

By: Zedler

H.B. No. 2435

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation and oversight of public and occupational
3 health risks related to the operation of sexually oriented
4 businesses; providing penalties.

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

6 SECTION 1. LEGISLATIVE FINDING. The Legislature has
7 determined that the operation of sexually oriented businesses
8 presents a large number of public health and occupational health
9 risks, including the transmission and spread of sexually
10 transmitted diseases and other communicable diseases, alcohol and
11 drug abuse, and domestic violence. It is therefore appropriate for
12 the Legislature to adopt a method of regulation, under the
13 oversight of the Department of State Health Services, that seeks to
14 eliminate or minimize these public health and occupational health
15 risks to the owners, operators, employees, and patrons of sexually
16 oriented businesses and to the communities in which these sexually
17 oriented businesses are located. The Legislature finds that a
18 method of licensure of operators and employees of sexually oriented
19 businesses that includes regulations designed to minimize public
20 and occupational health risks, screening for public health and
21 occupational health risks, continuing education on public health
22 and occupational health risks, and warnings of public health and
23 occupational health risks to employees and members of the public,
24 is necessary to protect the public health of citizens of this state.

1 SECTION 2. The Department of State Health Services shall,
2 not later than the 90th day after the adoption of this Act, review
3 and report to the Legislature its initial finding regarding public
4 health and occupational health risks associated with the operation
5 of sexually oriented businesses, including the transmission and
6 spread of sexually transmitted diseases and other communicable
7 diseases, alcohol and drug abuse, and domestic violence. The
8 report shall be forwarded to the chair of the House Committee on
9 Public Health and Senate Committee on Health and Human Services.

10 SECTION 2. Subtitle G, Title 2, Health and Safety Code, is
11 amended by adding Chapter 148 to read as follows:

12 CHAPTER 148. REGULATION OF PUBLIC AND OCCUPATIONAL HEALTH RISKS
13 RELATED TO THE OPERATION OF SEXUALLY ORIENTED BUSINESSES

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 148.0005. PUBLIC HEALTH AND OCCUPATIONAL HEALTH DUTIES
16 OF SEXUALLY ORIENTED BUSINESSES. An operator or employee of a
17 sexually oriented businesses shall provide employees, patrons, and
18 members of the community with conditions that are free from
19 recognized public health and occupational health hazards.

20 Sec. 148.001. DEFINITIONS. In this chapter:

21 (1) "Department" means the Department of State Health
22 Services.

23 (2) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (3) "License holder" means a person who holds a
26 license issued under this chapter.

27 Sec. 148.002. SEXUALLY ORIENTED BUSINESSES DEFINED. (a)

1 In this chapter, a "sexually oriented business" means:

2 (1) a sex parlor, sexually oriented arcade, sexually
3 oriented bookstore, sexually oriented video store, sexually
4 oriented cabaret, sexually oriented motel, sexually oriented
5 novelty store, sexually oriented theater, sexually oriented motion
6 picture theater, sexually oriented service establishment, nude
7 model business, or sexual encounter center; or

8 (2) any other commercial enterprise:

9 (A) that devotes a significant or substantial
10 portion of its business to the offering of a service or to the
11 selling, renting, or exhibiting of a device or any other item
12 intended to provide sexual stimulation or sexual gratification to
13 its customers;

14 (B) that is distinguished by or characterized by
15 an emphasis on matter depicting, describing, or relating to
16 specified sexual activities or specified anatomical areas; or

17 (C) whose employees or customers appear in a
18 state of nudity.

19 (b) As used in Subsection (a), "significant or substantial
20 portion" refers to all relevant factors, including:

21 (1) whether the business uses advertising or a sign
22 identifying the business as having sexually explicit merchandise or
23 services for sale, rental, or viewing, including the use of terms
24 such as "adult," "sex," or "XXX";

25 (2) the percentage of the business's overall sales or
26 revenues attributable to sexually explicit content; and

27 (3) the percentage of sales or revenues attributable

1 to sexually explicit content within each category of merchandise,
2 including books, magazines, movies for rent, movies for sale,
3 movies for on-site viewing, performances, sexual paraphernalia,
4 and other similar products or services.

5 (c) As used in Subsection (a), "state of nudity" means:

6 (1) the appearance of a human bare buttock, a vulva, an
7 anus, an anal cleft with less than a full opaque covering, male
8 genitals, female genitals, or a female breast; or

9 (2) a state of dress that fails to completely and
10 opaquely cover a human buttock, a vulva, an anus, male genitals, or
11 female genitals or a part of the female breast that is situated
12 below a point immediately above the top of the areola of the female
13 breast.

14 Sec. 148.003. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH
15 SERVICES. The department shall administer this chapter.

16 Sec. 148.004. MUNICIPAL AND COUNTY REGULATION. This
17 chapter is in addition to any municipal or county regulation. To
18 the extent of a conflict between this chapter and a municipal or
19 county regulation, this chapter controls.

20 Sec. 148.005. EXEMPTIONS. (a) This chapter does not apply
21 to:

22 (1) a business operated by or employing a licensed
23 psychologist, licensed physical therapist, licensed masseuse,
24 licensed vocational nurse, registered nurse, licensed athletic
25 trainer, licensed cosmetologist, or licensed barber engaged in
26 performing the normal and customary functions authorized under the
27 license;

1 (2) a business operated by or employing a licensed
2 physician or licensed chiropractor engaged in practicing the
3 healing arts;

4 (3) a retail establishment whose principal business is
5 the offering of wearing apparel for sale to customers and that does
6 not exhibit merchandise on live models;

7 (4) an activity conducted or sponsored:

8 (A) by a proprietary school licensed by this
9 state or a state-supported junior college or institution of higher
10 education; or

11 (B) by a private institution of higher education
12 that maintains or operates educational programs in which credits
13 are transferable to a state-supported junior college or institution
14 of higher education;

15 (5) a person licensed as an occupational therapist
16 under Chapter 454; or

17 (6) a person who is providing a repair, maintenance,
18 air conditioning, or delivery service on the premises of a sexually
19 oriented business.

20 (b) An activity conducted or sponsored by an entity
21 identified in Subsection (a)(4):

22 (1) must be in a structure that does not have a sign or
23 other advertising visible from the exterior of the structure
24 indicating that a nude person is available for viewing;

25 (2) must require that, in order to participate in the
26 activity or conduct of a class, a student must enroll in the class
27 at least three days in advance of the class; and

1 (3) may not have more than one nude model on the
2 premises at any time.

3 [Sections 148.006-148.050 reserved for expansion]

4 SUBCHAPTER B. POWERS AND DUTIES

5 Sec. 148.051. FEES. The department shall set fees in an
6 amount sufficient to cover the cost of administering this chapter.

7 Sec. 148.052. RULES. The executive commissioner shall
8 adopt rules necessary to administer and enforce this chapter.

9 Sec. 148.053. RULES RELATING TO PUBLIC HEALTH AND
10 OCCUPATIONAL HEALTH ISSUES RELATED TO THE OPERATION OF A SEXUALLY
11 ORIENTED BUSINESS. (a) The executive commissioner shall adopt
12 rules that establish public and occupational health standards for
13 sexually oriented businesses. The standards may relate to:

14 (1) adequate and proper supervision of public health
15 and occupational health risks at all times during the operation of a
16 sexually oriented business;

17 (2) proper safeguards for sanitation, public health
18 and occupational health in the operation of a sexually oriented
19 business or in the conduct of an employee on the premises of a
20 sexually oriented business;

21 (3) dissemination of public health and occupational
22 health information to operators or employees of sexually oriented
23 businesses, including information relating to the transmission and
24 spread of sexually transmitted diseases or other communicable
25 diseases;

26 (4) dissemination of public health and occupational
27 health information to patrons of sexually oriented businesses,

1 including information relating to the transmission and spread of
2 sexually transmitted diseases or other communicable diseases;

3 (5) dissemination of public health and occupational
4 health information to operators, employees, and patrons of sexually
5 oriented businesses regarding public health and occupational risks
6 related to alcohol abuse, drug abuse, and domestic violence;

7 (6) screening requirements for operators and
8 employees of sexually oriented businesses, including testing and
9 surveillance of public and occupational health risks, including
10 testing for sexually transmitted diseases, other communicable
11 diseases, and alcohol or drug use;

12 (7) warning signs that are posted in conspicuous
13 location, readily visible by persons entering a sexually oriented
14 business, of the public and occupational health risks associated
15 with sexually oriented businesses; and

16 (8) inspections of sexually oriented businesses for
17 public health and occupational health risks.

18 Sec. 148.054. RECORDS DISCLOSURE; CONFIDENTIALITY. (a)
19 The department shall immediately disclose to appropriate public
20 health agencies any information necessary to prevent or halt public
21 health or occupational health risks, including the spread of
22 sexually transmitted or other communicable diseases.

23 (b) The department shall disclose to a criminal justice
24 agency or a public health or occupational health agency information
25 contained in its files and records regarding whether a named
26 individual is licensed under this chapter.

27 (c) Except as otherwise provided by this section, all

1 records maintained under this chapter regarding an applicant or
2 license holder are confidential and are not subject to mandatory
3 disclosure under the open records law, Chapter 552, Government
4 Code, except that an applicant or license holder may be furnished a
5 copy of disclosable records regarding that applicant or license
6 holder on request and the payment of a reasonable fee.

7 [Sections 148.055-148.100 reserved for expansion]

8 SUBCHAPTER C. LICENSE REQUIREMENTS

9 Sec. 148.101. LICENSE REQUIRED. (a) A person may not own,
10 operate, or work at a sexually oriented business unless the person
11 holds a license under this chapter and complies with all public
12 health and occupational health requirements or other requirements
13 adopted by the Executive Commissioner and the Department.

14 (b) A person may not employ or hire a person to work at, or
15 contract with an independent contractor to work at, a sexually
16 oriented business unless the person employed or the independent
17 contractor entering into the contract holds a license under this
18 chapter.

19 Sec. 148.102. ISSUANCE OF LICENSE. (a) The department
20 shall issue a sexually oriented business license to an applicant
21 that meets the requirements of this chapter.

22 (b) The department shall establish separate categories of
23 licenses issued under this chapter for:

24 (1) an owner or operator of a sexually oriented
25 business; and

26 (2) an employee of or independent contractor for a
27 sexually oriented business.

1 health and occupational health education programs for its license
2 holders under this chapter. A license holder may not renew the
3 person's license unless the person meets 10 hours of continuing
4 education requirements during each license period.

5 (b) The continuing education requirements shall include:

6 (1) information relating to public health and
7 occupational health risks associated with sexually oriented
8 businesses, including the transmission and spread of sexually
9 transmitted and other communicable disease, alcohol abuse, drug
10 abuse, and domestic violence; and

11 (2) information, presented in the aggregate, relating
12 to current public health and occupational health risks associated
13 with sexually oriented businesses, including the result of relating
14 to the department's most recent finding related to testing and
15 surveillance of public and occupational health risks, including
16 testing for sexually transmitted diseases, other communicable
17 diseases, and alcohol or drug use;

18 (c) The department shall:

19 (1) provide to a license applicant, with the
20 application form on which the person is to apply for a license,
21 information describing the continuing education requirements; and

22 (2) notify each license holder of any change in the
23 continuing education requirements at least one year before the date
24 the change takes effect.

25 [Sections 148.152-148.200 reserved for expansion]

26 SUBCHAPTER E. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

27 Sec. 148.201. ADMINISTRATIVE SANCTIONS. (a) The

1 department shall revoke, suspend, or refuse to issue or renew a
2 license or shall reprimand a license holder for a violation of this
3 chapter or a rule adopted under this chapter.

4 (b) The department may place on probation a person whose
5 license is suspended. If a license suspension is probated, the
6 department may require the person:

7 (1) to report regularly to the department on matters
8 that are the basis of the probation;

9 (2) to limit business activities to the areas
10 prescribed by the department; or

11 (3) to continue or review professional education until
12 the person attains a degree of skill satisfactory to the department
13 in those areas that are the basis of the probation.

14 Sec. 148.202. COMPLAINTS. Any person may file a complaint
15 with the department alleging a violation of this chapter or a rule
16 adopted under this chapter.

17 Sec. 148.203. PROHIBITED ACTIONS. A license holder may
18 not:

19 (1) obtain a license by means of fraud,
20 misrepresentation, or concealment of a material fact; or

21 (3) engage in unprofessional conduct that endangers or
22 is likely to endanger the public health, welfare, or safety of the
23 public as defined by an executive commissioner rule.

24 Sec. 148.204. MONITORING OF LICENSE HOLDER; RULES. The
25 executive commissioner by rule may develop a system for monitoring
26 a license holder's compliance with this chapter.

27 Sec. 148.205. PUBLIC HEALTH OR OCCUPATIONAL HEALTH

1 EMERGENCY SUSPENSION. (a) The department or a three-member
2 committee of members designated by the department shall temporarily
3 suspend the license of a license holder if the department or
4 committee determines from the evidence or information presented to
5 it that continued practice by the license holder would constitute a
6 continuing and imminent threat to the public health.

7 [Sections 148.206-148.250 reserved for expansion]

8 SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

9 Sec. 148.251. INJUNCTION. The department may apply to a
10 district court in any county for an injunction or another order to
11 restrain the violation of this chapter by a person other than a
12 license holder under this chapter.

13 Sec. 148.252. CRIMINAL OFFENSE. (a) A person commits an
14 offense if the person violates Section 148.101.

15 (b) An offense under this section is a Class A misdemeanor.

16 Sec. 148.253. CIVIL PENALTY. A person who violates Section
17 148.101 is liable to the state for a civil penalty in an amount not
18 to exceed \$1,000 for each violation. Each day a violation occurs is
19 a separate violation.

20 (b) The department or the attorney general may institute an
21 action in a district court in Travis County or in the county in
22 which the person who is alleged to have violated Section 148.101
23 resides.

24 [Sections 148.254-148.300 reserved for expansion]

25 SECTION 2. Except as required by Sections 2 and 3 of this
26 Act, this Act takes effect September 1, 2007.

27 SECTION 3. Section 148.101 and Subchapters E and F Chapter

H.B. No. 2435

1 148, Health and Safety Code, as added by this Act, take effect
2 September 1, 2008.