

By: Gallego

H.B. No. 3473

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a defense to prosecution for, the punishment for, and  
3 the civil and other consequences of committing the offense of  
4 prostitution.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 43.02(c), Penal Code, is amended to read  
7 as follows:

8 (c) An offense under this section is a Class B misdemeanor,  
9 except that the offense is:

10 (1) a Class A misdemeanor if [~~unless~~ the actor has  
11 previously been convicted one or two times of an offense under this  
12 section;

13 (2) a state jail felony if [~~, in which event it is a~~  
14 ~~Class A misdemeanor. If~~ the actor has previously been convicted  
15 three or more times of an offense under this section; or

16 (3) a felony of the third degree if:

17 (A) the actor is the person who is to pay the fee  
18 or who solicits another for hire; and

19 (B) the person who is to receive the fee or who is  
20 solicited to be hired is younger than 17 years of age at the time of  
21 the offense [~~, the offense is a state jail felony].~~

22 SECTION 2. Section 43.02, Penal Code, is amended by  
23 amending Subsection (d) and adding Subsection (e) to read as  
24 follows:

1 (d) It is a defense to prosecution under this section that  
2 the actor engaged in the conduct that constitutes the offense:

3 (1) because the actor was the victim of conduct that  
4 constitutes an offense under Section 20A.02; or

5 (2) was a child younger than 14 years old and was  
6 forced to commit the conduct by a person who is 18 years of age or  
7 older.

8 (e) The exception provided by Subsection (d)(2) applies to  
9 any other proceeding under state law.

10 SECTION 3. Section 43.03(b), Penal Code, is amended to read  
11 as follows:

12 (b) An offense under this section is a Class A misdemeanor,  
13 except that the offense is:

14 (1) a state jail felony if the actor has previously  
15 been convicted of an offense under this section; or

16 (2) a felony of the third degree if:

17 (A) the person who provides prostitution  
18 services from which the actor receives money or other property is  
19 younger than 17 years of age at the time of the offense; or

20 (B) the actor solicits another to engage in  
21 sexual conduct with a person who is younger than 17 years of age.

22 SECTION 4. Section 43.04(b), Penal Code, is amended to read  
23 as follows:

24 (b) An offense under this section is a felony of the third  
25 degree, unless any prostitute that is part of the actor's  
26 prostitution enterprise is younger than 17 years of age at the time  
27 of the offense, in which event it is a felony of the second degree.

1 SECTION 5. Article 62.001(5), Code of Criminal Procedure,  
2 is amended to read as follows:

3 (5) "Reportable conviction or adjudication" means a  
4 conviction or adjudication, including an adjudication of  
5 delinquent conduct or a deferred adjudication, that, regardless of  
6 the pendency of an appeal, is a conviction for or an adjudication  
7 for or based on:

8 (A) a violation of Section 21.02 (Continuous  
9 sexual abuse of young child or children), 21.11 (Indecency with a  
10 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual  
11 assault), or 25.02 (Prohibited sexual conduct), Penal Code;

12 (B) a violation of Section 43.05 (Compelling  
13 prostitution), 43.25 (Sexual performance by a child), or 43.26  
14 (Possession or promotion of child pornography), Penal Code;

15 (B-1) a violation of Section 43.02  
16 (Prostitution), Penal Code, if the offense is punishable under  
17 Subsection (c)(3) of that section;

18 (B-2) a violation of Section 43.03 (Promotion of  
19 prostitution), Penal Code, if the offense is punishable under  
20 Subsection (b)(2) of that section;

21 (B-3) a violation of Section 43.04 (Aggravated  
22 promotion of prostitution), Penal Code, if the offense is  
23 punishable as a felony of the second degree;

24 (C) a violation of Section 20.04(a)(4)  
25 (Aggravated kidnapping), Penal Code, if the actor committed the  
26 offense or engaged in the conduct with intent to violate or abuse  
27 the victim sexually;

1 (D) a violation of Section 30.02 (Burglary),  
2 Penal Code, if the offense or conduct is punishable under  
3 Subsection (d) of that section and the actor committed the offense  
4 or engaged in the conduct with intent to commit a felony listed in  
5 Paragraph (A) or (C);

6 (E) a violation of Section 20.02 (Unlawful  
7 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),  
8 Penal Code, if, as applicable:

9 (i) the judgment in the case contains an  
10 affirmative finding under Article 42.015; or

11 (ii) the order in the hearing or the papers  
12 in the case contain an affirmative finding that the victim or  
13 intended victim was younger than 17 years of age;

14 (F) the second violation of Section 21.08  
15 (Indecent exposure), Penal Code, but not if the second violation  
16 results in a deferred adjudication;

17 (G) an attempt, conspiracy, or solicitation, as  
18 defined by Chapter 15, Penal Code, to commit an offense or engage in  
19 conduct listed in Paragraph (A), (B), (C), (D), or (E);

20 (H) a violation of the laws of another state,  
21 federal law, the laws of a foreign country, or the Uniform Code of  
22 Military Justice for or based on the violation of an offense  
23 containing elements that are substantially similar to the elements  
24 of an offense listed under Paragraph (A), (B), (B-1), (B-2), (B-3),  
25 (C), (D), (E), (G), or (J), but not if the violation results in a  
26 deferred adjudication;

27 (I) the second violation of the laws of another

1 state, federal law, the laws of a foreign country, or the Uniform  
2 Code of Military Justice for or based on the violation of an offense  
3 containing elements that are substantially similar to the elements  
4 of the offense of indecent exposure, but not if the second violation  
5 results in a deferred adjudication; or

6 (J) a violation of Section 33.021 (Online  
7 solicitation of a minor), Penal Code.

8 SECTION 6. (a) The change in law made by this Act in  
9 amending Section 43.02, Penal Code, applies only to an offense  
10 committed on or after the effective date of this Act.

11 (b) An offense committed before the effective date of this  
12 Act is governed by the law in effect on the date the offense was  
13 committed, and the former law is continued in effect for that  
14 purpose. For purposes of this section, an offense was committed  
15 before the effective date of this Act if any element of the offense  
16 occurred before that date.

17 SECTION 7. This Act takes effect September 1, 2011.