

## **BILL ANALYSIS**

Senate Research Center  
86R19690 JSC-F

C.S.S.B. 20  
By: Huffman et al.  
State Affairs  
3/15/2019  
Committee Report (Substituted)

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

S.B. 20 codifies all 14 recommendations from the Texas Human Trafficking Prevention Task Force, a statutorily created group administratively attached to the Office of the Attorney General. The task force includes the representatives or designees from 27 state or local agencies including the Office of the Governor, the Office of the Attorney General, the state's health and human services agencies, the Department of Public Safety of the State of Texas, the Texas Workforce Commission, the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, the Texas Education Agency, the Texas Alcohol Beverage Commission, and nongovernmental associations and agencies affected by or combatting human trafficking. The biennial report, which was issued in December 2018, contained the following 14 recommendations:

1. Expand Texas Department of Licensing and Regulation (TDLR) authority to conduct more comprehensive background checks under the massage therapy program.
2. Require posting of human trafficking awareness signs in licensed massage establishments and schools.
3. Require additional reporting by massage therapy schools to identify fraudulent schools and students.
4. Remove the five-year "sit out" period for massage therapy licensees.
5. Provide TDLR with authority to act in instances of sexual violations by massage therapy licensees.
6. Provide enforcement provisions in the massage therapy statute similar to other TDLR programs.
7. Provide rape shield law protections for human trafficking and child sexual abuse victims.
8. Include adult sex trafficking and adult sex crimes in the list of offenses where evidence of uncharged crimes is allowable.
9. Provide tools to pursue state charges against online traffickers.
10. Include continuous human trafficking as a stackable offense.
11. Make definition of "coercion" found in Section 20A.02(a-1), Penal Code, applicable to adult and child labor trafficking.
12. Create a new process to protect commercial lessees from operating in the vicinity of human trafficking.
13. Enhance the nondisclosure process under Chapter 411 of the Government Code for victims of human trafficking.

14. Amend prostitution and related statutes to provide increased penalties for buyers and mandatory community supervision provisions for sellers. (Original Author's/Sponsor's Statement of Intent).

C.S.S.B. 20 amends current law relating to the prevention of, prosecution of, penalties for, and other consequences of prostitution, trafficking of persons, and related criminal offenses, and to orders of nondisclosure for persons who committed certain of those offenses; regulating occupations and property to prevent and respond to those criminal offenses, including requiring a student occupational permit for those purposes; authorizes fees; increases criminal penalties; and creates criminal offenses.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 6.06 (Section 455.207, Occupations Code) and SECTION 6.09 of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. TRAFFICKING OF PERSONS AND CONTINUOUS TRAFFICKING OF PERSONS

SECTION 1.01. Amends Section 20A.01, Penal Code, by adding Subdivision (1-a), to provide that "coercion" as defined by Section 1.07 includes destroying, concealing, confiscating, or withholding from a person, or threatening to destroy, conceal, confiscate, or withhold from a person, the person's actual or purported government records or identifying information or documents.

SECTION 1.02. Amends Section 3.03(b), Penal Code, as follows:

(b) Authorizes the sentences, if the accused is found guilty of more than one offense arising out of the same criminal episode, to run concurrently or consecutively if each sentence is for a conviction of an offense under Section 20A.02 (Trafficking of Persons), 20A.03 (Continuous Trafficking of Persons), or 43.05 (Compelling Prostitution), rather than under Sections 20A.02 or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section, rather than convicted of violations of both sections, or for which a plea agreement was reached in a case in which the accused was charged with more than one offense, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section, rather than of both sections.

SECTION 1.03. Repealer: Section 402.035(h) (relating to the expiration of this section on September 1, 2019), Government Code, as amended by Chapter 762 (S.B. 2039), Acts of the 85th Legislature, Regular Session 2017.

Repealer: Section 20A.02(a-1) (relating to trafficking another person with the intent that the trafficked person engage in forced labor or services), Penal Code.

SECTION 1.04. Provides that the change made by this article applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on date the offense was committed, and the former law is continued in effect for that purpose. Provides that for the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

#### ARTICLE 2. PENALTIES FOR PROSTITUTION

SECTION 2.01. Amends Subchapter K, Chapter 42A, Code of Criminal Procedure, by adding Article 42A.515, as follows:

Art. 42A.515. COMMUNITY SUPERVISION FOR CERTAIN PROSTITUTION OFFENSES. (a) Requires the judge, except as provided by Subsection (e), on a defendant's conviction of a Class B misdemeanor under Section 43.02(a) (relating to providing that a person commits an offense if the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct), Penal Code, to suspend imposition of the sentence and place the defendant on community supervision.

(b) Requires the judge, except as provided by Subsection (e), on a defendant's conviction of a state jail felony under Section 43.02(c)(2) (relating to a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (a)), Penal Code, that is punished under Section 12.35(a) (relating to the requirement that an individual adjudged guilty of a state jail felony, except as provided by Subsection (c), be punished by confinement in a state jail for any term of not more than two years or less than 180 days), Penal Code, to suspend the imposition of the sentence and place the defendant on community supervision. Provides that this section does not apply to a defendant who has previously been convicted of any other state jail felony under Section 43.02(c)(2), Penal Code, that is punished under Section 12.35 (State Jail Felony Punishment), Penal Code.

(c) Requires a judge who places a defendant on community supervision under Subsection (a) or (b) to require as a condition of community supervision that the defendant participate in a commercially sexually exploited persons court program established under Chapter 126 (Authority to Establish Program; Eligibility), Government Code, if a program has been established for the county or municipality where the defendant resides. Provides that Sections 126.002(b) (relating to a defendant being eligible to participate in a commercially sexually exploited persons court program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program) and (c) (relating to a requirement that the court in which the criminal case is pending allow an eligible defendant to choose whether to participate in the commercially sexually exploited persons court program or otherwise proceed through the criminal justice system), Government Code, do not apply with respect to a defendant required to participate in the court program under this subsection.

(d) Authorizes a judge who requires a defendant to participate in a commercially sexually exploited persons court program under Subsection (c) to suspend in whole or in part the imposition of the program fee described by Section 126.006 (Fees), Government Code.

(e) Requires the judge, in any case in which the jury assesses punishment, to follow the recommendations of the jury in suspending the imposition of a sentence or ordering a sentence to be executed. Requires the judge, if a jury assessing punishment does not recommend community supervision, to order the sentence to be executed in whole.

(f) Authorizes the judge to suspend in whole or in part the imposition of any fine imposed on conviction.

SECTION 2.02. Amends Article 42A.551(d), Code of Criminal Procedure, as follows:

(d) Authorizes the judge, on the conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subsection (a) or to which Article 42A.515 applies, subject to Subsection (e), to suspend the imposition of the sentence and place the defendant on community supervision or order the sentence to be executed in whole or in part, with a period of community supervision to begin immediately on release of the defendant from confinement.

SECTION 2.03. Amends Article 62.001(5), Code of Criminal Procedure, to redefine "reportable conviction or adjudication" to make a conforming change.

SECTION 2.04. Amends Section 402.035(d), Government Code, to make a conforming change.

SECTION 2.05. Amends Section 43.02(c-1), Penal Code, as follows:

(c-1) Redesignates existing Subdivision (2) as Subdivision (1) and Subdivision (3) as Subdivision (2). Provides that an offense under Subsection (b) (relating to providing that a person commits an offense if the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct) is a Class A, rather than a Class B, misdemeanor, except that the offense is a state jail felony if the actor has previously been convicted of an offense under Subsection (b), rather than has previously been convicted three or more times, and a felony of the second degree in certain circumstances. Deletes existing text providing that the offense is a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (b).

SECTION 2.06. Makes the change in law made by this article prospective. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

### ARTICLE 3. ONLINE PROMOTION OF PROSTITUTION

SECTION 3.01. Amends Section 43.01, Penal Code, by adding Subdivisions (1-b) and (1-c) to define "interactive computer service" and "Internet."

SECTION 3.02. Amends Subchapter A, Chapter 43, Penal Code, by adding Sections 43.031 and 43.041, as follows:

Sec. 43.031. ONLINE PROMOTION OF PROSTITUTION. (a) Provides that a person commits an offense if the person owns, manages, or operates an interactive computer service with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution.

(b) Provides that an offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has been previously convicted of an offense under this section or Section 43.041 or engages in conduct described by Subsection (a) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

Sec. 43.041. AGGRAVATED ONLINE PROMOTION OF PROSTITUTION. (a) Provides that a person commits an offense if the person owns, manages, or operates an interactive computer service with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution.

(b) Provides that an offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the actor has been previously convicted of an offense under this section or engages in conduct described by Subsection (a) involving two or more persons younger than 18 years of age regardless of whether the actor knows the age of the persons at the time of the offense.

SECTION 3.03. Amends Section 98A.001, Civil Practice and Remedies Code, by adding Subdivisions (1-a) and (4-a) to define "aggravated online promotion of prostitution" and "online promotion of prostitution."

SECTION 3.04. Amends Section 98A.002(a), Civil Practice and Remedies Code, to provide that a defendant is liable to a victim of compelled prostitution, as provided by this chapter, for damages arising from the compelled prostitution if the defendant knowingly or intentionally

engages in promotion of prostitution, online promotion of prostitution, aggravated promotion of prostitution, or aggravated online promotion of prostitution that results in compelling prostitution with respect to the victim.

SECTION 3.05. Amends Article 18A.101, Code of Criminal Procedure, as follows:

Art. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE ISSUED. Authorizes a judge of competent jurisdiction to issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of an offense under Section 43.041, among other enumerated provisions of the Penal Code. Makes nonsubstantive changes.

SECTION 3.06. Amends Article 56.32(a)(14), Code of Criminal Procedure, to redefine "trafficking of persons" to make conforming changes.

SECTION 3.07. Amends Article 56.81(7), Code of Criminal Procedure, to redefine "trafficking of persons" to make conforming changes.

SECTION 3.08. Amends Section 411.042(b), Government Code, as follows:

(b) Requires the bureau of identification and records of the Department of Public Safety of the State of Texas (DPS) 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 Sections 43.031, 43.04, and 43.041, Penal Code, among other enumerated sections of the Penal Code.

SECTION 3.09. Amends Section 499.027(b), Government Code, to provide that an inmate is ineligible under this subchapter to be considered for release to intensive supervision parole if the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense listed in Section 43.041 (aggravated online promotion of prostitution), Penal Code, among other offenses.

SECTION 3.10. Amends Section 169.002(b), Health and Safety Code, to provide that a defendant is eligible to participate in a first offender prostitution prevention program established under this chapter only if the court in which the criminal case is pending finds that the defendant has not been previously convicted of an offense under Section 43.031 or 43.041, Penal Code, among other enumerated sections of the Penal Code.

SECTION 3.11. Amends Section 20A.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if the person knowingly:

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

(3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by Section 43.031 or Section 43.041, among other offenses;

(4)–(6) makes no changes to these subdivisions;

(7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of conduct prohibited by certain sections; or

(8) makes no changes to this subdivision.

#### ARTICLE 4. ADMISSIBILITY OF EVIDENCE

SECTION 4.01. Amends Section 1, Article 38.37, Code of Criminal Procedure, as follows:

Sec. 1. (a) Provides that Subsection (b) (relating to the requirement that evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense be admitted for its bearing on relevant matters) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

- (1) Chapter 20A (Trafficking of Persons);
- (2) Chapter 21 (Sexual Offenses), rather than Chapter 21 if committed against a child under 17 years of age;
- (3) Section 22.01 (Assault), if committed against a person younger than 18 years of age;
- (4) Section 22.011 (Sexual Assault);
- (5) Section 22.02 (Aggravated Assault), if committed against a person younger than 18 years of age;
- (6) Section 22.021 (Aggravated Sexual Assault);
- (7) Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), if committed against a person younger than 18 years of age;
- (8) Section 22.041 (Abandoning or Endangering a Child);
- (9) Section 22.05 (Deadly Conduct), if committed against a person younger than 18 years of age;
- (10) Section 22.07 (Terroristic Threat), if committed under Subsection (a)(2) (relating to fear of imminent serious bodily injury) of that section against a person younger than 18 years of age;
- (11) Section 25.02 (Prohibited Sexual Conduct), rather than Chapter 22 (Assaultive Offenses) or Section 25.02;
- (12) Section 43.05(a)(2) (Compelling Prostitution), rather than Section 43.25 (Sexual Performance by a Child), Section 20A.02(a)(7) (relating to the offense of trafficking a child and compelling child prostitution) or (8) (relating to the offense of receiving a benefit from participating in a venture involving child prostitution or engaging in sexual conduct with a child trafficked for such purposes), or Section 43.05(a)(2), if committed against a person younger than 18 years of age or;
- (13) Section 43.25 (Sexual Performance by a Child).

(b) Provides that, notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the victim, rather than against the child who is the victim, of the alleged offense is required to be admitted for its bearing on relevant matters, including:

- (1) the state of mind of the defendant and the victim, rather than the child; and
- (2) the previous and subsequent relationship between the defendant and the victim, rather than the child.

SECTION 4.02. Amends Section 2(a), Article 38.37, Code of Criminal Procedure, as follows:

(a) Provides that Subsection (b) applies only to the trial of a defendant for:

(1) an offense under any of the following provisions of the Penal Code:

(A) Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex or Labor Trafficking of a Child);

(B) Section 20A.03, if based partly or wholly on conduct that constitutes an offense under Article 20A.02(a)(5), (6), (7), or (8) (Continuous Trafficking of Persons); or

(C) Section 21.02 (Continuous Sexual Abuse of Young Child or Children). Redesignates existing Paragraphs (C)-(H) as Paragraphs (D)-(I).

SECTION 4.03. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.51, as follows:

Art. 38.51. EVIDENCE OF VICTIM'S PAST SEXUAL BEHAVIOR. (a) Provides that this article applies to the prosecution of an offense, or an attempt to commit an offense, under the following provisions of the Penal Code:

(1) Section 20A.02(a)(3), (4), (7), or (8) (Sex Trafficking of Persons);

(2) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);

(3) Chapter 21 (Sexual Offenses);

(4) Section 22.011 (Sexual Assault);

(5) Section 22.021 (Aggravated Sexual Assault);

(6) Section 25.02 (Prohibited Sexual Conduct);

(7) Section 43.05 (Compelling Prostitution);

(8) Section 43.24 (Sale, Distribution, or Display of Harmful Material to Minor);

(9) Section 43.25 (Sexual Performance by a Child);

(10) Section 43.251 (Employment Harmful to Children);

(11) Section 43.26 (Possession or Promotion of Child Pornography); or

(12) Section 43.262 (Possession or Promotion of Lewd Visual Material Depicting Child).

(b) Provides that, except as provided by Subsection (c), in the prosecution of an offense described by Subsection (a), reputation or opinion evidence of a victim's past sexual behavior or evidence regarding specific instances of a victim's past sexual behavior is not admissible.

(c) Provides that evidence of a specific instance of a victim's past sexual behavior is admissible if:

(1) the evidence:

(A) is necessary to rebut or explain scientific or medical evidence offered by the attorney representing the state;

(B) concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;

(C) relates to the victim's motive or bias;

(D) is admissible under Rule 609 (Impeachment by Evidence of a Criminal Conviction), Texas Rules of Evidence; or

(E) is constitutionally required to be admitted; and

(2) the probative value of the evidence outweighs the danger of unfair prejudice.

(d) Requires the defendant, before evidence described by Subsection (c) is authorized to be introduced, to notify the court outside of the jury's presence. Requires the court to conduct an in camera hearing to determine whether the evidence is admissible. Requires the court reporter to record the hearing, and requires the court to preserve that record under seal as part of the record in the case.

(e) Requires the defendant, before referring to evidence that the court has determined to be inadmissible, to request and obtain the court's permission outside of the jury's presence.

SECTION 4.04. Provides that under the terms of Section 22.109(b), Government Code, Rule 412 (Evidence of Previous Sexual Conduct in Criminal Cases), Texas Rules of Evidence, is disapproved.

SECTION 4.05. Provides that the changes in law and rules made by this article apply to the admissibility of evidence in a criminal proceeding that commences on or after the effective date of this Act. Provides that admissibility of evidence in a criminal proceeding that commences before the effective date of this Act is governed by the law and rules in effect on the date the proceeding commenced, and that the former law and rules are continued in effect for that purpose.

#### ARTICLE 5. ORDERS OF NONDISCLOSURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLED PROSTITUTION

SECTION 5.01. Amends Section 411.0728, Government Code, as follows:

Sec. 411.0728. PROCEDURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS. (a) Provides that this section applies only to a person:

(1) who is convicted of or placed on deferred adjudication community supervision, rather than a person who is placed on community supervision under Chapter 42A (Community Supervision), Code of Criminal Procedure, after conviction, for an offense under certain sections of the Health and Safety Code or Penal Code. Deletes existing text providing that among those sections is Section 43.03(a)(2) (relating to soliciting another to engage in sexual conduct with another person for compensation), Penal Code, if the offense is punishable as a Class A misdemeanor; and

(2) who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A) provided assistance in the investigation or prosecution of the offense;  
or

(B) did not provide assistance in the investigation or prosecution of the offense due to the person's age or physical or mental disability resulting from being a victim of an offense described by this subdivision.

(b) Authorizes a person described by Subsection (a) who satisfies the requirements of Section 411.074 (b), rather than Section 411.074 (Definition), notwithstanding any other provision of this subchapter or Subchapter F (Criminal History Record Information), to petition the court that convicted the person or placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section on the grounds that the person committed the offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, rather than solely as a victim of trafficking of persons.

(b-1) Requires a petition under Subsection (b) to:

(1) be in writing;

(2) allege specific facts that, if proved, would establish that the petitioner committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code; and

(3) assert that if the person has previously submitted a petition for an order of nondisclosure under this section, the person has not committed an offense described by Subsection (a)(1) on or after the date on which the person's first petition under this section was submitted, rather than assert that the person seeking an order of nondisclosure under this section has not previously received an order of nondisclosure under this section.

(b-2) Requires the clerk of court, on the filing of the petition under Subsection (b), to promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Requires any response to the petition by the attorney representing the state to be filed not later than the 20th business day after the date of service under this subsection.

(b-3) Authorizes a person convicted of or placed on deferred adjudication community supervision for more than one offense described by Subsection (a)(1) that the person committed solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, to request consolidation of the person's petitions for an order of nondisclosure of criminal history record information in a district court in the county where the person was most recently convicted or placed on deferred adjudication community supervision. Requires the court, on receipt of a request for consolidation, to consolidate the petitions and exercise jurisdiction over the petitions, regardless of the county in which the offenses described by Subsection (a)(1) occurred.

(b-4) Authorizes a district court that consolidates petitions under Subsection (b-3) to allow an attorney representing the state who receives a petition involving an offense that was committed outside the county in which the court is located to appear at any hearing regarding the consolidated petition by telephone or video conference call.

(c) Requires the court having jurisdiction over the petition, after notice to the state and an opportunity for a hearing, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense if the court determines that:

(1) the person committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;

(2) if applicable, the person did not commit another offense described by Subsection (a)(1) on or after the date on which the person's first petition for an order of nondisclosure under this section was submitted; and

(3) issuance of an order is in the best interest of justice.

(c-1) Authorizes court, in determining whether a person committed an offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, to consider any order of nondisclosure previously granted to the person under this section.

(d) Authorizes a person to petition the applicable court, rather than the court that placed the person on community supervision, for an order of nondisclosure of criminal history information under this section only on or after the first anniversary of the date the person:

(1) completed the sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or

(2) received a dismissal and discharge under Article 42A.111 (Dismissal and Discharge), Code of Criminal Procedure, if the person was placed on deferred adjudication community supervision, rather than after person's conviction is set aside as described by Subsection (a).

SECTION 5.02. Amends Article 56.021, Code of Criminal Procedure, by adding Subsection (e), as follows:

(e) Provides that a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, is entitled to be informed that the victim is authorized to petition for an order of nondisclosure of criminal history record information under Section 411.0728, Government Code, if the victim:

(1) has been convicted of or placed on deferred adjudication community supervision for an offense described by Subsection (a)(1) of that section; and

(2) committed that offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

SECTION 5.03. Amends Section 126.004, Government Code, by adding Subsection (d) to require a program established under this chapter to provide each program participant with information related to an order of nondisclosure of criminal history record information under Section 411.0728.

## ARTICLE 6. REGULATION OF MASSAGE ESTABLISHMENTS, MASSAGE SCHOOLS, AND MASSAGE THERAPISTS

SECTION 6.01. Amends Section 455.152, Occupations Code, as follows:

Sec. 455.152. INELIGIBILITY FOR LICENSE. Deletes existing text providing that a person convicted or a violation of this chapter is ineligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor until the fifth anniversary of the date of the conviction. Makes a nonsubstantive change.

SECTION 6.02. Amends Section 455.1525, Occupations Code, as follows:

Sec. 455.1525. New heading: CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires the Texas Department of Licensing and Regulation (TDLR) to require an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by TDLR, to TDLR or to

DPS for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI). Deletes existing text requiring TDLR, on receipt of an application for a license under this chapter, to conduct a criminal background check.

(b) Prohibits TDLR from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TDLR to conduct a criminal history record information check of each applicant for a license using information provided by the individual under this section and made available to TDLR by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes TDLR to enter into an agreement with DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

SECTION 6.03. Amends Subchapter D, Chapter 455, Occupations Code, by adding Section 455.1605, as follows:

Sec. 455.1605. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. Requires an applicant renewing a license issued under this chapter (Message Therapy), as required by TDLR rule, to submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 455.1525 (Criminal Background Checks).

SECTION 6.04. Amends Subchapter D, Chapter 455, Occupations Code, by adding Section 455.161, as follows:

Sec. 455.161. STUDENT PERMIT; ELIGIBILITY. (a) Requires TDLR to require a student enrolled in a massage school in this state to hold a permit stating the student's name and the name of the school. Requires the permit to be displayed in a reasonable manner at the school.

(b) Requires TDLR to issue a student permit to an applicant who submits an application to TDLR for a student permit accompanied by any required fee.

(c) Requires an applicant for a student permit described by this section to:

(1) submit an enrollment application to TDLR in a form and manner prescribed by TDLR; and

(2) satisfy other requirements specified by TDLR.

SECTION 6.05. Amends Subchapter E, Chapter 455, Occupations Code, by adding Section 455.2035, as follows:

Sec. 455.2035. REPORTS TO DEPARTMENT. (a) Requires a massage school to maintain a monthly progress report regarding each student attending the school. Requires the report to certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) Requires the school, on a student's completion of a prescribed course of instruction, to notify TDLR that the student has completed the required number of hours and is eligible to take the appropriate examination.

SECTION 6.06. Amends Subchapter E, Chapter 455, Occupations Code, by adding Section 455.207, as follows:

Sec. 455.207. POSTING OF CERTAIN NOTICES REQUIRED. (a) Requires each massage establishment and massage school to display in the form and manner prescribed by the Texas Commission of Licensing and Regulation (TCLR) a sign concerning services and assistance available to victims of human trafficking.

(b) Requires the sign required by this section to include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

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

SECTION 6.07. Amends Sections 455.251(a) and (c), Occupations Code, as follows:

(a) Authorizes TCLR or the executive director of TDLR (executive director) to refuse to issue a license to a person and authorizes, rather than requires, TLCR or the executive director to suspend, revoke, or refuse to renew the license of a person or to reprimand a person licensed under this chapter if the person obtains or attempts to obtain a license by fraud, misrepresentation, or concealment of material facts.

(c) Authorizes TLCR or the executive director to revoke the license of a person licensed as a massage school or massage establishment if TLCR or the executive director determines that an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment. Makes nonsubstantive changes.

SECTION 6.08. Repealer: Section 455.158 (Student Exemption from Licensing Requirements), Occupations Code.

SECTION 6.09. Requires TCLR, not later than January 1, 2020, to adopt rules necessary to implement the changes in law made by this article to Chapter 455, Occupations Code.

SECTION 6.10. Provides that Section 455.1525, Occupations Code, as amended by this article, and Section 455.1605, Occupations Code, as added by this article, apply only to an application for the issuance or renewal of a license submitted on or after January 1, 2020. Makes application of this Act prospective to January 1, 2020.

SECTION 6.11. (a) Defines "massage school" for purposes of this section.

(b) Provides that Section 455.161, Occupations Code, as added by this article, applies to a student who is enrolled in a massage school on or after January 1, 2020.

(c) Requires TCLR to adopt rules under Section 455.161, Occupations Code, as added by this article, not later than November 1, 2019.

SECTION 6.12. Requires a massage establishment, as defined by Section 455.001 (Definitions), Occupations Code, to comply with Section 455.207, Occupations Code, as added by this article, not later than January 1, 2020.

SECTION 6.13. Makes application of Section 455.251, Occupations Code, as amended by this Act, prospective.

SECTION 6.14. (a) Effective date, this article, except as provided by Subsection (b) of this section: September 1, 2019.

(b) Effective date, Sections 455.161 and 455.2035, Occupations Code, as added by this article: January 1, 2020.

## ARTICLE 7. UNLAWFUL ACTIVITIES ON CERTAIN PROPERTY

SECTION 7.01 Amends Section 93.013(a), Property Code, as follows:

(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 operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations Code, that is not in compliance with Chapter 455, Occupations Code, or an applicable local ordinance relating to the licensing or regulation of a massage establishment.

SECTION 7.02. Amends Chapter 93, Property Code, by adding Section 93.014, as follows:

Sec. 93.014. RIGHT TO VACATE DUE TO CERTAIN UNLAWFUL ACTIVITIES IN MULTIUNIT COMMERCIAL PROPERTY. (a)(1) Defines "multiunit commercial property," as a strip mall, shopping center, office building, or other similar commercial property with multiple contiguous or proximate rental units that are owned or managed as a single property.

(2) Defines "unlawful activity" as:

(A) prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution, as prohibited under Chapter 43, Penal Code;

(B) trafficking of persons, as prohibited under Section 20A.02, Penal Code; or

(C) operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations Code, that is not in compliance with certain requirements.

(b) Provides that a landlord of a multiunit commercial property is in breach of a lease with a tenant if:

(1) the tenant reasonably believes that another tenant in the same multiunit commercial property is engaging in an unlawful activity;

(2) the complaining tenant gives the landlord written notice of the offering tenant's engagement in the unlawful activity; and

(3) the landlord does not file a forcible detainer suit against the offending tenant under Section 93.013 (Certain Unlawful Uses of Premises; Termination of Tenant's Right of Possession) before the 30th day after the date the notice is given.

(c) Authorizes the tenant, notwithstanding a provision of the lease to the contrary, if a landlord is in breach of a tenant's lease under Subsection (b), to:

(1) terminate the tenant's rights and obligations under the lease;

(2) vacate the leased premises; and

(3) avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the premises before the end of the lease term.

(d) Provides that this section does not prohibit a landlord from pursuing a civil action against a complaining tenant for any amount due under the complaining tenant's lease if, after the landlord investigates the offending tenant, the landlord

determines the complaining tenant's belief regarding an offending tenant's engagement in unlawful activity, as stated in the written notice under Subsection (b)(2), was not reasonable.

(e) Provides that in a civil action described by Subsection (d), there is a rebuttable presumption that a complaining tenant's belief regarding an offending tenant's engagement in unlawful activity is reasonable if the complaining tenant gave the landlord the notice required by Subsection (b)(2).

SECTION 7.03. Provides that the changes in law made by this article apply only to a commercial lease that is entered into or renewed on or after the effective date of this Act. Provides that a commercial lease that is entered into or renewed before the effective date of this Act is governed by the law applicable to the lease immediately before the effective date of the Act, and that law is continued in effect for that purpose.

#### ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Effective date, except as otherwise provided by this Act: September 1, 2019.