

BILL ANALYSIS

C.S.H.B. 1938
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Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Transportation Security Administration (TSA) recently began deploying advanced imaging technology (AIT) in airports. Commonly referred to as whole-body scanner technology, an AIT scanner creates a visual image of a person's unclothed body and is intended to detect concealed objects. There is concern among interested parties that this technology is humiliating and potentially harmful due to its use of radiation or radio waves and that the alternatives to being scanned, such as a physical search by a TSA employee or passing through a traditional metal detector, are equally inappropriate.

C.S.H.B. 1938 seeks to implement a prohibition against the use of whole-body scanners in airports.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1938 amends the Transportation Code to prohibit an airport operator from allowing body imaging scanning equipment to be installed or operated in any airport in Texas unless the equipment is used exclusively as part of the investigation of a person who the equipment operator has probable cause to believe has committed an offense; or the airport operator establishes a procedure that prohibits a person from being scanned with the equipment unless the person, immediately before the scan is performed, gives written consent to scan to the equipment operator or to an agent or employee of the airport operator after being informed of the potential health hazards posed by the equipment.

C.S.H.B. 1938 makes it an offense for an airport operator to fail to comply with this provision and subjects an airport operator who commits such an offense to a civil penalty in an amount not to exceed \$10,000 for each day of the violation. The bill authorizes the attorney general to bring suit in a district court of Travis County for injunctive relief or to collect the civil penalty plus court costs, reasonable attorney's fees, and costs incurred by the attorney general. The bill defines "airport operator" and "body imaging scanning equipment."

C.S.H.B. 1938 requires the attorney general of Texas, if any person challenges the validity of the bill's provisions in a criminal, civil, or administrative proceeding on grounds of unconstitutionality, preemption, or sovereign immunity, to, with the consent of the local county or district attorney, as appropriate, take any actions necessary on behalf of the state to defend the validity of the statute. The bill authorizes the attorney general to make any legal arguments the attorney general considers appropriate, including that the bill's provisions constitute a valid exercise of specified powers, interests, or rights and protections.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1938 differs from the original by specifying that "body imaging scanning equipment" means a device that has the capability of capturing or transmitting data for use in creating a visual image of a person's unclothed body, rather than a device that creates such a visual image.

C.S.H.B. 1938 contains a provision not included in the original specifying conditions under which an airport operator is authorized to allow such equipment to be installed or operated at an airport in Texas.

C.S.H.B. 1938 differs from the original by specifying that the civil penalty for committing an offense under the bill is not to exceed \$10,000 for each day of the violation, whereas the original specifies that the penalty is not to exceed \$1,000 for each day of the violation.

C.S.H.B. 1938 contains a provision not included in the original requiring the attorney general to take any actions necessary to defend the validity of the bill's provisions and authorizing the attorney general to make any appropriate legal arguments in such a defense.