, including enhanced penalties for traffickers, providing prosecutors with additional tools for prosecution, improving victim protections, and addressing training needs. These recommendations are the product of the collaborative efforts and unanimous approval of task force members.

H.B. 29 amends current law relating to prostitution and the trafficking of persons, civil racketeering related to trafficking, the investigation and prosecution of and punishment for certain sexual offenses and offenses involving or related to trafficking, reimbursement of certain costs for criminal victims who are children, and the release and reporting of certain information relating to a child; increases a criminal penalty; and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 18 (Section 130.0105, Education Code) of this bill.

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 19 (Section 132.006, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 140A, Civil Practice and Remedies Code, by designating Sections 140A.001 and 140A.002 as Subchapter A and adding a subchapter heading, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Section 140A.001, Civil Practice and Remedies Code, by adding Subdivision (1-a) to define "attorney general."

SECTION 3. Amends Subchapter A, Chapter 140A, Civil Practice and Remedies Code, as added by this Act, by adding Section 140A.0015, as follows:

Sec. 140A.0015. **APPLICABILITY OF PROVISIONS.** (a) Provides that the provisions of this chapter (Civil Racketeering Related to Trafficking of Persons) are cumulative of each other and any other provision of law in effect relating to the same subject. Provides that the provisions of this chapter preserve the constitutional and common law authority of the Texas Attorney General (attorney general) to bring any action under state and federal law.

(b) Provides that if any of the provisions of this chapter 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 are not affected as a result.

SECTION 4. Amends Chapter 140A, Civil Practice and Remedies Code, by adding Subchapter B, as follows:

SUBCHAPTER B. PROCEDURES AND EVIDENCE

Sec. 140A.051. DEFINITIONS. Defines "civil investigative demand," "documentary material," "person," "product of discovery," "racketeering investigation," and "racketeering violation."

Sec. 140A.052. CIVIL INVESTIGATIVE DEMAND. Authorizes 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, before beginning a civil proceeding, to issue in writing and serve on the person 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 certain civil investigative demands.

Sec. 140A.053. CONTENTS OF DEMAND. (a) Requires a civil investigative demand issued under Section 140A.052 to describe the nature of the activities that are the subject of the investigation, state each statute the activity violates, and advise the person on whom the demand is served that the person has the right to object to the demand as provided for in this subchapter.

(b) Requires a demand for production of documentary material to describe the class of material to be produced with reasonable specificity so that the material demanded is fairly identified, prescribe a return date that provides a reasonable period of time within which the material is to be produced, and identify the individual to whom the material is to be made available for inspection and copying.

(c) Requires a demand for answers to written interrogatories to propound the interrogatories with definiteness and certainty, prescribe a date by which answers to the interrogatories are required to be submitted, and identify the individual to whom the answers should be submitted.

(d) Requires each demand for the giving of oral testimony to prescribe a reasonable date, time, and place at which the testimony will begin and identify the individual who will conduct the examination.

Sec. 140A.054. SERVICE; PROOF OF SERVICE. (a) Authorizes service of any civil investigative demand or petition filed under Section 140A.055 or 140A.060 to be made on any natural person by delivering a duly executed copy of the demand or petition to the person to be served or by mailing a copy by registered or certified mail, return receipt requested, to the person at the person's residence or principal office or place of business.

(b) Authorizes service of any demand or petition filed under Section 140A.055 or 140A.060 to be made on any person other than a natural person by delivering a duly executed copy of the demand or petition to a person to whom delivery would be appropriate under state law if the demand or petition were process in a civil suit.

(c) Provides that a verified return by the individual serving any demand or petition filed under Section 140A.055 or 140A.060 setting forth the manner of service is proof of service. Requires the return, in the case of service by registered or certified mail, to be accompanied by the return post office receipt of delivery of the demand or petition.

Sec. 140A.055. PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND. (a) Authorizes 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. Requires the petition to specify each ground upon which the petitioner relies in seeking the relief sought. Authorizes the petition to be based on any failure of a demand to comply with the provisions of this subchapter or on any constitutional or other legal right or privilege of the petitioner.

(b) Requires the petitioner to serve a copy of the petition on the attorney general in accordance with Section 140A.054. Authorizes the attorney general to submit an answer to the petition.

(c) Requires the court, in ruling on the petition under this section, 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.

Sec. 140A.056. COMPLIANCE WITH DEMAND. (a) Requires a person on whom a civil investigative demand is served under this subchapter to comply with the terms of the demand unless otherwise provided by court order.

(b) Provides that the time for compliance with the demand wholly or partly does not run during the pendency of any petition filed under Section 140A.055, provided that the petitioner is required to comply with any portions of the demand not sought to be modified or set aside.

Sec. 140A.057. DOCUMENTARY MATERIAL. (a) Requires any person on whom any civil investigative demand for the production of documentary material has been duly served under this subchapter to make the material available to the attorney general for inspection and copying during normal business hours on the return date specified in the demand at the person's principal office or place of business or as otherwise may be agreed on by the person and the attorney general. Requires the attorney general to bear the expense of any copying. Authorizes the person to substitute copies for originals of all or part of the requested documents if the originals are made available for inspection. Authorizes the attorney general to elect to obtain or review information in an electronic format. Requires the person to indicate in writing which, if any, of the documents produced contain trade secrets or confidential information.

(b) Requires the production of documentary material in response to any demand to be made under a sworn certificate in the form the demand designates by a natural person having knowledge of the facts and circumstances relating to the production to the effect that all of the requested material in the possession, custody, or control of the person to whom the demand is directed has been produced.

Sec. 140A.058. INTERROGATORIES. (a) Requires each interrogatory in any civil investigative demand duly served to be answered separately and fully in writing, unless it is objected to, in which case the basis for the objection is required to be set forth in lieu of an answer. Requires the person to indicate in writing which, if any, of the answers contain trade secrets or confidential information.

(b) Requires answers to interrogatories to be submitted under a sworn certificate in the form the related demand designates by a natural person having knowledge of the facts and circumstances relating to the preparation of the answers to the effect that all of the requested information in the possession, custody, control, or

knowledge of the person to whom the demand is directed has been set forth fully and accurately.

Sec. 140A.059. ORAL EXAMINATION. (a) Requires the examination of any person pursuant to a civil investigative demand for oral testimony duly served to be taken before any person authorized to administer oaths and affirmations under the laws of this state or the United States. Requires the person before whom the testimony is to be taken to put the witness on oath or affirmation and to personally or by someone acting under the person's direction and in the person's presence record the witness's testimony. Requires the testimony, at the expense of the attorney general, and except as provided by this subsection, to be taken stenographically and is authorized to be transcribed. Authorizes the attorney general to take audio and video recordings of the testimony by providing notice to the person to be examined not later than the seventh day before the day the person is to be examined.

(b) Requires the oral testimony of any person taken pursuant to a demand served to be taken within 100 miles of the county where the person resides, is found, or transacts business or in any other place agreed on by the person and the attorney general.

(c) Authorizes any person compelled to appear under a demand for oral testimony to be accompanied, represented, and advised by counsel. Authorizes counsel to advise the person in confidence, either on the request of the person or on the counsel's own initiative, with respect to any question arising in connection with the examination.

(d) Requires the individual conducting the examination on behalf of the attorney general to exclude from the place of examination all other persons except certain individuals.

(e) Authorizes the person being examined or the person's counsel, during the examination, to object on the record to any question in accordance with Rule 199.5(e), Texas Rules of Civil Procedure. Authorizes an objection to properly be made, received, and entered on the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other privilege, including the privilege against self-incrimination. Provides that neither that person nor the person's counsel is authorized to otherwise object to or refuse to answer any question or interrupt the oral examination. Authorizes the attorney general, if the person refuses to answer any question, to petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question.

(f) Requires the person before whom the testimony was taken, after the testimony has been fully transcribed, to promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general. Requires the witness to have a reasonable opportunity to examine the transcript and make any changes in form or substance accompanied by a statement of the reasons for the changes. Requires the witness to then sign and return the transcript. Authorizes the witness, if the witness does not return the transcript to the person before whom the testimony was taken not later than the 20th day after the date the transcript was provided to the witness, to be deemed to have waived the right to make changes. Requires the officer to then certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness and promptly transmit a copy of the certified transcript to the attorney general.

(g) Requires the attorney general, on request, to furnish a copy of the certified transcript to the witness.

(h) Authorizes the attorney general to provide the witness the same fees and mileage reimbursement that are paid to witnesses in the district courts of this state.

Sec. 140A.060. FAILURE TO COMPLY WITH DEMAND PETITION FOR ENFORCEMENT. Authorizes the attorney general, if a person fails to comply with a civil investigative demand duly served on the person, 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 authorizes the attorney general to serve on the person a petition for an order of the court for enforcement. Requires the petition, if the person transacts business in more than one county and the attorney general elects not to file the petition in Travis County, to be filed in the county of the person's principal office or place of business in the state or in any other county as may be agreed on by the person and the attorney general.

Sec. 140A.061. DELIBERATE NONCOMPLIANCE. (a) Provides that a person commits an offense if the person, with intent to avoid, evade, or prevent compliance with a civil investigative demand issued under this subchapter, knowingly removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information.

(b) Provides that an offense under this section is a misdemeanor punishable by a certain fine and certain confinement.

Sec. 140A.062. DISCLOSURE AND USE OF MATERIAL AND INFORMATION. (a) Provides that 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, is not subject to disclosure under Chapter 552 (Public Information), Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for the release, except as described in Subsections (b) and (c).

(b) 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 with certain exceptions.

(c) 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 this chapter, including presentation before court.

Sec. 140A.063. JURISDICTION. Provides that if a petition is filed in the district court in any county, the court has jurisdiction to hear and determine the matter presented and to enter any order required to implement this chapter. Provides that any final order is subject to appeal. Provides that failure to comply with any final order entered by a court under this chapter is punishable by the court as contempt of the order.

Sec. 140A.064. NONEXCLUSIVE PROCEDURES. Provides that nothing in this chapter precludes the attorney general from using any procedure not specified in this chapter in conducting a racketeering investigation.

SECTION 5. Amends Chapter 140A, Civil Practice and Remedies Code, by adding Subchapter C and adding a subchapter heading, to read as follows:

SUBCHAPTER C. ENFORCEMENT

SECTION 6. Transfers Sections 140A.003 through 140A.013, Civil Practice and Remedies Code, to Subchapter C, Chapter 140A, Civil Practice and Remedies Code, as added by this Act,

redesignates them as Sections 140A.101 through 140A.111, Civil Practice and Remedies Code, and amends those sections, as follows:

Sec. 140A.101. SUIT TO ABATE RACKETEERING. Redesignates existing Section 140A.003 as Section 140A.101 and makes no further changes to this section.

Sec. 140A.102. INJUNCTIVE RELIEF; OTHER REMEDIES. Redesignates existing Section 140A.004 as Section 140A.102. (a) Makes no changes to this subsection.

(b) Authorizes the court, following a final determination of liability under this chapter, to issue an appropriate order, including an order that orders the recovery of reasonable fees, expenses, and costs incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, investigation costs, attorney's fees, witness fees, and deposition fees.

(c) Requires the court, in determining the amount of a certain civil penalty, to consider any other matter that justice requires. Makes nonsubstantive changes.

(d) through (i) Makes no changes to these subsections.

Sec. 140A.103. CONSTRUCTIVE TRUST. Redesignates existing Section 140A.005 as Section 140A.103 and makes no further changes to this section.

Sec. 140A.104. EVIDENCE. Redesignates existing Section 140A.006 as Section 140A.104 and makes no further changes to this section.

Sec. 140A.105. LIMITATIONS PERIOD. Redesignates existing Section 140A.007 as Section 140A.105 and makes no further changes to this section.

Sec. 140A.106. SPECIAL DOCKETING PROCEDURES. Redesignates existing Section 140A.008 as Section 140A.106 and makes no further changes to this section.

Sec. 140A.107. NOTICE TO LOCAL PROSECUTOR. Redesignates existing Section 140A.009 as Section 140A.107 and makes no further changes to this section.

Sec. 140A.108. COOPERATION WITH LOCAL PROSECUTOR. Redesignates existing Section 140A.010 as Section 140A.108. (a) Authorizes a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction that receives notice under Section 140A.107, rather than 140A.009, to notify the attorney general of a related pending criminal investigation or prosecution.

(b) Requires notification to the attorney general under Subsection (a) to be in writing and describe or otherwise identify the defendant or suspect in the criminal investigation or proceeding.

(c) Creates this subsection from existing text and makes no further changes to this subsection.

Sec. 140A.109. ABATEMENT OF SUIT. Redesignates existing Section 140A.011 as Section 140A.109 and makes a conforming change.

Sec. 140A.110. DISPOSITION OF ASSETS. Redesignates existing Section 140A.012 as Section 140A.110 and makes no further changes to this section.

Sec. 140A.111. PREVIOUSLY SEIZED ASSETS. Redesignates existing Section 140A.013 as Section 140A.111 and makes no further changes to this section.

SECTION 7. Amends Article 24A.001, Code of Criminal Procedure, as follows:

Art. 24A.001. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter (Responding to Subpoenas and Certain Other Court Orders) applies only to a subpoena, search warrant, or other court order that:

(1) relates to the investigation or prosecution of a criminal offense under:

(A) Sections 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency With a Child), 22.011 (Sexual Assault), or 22.021 (Aggravated Sexual Assault), Penal Code;

(B) Chapter 20A (Trafficking of Persons), Penal Code;

(C) Section 33.021 (Online Solicitation of a Minor), Penal Code; or

(D) Chapter 43 (Public Indecency), Penal Code; and

(2) is served on or issued with respect to an online service provider, rather than Internet service provider, that provides service in this state.

SECTION 8. Amends Subchapter A, Chapter 24A, Code of Criminal Procedure, by adding Article 24A.0015 as follows:

Art. 24A.0015. DEFINITION. Defines "online service provider."

SECTION 9. Amends Articles 24A.002(a) and (b), Code of Criminal Procedure, to replace references to Internet service provider to online service provider.

SECTION 10. Amends Article 24A.003, Code of Criminal Procedure, as follows:

Art. 24A.003. DISOBEYING SUBPOENA, WARRANT, OR ORDER. Replaces a reference to Internet service provider to online service provider.

SECTION 11. Amends Article 24A.051, Code of Criminal Procedure, as follows:

Art. 24A.051. PRESERVING INFORMATION. Replaces references to Internet service provider to online service provider.

SECTION 12. Amends Article 45.0216(f), Code of Criminal Procedure, to require the court to order the conviction, together with certain documents and records relating to the offense, expunged from the person's record if the court finds that, for a person applying for the expunction of a conviction for an offense described by Section 43.261 (Electronic Transmission of Certain Visual Material Depicting Minor), Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) (relating to certain conduct indicating a need for supervision), rather than Section 51.03(b)(7) (relating to certain conduct indicating a need for supervision), Family Code, while the person was a child.

SECTION 13. Amends Article 56.32(a)(9), Code of Criminal Procedure, to redefine "pecuniary loss."

SECTION 14. Amends Article 62.001(5), Code of Criminal Procedure, to redefine "reportable conviction or adjudication."

SECTION 15. Amends Article 62.005(b), Code of Criminal Procedure, to provide that the information contained in the database, including the numeric risk level assigned to a person under this chapter (Sex Offender Registration Program), is public information, with the exception of any information that is described by Article 62.051(c)(7) (relating to the requirement that the registration form require the identification of any online identifier established or used by the person) or required by the Texas Department of Public Safety (DPS) under Article 62.051(c)(9), rather than Section 62.051(c)(8) (relating to the requirement that the

registration form require any other information required by DPS), including any information regarding an employer's name, address, or telephone number.

SECTION 16. Amends Article 62.051(c), Code of Criminal Procedure, as follows:

(c) Requires the registration form to require the vehicle registration information, including certain information of any vehicle owned by the person, if the person has a reportable conviction or adjudication for an offense under certain sections of the Penal Code. Redesignates existing Subdivision (8) as Subdivision (9).

SECTION 17. Amends Article 62.101(a), Code of Criminal Procedure, as follows:

(a) Provides that, except as provided by Subsection (b) (relating to the expiration of a person's duty to register) and Subchapter I (Early Termination of Certain Persons' Obligation to Register), the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for a certain offense. Redesignates existing Subdivisions (3) through (5) as Subdivisions (4) through (6).

SECTION 18. Amends Subchapter A, Chapter 130, Education Code, by adding Section 130.0105, as follows:

Sec. 130.0105. COMMERCIAL DRIVER'S LICENSE TRAINING PROGRAM; CERTAIN CURRICULUM REQUIREMENTS. (a) Requires the Texas Higher Education Coordinating Board (THECB), by rule, to require each public junior college 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.

(b) Requires THECB, in collaboration with the Office of the Attorney General (OAG), to establish the content of the education and training required by this section.

SECTION 19. Amends Subchapter A, Chapter 132, Education Code, by adding Section 132.006, as follows:

Sec. 132.006. COMMERCIAL DRIVER'S LICENSE TRAINING PROGRAM; CERTAIN CURRICULUM REQUIREMENTS. (a) Requires the Texas Workforce Commission (TWC), by rule, to require each career school or college 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.

(b) Requires TWC, in collaboration with OAG, to establish the content of the education and training required by this section.

SECTION 20. Reenacts Section 51.03(b), Family Code, as amended by Chapters 935 (H.B. 2398), 944 (S.B. 206), and 1273 (S.B. 825), Acts of the 84th Legislature, Regular Session, 2015, and amends it to redesignate existing Subdivisions (6) and (7) as Subdivisions (5) and (6).

SECTION 21. Amends Section 51.13(e), Family Code, to change a reference to Section 51.03(b)(7) to 51.03(b)(6).

SECTION 22. Amends Section 54.0404(a), Family Code, to change a reference to Section 51.03(b)(7) to 51.03(b)(6).

SECTION 23. Amends Section 58.003(c-3), Family Code, to change references to Section 51.03(b)(6) to 51.03(b)(5).

SECTION 24. Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to certain hearings and trials.

SECTION 25. 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.

SECTION 26. Reenacts Section 402.035(c), Government Code, as amended by Chapters 146 (H.B. 188), 332 (H.B. 10), and 734 (H.B. 1549), Acts of the 84th Legislature, Regular Session, 2015, and amends it to provide that the task force is composed of one representative from each of certain state agencies, appointed by the chief administrative officer of the respective agency and to make a nonsubstantive change.

SECTION 27. Reenacts Section 402.035(d), Government Code, as amended by Chapters 146 (H.B. 188) and 332 (H.B. 10), Acts of the 84th Legislature, Regular Session, 2015, and amends it, as follows:

(d) Changes reference to Section 43.02(c)(3) (relating to the certain circumstance that make prostitution a felony of the second degree), Penal Code, to 43.02(c-1)(3), Penal Code. Redesignates existing text under Subdivision (12) as Subdivision (13). Makes conforming and nonsubstantive changes.

SECTION 28. Amends Section 81.046(d), Health and Safety Code, as follows:

(d) Prohibits information, in a case of sexually transmitted disease involving a minor under 14 years of age, rather than 13 years of age, from being released, except certain information is authorized to be released to appropriate agents as required by Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code. Provides that this subsection does not affect a person's duty to report child abuse or neglect under Subchapter B (Report of Abuse or Neglect; Immunities), Chapter 261, Family Code, except that information made confidential by this chapter is prohibited from being released.

SECTION 29. Amends Section 20A.02(b), Penal Code, to provide that an offense under this section is a felony of the first degree if the applicable conduct constitutes a certain offense, regardless of whether the actor knows the age of the child at the time of the offense, rather than at the time the actor commits the offense.

SECTION 30. Amends Section 21.02(b), Penal Code, to provide that a person commits an offense if at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense.

SECTION 31. Amends Section 21.11(a), Penal Code, to provide that a person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person who knows the age of the child at the time of the offense, the person engages in a certain act with a certain intent.

SECTION 32. Amends Section 22.011(a), Penal Code, as follows:

(a) Provides that a person commits an offense if the person intentionally or knowingly causes certain sexual acts or regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly causes certain sexual acts. Makes a nonsubstantive change.

SECTION 33. Amends Section 22.021(a), Penal Code, as follows:

(a) Provides that a person commits an offense:

(1) if the person, regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly causes certain sexual acts; and

(2) if the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense.

SECTION 34. Amends Section 43.01, Penal Code, by adding Subdivision (1-a) to define "fee."

SECTION 35. Amends Sections 43.02(a) and (b), Penal Code, as follows:

(a) Provides that a person commits an offense if the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct. Deletes existing text providing that a person commits an offense if, in return for receipt of a fee, the person knowingly offers to engage, agrees to engage, or engages in sexual conduct, or solicits another in a public place to engage with the actor in sexual conduct for hire.

(b) Provides that a person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another. Deletes existing text providing that a person commits an offense if, based on the payment of a fee by the actor or another person on behalf of the actor, the person knowingly offers to engage, agrees to engage, or engages in sexual conduct or solicits another in a public place to engage with the actor in sexual conduct for hire.

SECTION 36. Amends Section 43.02, Penal Code, as amended by Chapters 332 (H.B. 10) and 1273 (S.B. 825), Acts of the 84th Legislature, Regular Session, 2015, by reenacting Subsection (c) and reenacting and amending Subsection (c-1), as follows:

(c) Makes no changes to this subsection.

(c-1) Provides that an offense under Subsection (b) (relating to a person who commits the offense of prostitution, if based on the payment of a fee, the person knowingly engages in certain acts) is a Class B misdemeanor, except that the offense is a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct, rather than if the person solicited, is younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of, rather than the time the actor commits, the offense.

SECTION 37. Amends Section 43.03(b), Penal Code, to provide that an offense under this section is a state jail felony, rather than a Class A misdemeanor, except that the offense is a felony of the third degree, rather than a state jail felony, if the actor has been previously convicted of an offense under this section, or a felony of the second degree if the actor engages in certain conduct, regardless of whether the actor knows the age of the person at the time of the offense, rather than the time the actor commits the offense.

SECTION 38. Amends Section 43.04(b), Penal Code, to provide that an offense under this section is a felony of the second degree, rather than third degree, except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense, rather than at the time the actor commits the offense.

SECTION 39. Amends Section 43.05(a), Penal Code, to change a reference to the time the actor commits the offense to the time of the offense.

SECTION 40. Amends Section 43.25, Penal Code, by amending Subsections (c) and (e) and adding Subsection (h), as follows:

(c) Provides that an offense under Subsection (b) (relating to the commission of an offense when a person with certain knowledge employs, authorizes, or induces a minor to engage in certain sexual conduct) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(e) Provides that an offense under Subsection (d) (relating to the commission of an offense when a person with certain knowledge produces, directs, or promotes certain sexual conduct with a minor) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(h) Provides that conduct under this section (Sexual Performance By a Child) constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

SECTION 41. Amends Section 43.251, Penal Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that an offense under this section (Employment Harmful to Children) is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the child at the time of the offense.

(d) Provides that conduct under this section constitutes an offense regardless of whether the actor knows the age of the child at the time of the offense.

SECTION 42. Repealer: Section 402.035(h) (relating to the expiration of the section), Government Code.

Repealer: Section 43.02(b-1) (relating to the establishment of a certain offense), Penal Code.

SECTION 43. (a) Makes application of this Act, except as provided by Subsection (b), prospective.

(b) Provides that the changes in law made by this Act in amending Chapter 62, Code of Criminal Procedure, apply only to a person who is required to register under Chapter 62, Code of Criminal Procedure, on the basis of a conviction or adjudication for or based on an offense committed on or after the effective date of this Act. Provides that a person who is required to register under Chapter 62, Code of Criminal Procedure, solely on the basis of a conviction or adjudication for or based on an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 44. Makes application of Chapter 24A, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 45. (a) Requires THECB, not later than December 1, 2017, to adopt rules necessary to implement Section 130.0105, Education Code, as added by this Act.

(b) Requires TWC, not later than December 1, 2017, to adopt rules necessary to implement Section 132.006, Education Code, as added by this Act.

SECTION 46. 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 47. Effective date: September 1, 2017.