

SUBJECT: Prohibiting sex offenders from employment at sexually oriented businesses

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 6 ayes — Driver, Garza, Y. Davis, Hegar, Hupp, Keel

1 nay — Burnam

0 absent

WITNESSES: For — None

Against — Ann del Llano, ACLU of Texas

BACKGROUND: Under Code of Criminal Procedure, ch. 62, inmates convicted of sex offenses must register with the Department of Public Safety (DPS) and the local police chief or sheriff when they are released from a facility operated by or under contract with the Texas Department of Criminal Justice or Texas Youth Commission. These sex offenses include:

- indecency with a child;
- sexual assault;
- aggravated sexual assault;
- prohibited sexual conduct;
- compelling prostitution;
- sexual performance by a child;
- possession or promotion of child pornography;
- aggravated kidnaping with intent to violate or abuse the victim sexually;
- burglary with intent to commit sexual assault;
- a second conviction of indecent exposure;
- an attempt, conspiracy, or solicitation of these sex crimes; and
- convictions of similar offenses in other states or under the Uniform Code of Military Justice.

Local Government Code, sec. 243.002, defines a “sexually oriented business” as:

- a sex parlor or love parlor;
- a nude studio or modeling studio;
- an adult bookstore;
- an adult movie theater or movie arcade;
- an adult video store or video arcade;
- an adult motel; or
- any other commercial enterprise that offers a service or sells, rents, or exhibits devices or other items intended to provide sexual stimulation or sexual gratification to the customer.

DIGEST:

CSHB 155 would add Business and Commerce Code, Ch. 46, to prohibit a sex offender, as defined in Code of Criminal Procedure, Ch. 62, from wholly or partly serving as a director, officer, operator, manager, or employee of a sexually oriented business as defined in Local Government Code, sec. 243.002. A sexually oriented business also would not be allowed to contract with a known sex offender to operate or manage the business as an independent contractor or employ a known sex offender in any capacity.

The bill would provide both civil and criminal penalties against a sex offender or a sexually oriented business for violations. The attorney general or the appropriate district or county attorney would be allowed to seek an injunction against anyone violating the section in a Travis County or in the county where the violation or threatened violation occurred. The court could grant any prohibitory or mandatory relief, including a temporary restraining order, temporary injunction, or permanent injunction. An offense under this section would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

Persons convicted of sex crimes, particularly those involving violence, should not be allowed to own, manage, or work in sexually oriented businesses. They should not be placed in an environment that might tempt them to commit additional offenses.

Owners of sexually oriented businesses routinely conduct background checks of applicants to determine whether the person is a registered sex offender, and some managers say they will not hire someone convicted of rape or sexual

assault because of the risk that these persons could pose to other employees and customers. Some already believe that the law prohibits them from hiring sex offenders, and CSHB 155 would ensure that all sexually oriented businesses followed these prudent hiring practices.

Civil and criminal penalties are necessary to ensure compliance with the law by sexually oriented businesses and sex offenders.

**OPPONENTS
SAY:**

Registered sex offenders already have limited employment opportunities because of their criminal records and the nature of their offenses. Sexually oriented businesses should not shun them if they are willing to work. These establishments restrict access to consenting adults, and there would not be the same level of risk as hiring a sex offender at a school or day care center.

Jail time would not be appropriate for those who violated CSHB 155. The state and local entities cannot afford to incarcerate any more non-violent offenders, especially when all governments face budgetary restraints.

**OTHER
OPPONENTS
SAY:**

Sexually oriented businesses — just as other businesses forbidden to hire sex offenders — should be assured that if they conducted a background check with DPS they would be not liable for hiring a sex offender from another state who was not registered in Texas. No completely reliable database on sex offenders exists at the state or national level. A person could lie about his background, and the business might not be able to discover this deception merely by contacting the DPS.

NOTES:

The bill as introduced differs from the committee substitute in that it would have defined as a sex offender anyone convicted of offenses under Penal Code, chapters 21 and 43, including homosexual conduct, public lewdness, indecent exposure, improper photography or video recording, prostitution, obscenity, or pornography. The definition also would have included anyone convicted of organized promotion of prostitution under Penal Code, sec. 71.02(a)(3).