

- SUBJECT:** Activity that constitutes maintaining a common nuisance
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Hunter, Alonzo, Hartnett, Jackson, Lewis, Madden, Martinez, Woolley
- 0 nays
- 3 absent — Hughes, Branch, Leibowitz
- SENATE VOTE:** On final passage, April 9 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** (*On House companion bill, HB 123:*)
- For — (*Registered, but did not testify:* Laura Anderson, San Antonio Police Department; Katrina Daniels, Bexar County District Attorney’s Office; Tom Gaylor, Texas Municipal Police Association; Justin Marlin, Texans Care for Children; Lauren Ross, Texas Association Against Sexual Assault; Jason Sabo, Children at Risk)
- Against — None
- On — (*Registered, but did not testify:* Jay Dyer, Texas Attorney General’s Office)
- BACKGROUND:** Civil Practice and Remedies Code, sec. 125.0015 establishes the elements of a claim against another person for knowingly maintaining a common nuisance, and lists several purposes for which people habitually go to places that constitute common nuisances. Another citizen, the attorney general, or a local prosecutor can bring a lawsuit for a temporary or permanent injunction to abate the nuisance, and violators are subject to fines, imprisonment or both.
- DIGEST:** CSSB 709 would amend Civil Practices and Remedies Code, sec. 125.015 and would include as common nuisances places where the following offenses occurred:
- employment of a minor at a sexually oriented business;

- trafficking of persons;
- sexual conduct or performance by a child; or
- employment harmful to a child.

The bill also would define as a common nuisance a person who maintains a sexually oriented business without obtaining a permit from a municipality or county required by Local Government Code, sec. 243.002

The bill would apply to lawsuits brought on or after the bill took effect on September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 709 would provide both prosecutors and members of the public with effective tools to help rid neighborhoods of establishments that exploit children sexually. Both state and local officials should have the flexibility provided by the bill to counter entrepreneurs who operate outside of state law and city regulations. The bill properly would target the succession of unlicensed sexually oriented businesses that replace other renegade enterprises located in the same location.

CSSB 709 would help combat the dangers posed by human trafficking operations. The bill also would help deprive underground brothels of neighborhoods in which to operate alongside other programs that would help protect the victims of the illicit sex trade.

The bill would also help local authorities to drive rogue strip clubs into compliance or out of business. Legislation such as CSSB 709 would help shut down bad operations and provide adequate enforcement and transparency to the rest.

Nothing in CSSB 709 would eliminate existing due process and legal protections already found in laws to abate common nuisances. The law requires that either the operator of the business or the owner of the property knowingly maintains the nuisance. Both parties would have an opportunity to argue their case in what would be a civil rather than criminal proceeding.

Problems with sexually-oriented businesses exist statewide and should be remedied on a statewide basis by the Legislature. Frequently, local governments ask for the type of powers extended by this bill. Nothing in the bill would reduce the ability of citizens or local governments to take action against problems in their own neighborhoods.

OPPONENTS
SAY:

CSSB 709 would represent a misuse of the common nuisance remedy and would be an illogical expansion of Civil Practices and Remedies Code, sec. 125.015. All of the activities that would be added by the bill already are prohibited or otherwise heavily regulated. Addressing problems with employment of minors at sexually-oriented businesses or with unlicensed sexually-oriented businesses should be addressed as part of the regulatory and licensing process, not as a matter requiring the powerful weapon of injunctive relief.

As a matter of practice, gentlemen's clubs and other sexually oriented businesses do not employ those under the age of 18. Current law allows those between the age of 18 and 21 years of age to serve alcohol at bars, and any attempt to restrict those below the age of 21 would interfere with employment rights. Clubs hire a majority of dancers who are between the ages of 18 and 21 because patrons prefer younger women, and the high-paying jobs are attractive to college students. The industry should not be penalized for rare cases in which an under-aged person provided false proof of age.

Expanding the common nuisance remedy could ensnare innocent owners. Problems with tenants who fail to register sexually oriented businesses would not be under the control of the property owner, and the landlord should not be punished.

OTHER
OPPONENTS
SAY:

SB 709 would appear to reverse the original intent of Civil Practices and Remedies Code, sec. 125.015 which was to grant more local control. The bill would move back to more statewide control and eliminate the discretion of local governments to clean up their own cities and counties.

NOTES:

The House committee substitute differs from the Senate-passed bill by adding a provision from SB 2161 by Ellis that would include an unlicensed sexually oriented business as a public nuisance.

The House companion bill, HB 123 by Jackson, was reported favorably, as substituted, on April 14 by the House Judiciary & Civil Jurisprudence Committee and sent to the Local and Consent Calendars Committee.