

BILL ANALYSIS

C.S.H.B. 219
By: Howard
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many sexually-oriented businesses advertise by displaying lewd, offensive, and potentially harmful billboards. There are also adverse secondary effects associated with sexually-oriented businesses that include deterioration of property values, juvenile delinquency, prostitution, crime, harm to minors, and traffic congestion.

To curtail these adverse secondary effects, C.S.H.B. 219 prohibits off-premise advertising for sexually oriented businesses and limits sexually-oriented businesses to only two on-premise signs.

Similar laws in New Jersey and Missouri were enacted by their respective legislatures and have withstood legal challenges.

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

SECTION 1. Establishes that the purpose of this Act are to mitigate the adverse secondary effects of sexually oriented businesses, improve traffic safety, limit harm to minors, reduce prostitution, crime, juvenile delinquency, and deterioration in property values, and encourage neighborhood improvement efforts.

SECTION 2. Amends Chapter 46, Business & Commerce Code, as added by Chapter 402, Act of the 78th Legislature, Regular Session, 2003, by adding Section 46.005, which defines the terms "nude" and "obscene." The bill prohibits off-premise advertising for a sexually-oriented business, and limits a sexually oriented business to two on-premise signs. The on-premise signs may not exceed 40 square feet and may only include the business's name, street address, telephone number, and operating hours. The bill specifically prohibits a sign that is authorized by this section from containing obscene material or a depiction of a nude person. A person who violates this section commits a Class B misdemeanor and may be liable to the state for a civil penalty of not less than \$500 and not more than \$1000 for each violation, depending on the seriousness of the violation. A separate penalty may be collected for each day a continuing violation occurs. The attorney general is authorized to sue to collect the penalty.

SECTION 3. A sign that exists on the effective date of this Act and does not comply with Section 46.005, Business & Commerce Code, as added by this Act, may be maintained until August 31, 2008. After August 1, 2008, the sign must comply with that section.

SECTION 4. Effective Date

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 219 79(R)

C.S.H.B. 219 modifies the original bill by adding Subsection (a) to Section 46.005 to define the terms "nude" and "obscene." The original Section 46.005 (a) becomes Subsection (b). The original Subsection (b) becomes Subsection (c), and is amended to specify that an authorized sign may not contain obscene material or a depiction of a nude person. The substitute removes the original Section 46.005 (c), which allowed a local ordinance to prevail if the state law conflicted with the local ordinance. The substitute also makes conforming changes by renumbering the existing sections.