

By: Zedler

H.B. No. 1929

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of owners, operators, employees, and independent contractors of sexually oriented businesses to reduce risks to public and occupational health and to prevent human trafficking; providing penalties.

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

SECTION 1. Subtitle D, Title 13, Occupations Code, is amended by adding Chapter 2158 to read as follows:

CHAPTER 2158. SEXUALLY ORIENTED BUSINESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2158.001. DEFINITIONS. In this chapter:

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

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

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

(4) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

Sec. 2158.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH SERVICES. The department shall administer this chapter.

Sec. 2158.003. MUNICIPAL AND COUNTY REGULATION. This chapter is in addition to any municipal or county regulation. To the extent of a conflict between this chapter and a municipal or

1 county regulation, this chapter controls.

2 Sec. 2158.004. EXEMPTIONS. (a) This chapter does not apply
3 to:

4 (1) a business operated by or employing a licensed
5 psychologist, licensed physical therapist, licensed massage
6 therapist, licensed vocational nurse, registered nurse, licensed
7 athletic trainer, licensed cosmetologist, or licensed barber
8 engaged in performing the normal and customary functions authorized
9 under the license;

10 (2) a business operated by or employing a licensed
11 physician or licensed chiropractor engaged in practicing the
12 healing arts;

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

16 (4) an activity conducted or sponsored:

17 (A) by a proprietary school licensed by this
18 state or a state-supported junior college or institution of higher
19 education; or

20 (B) by a private institution of higher education
21 that maintains or operates educational programs in which credits
22 are transferable to a state-supported junior college or institution
23 of higher education;

24 (5) a person licensed as an occupational therapist
25 under Chapter 454;

26 (6) a person who is providing a repair, maintenance,
27 air conditioning, or delivery service on the premises of a sexually

1 oriented business; or

2 (7) a nonsexual nudist camp.

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

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

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

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

13 [Sections 2158.005-2158.050 reserved for expansion]

14 SUBCHAPTER B. POWERS AND DUTIES

15 Sec. 2158.051. FEES. The department shall set fees in an
16 amount sufficient to cover the cost of administering this chapter.

17 Sec. 2158.052. RULES. (a) The executive commissioner
18 shall adopt rules necessary to administer and enforce this chapter.

19 (b) Rules adopted under this section must:

20 (1) seek to identify and prevent human trafficking
21 through sexually oriented businesses; and

22 (2) establish public and occupational health
23 standards for sexually oriented businesses that may relate to:

24 (A) the supervision of public health and
25 occupational health risks at all times during the operation of a
26 sexually oriented business;

27 (B) the proper safeguards for sanitation, public

1 health, and occupational health in the operation of a sexually
2 oriented business or in the conduct of an employee on the premises
3 of a sexually oriented business; and

4 (C) the inspection of a sexually oriented
5 business for public health risks, occupational health risks, and
6 other violations of this chapter.

7 Sec. 2158.053. RULES RESTRICTING ADVERTISING OR
8 COMPETITIVE BIDDING. (a) The executive commissioner may not adopt
9 rules restricting advertising or competitive bidding by a license
10 holder except to prohibit false, misleading, or deceptive
11 practices.

12 (b) In the executive commissioner's rules to prohibit
13 false, misleading, or deceptive practices, the executive
14 commissioner may not include a rule that:

15 (1) restricts the use of any medium for advertising;

16 (2) restricts the use of a license holder's personal
17 appearance or voice in an advertisement;

18 (3) relates to the size or duration of an
19 advertisement by the license holder; or

20 (4) restricts the license holder's advertisement under
21 a trade name.

22 Sec. 2158.054. RECORDS DISCLOSURE; CONFIDENTIALITY. (a)
23 The department shall disclose to a criminal justice agency
24 information contained in its files and records regarding whether a
25 named individual is licensed under this chapter.

26 (b) Except as otherwise provided by this section, all
27 records maintained under this chapter regarding an applicant or

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

6 [Sections 2158.055-2158.100 reserved for expansion]

7 SUBCHAPTER C. LICENSE REQUIREMENTS

8 Sec. 2158.101. LICENSE REQUIRED. (a) A person may not own,
9 operate, or work at, or otherwise engage in a business transaction
10 as an owner, operator, employee, or independent contractor at, a
11 sexually oriented business unless the person holds a license under
12 this chapter.

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

18 (c) A sexually oriented business shall maintain a copy of
19 the license of any owner, operator, employee, or independent
20 contractor associated with the business for at least 30 days after
21 the last day the owner, operator, employee, or independent
22 contractor is associated with the business.

23 Sec. 2158.102. ISSUANCE OF LICENSE. (a) The department
24 shall issue a sexually oriented business license to an applicant
25 that meets the requirements of this chapter.

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

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

3 (2) an employee of or independent contractor for a
4 sexually oriented business.

5 (c) A license issued under this chapter is not transferable.

6 Sec. 2158.103. FORM OF LICENSE. A license issued to an
7 individual under this subchapter that the individual is required to
8 display:

9 (1) may not contain any personally identifiable
10 information about the individual; and

11 (2) must be capable of being verified as belonging to
12 the license holder on inspection by the department.

13 Sec. 2158.104. LICENSE APPLICATION. (a) A license
14 applicant must apply to the department on a form and in the manner
15 the department prescribes.

16 (b) The application must be accompanied by a nonrefundable
17 application fee and any other appropriate fees.

18 Sec. 2158.105. ELIGIBILITY FOR LICENSE; INELIGIBILITY FOR
19 CERTAIN OFFENSES. (a) To be eligible for a license under this
20 chapter, an applicant must:

21 (1) be at least 18 years of age;

22 (2) have completed a department-approved training
23 course relating to human trafficking awareness and reporting
24 procedures; and

25 (3) meet any other requirements approved by the
26 department.

27 (b) A person is ineligible to be issued a license under this

1 chapter if the person has been convicted of:

2 (1) an offense under Section 20A.02, Penal Code
3 (trafficking of persons);

4 (2) an offense under Section 43.25, Penal Code (sexual
5 performance by a child);

6 (3) prostitution;

7 (4) promotion of prostitution;

8 (5) aggravated promotion of prostitution;

9 (6) compelling prostitution;

10 (7) obscenity;

11 (8) sale, distribution, or display of harmful material
12 to a minor;

13 (9) possession of child pornography;

14 (10) public lewdness;

15 (11) indecent exposure;

16 (12) indecency with a child;

17 (13) sexual assault or aggravated sexual assault;

18 (14) incest, including prohibited sexual conduct
19 under Chapter 25, Penal Code; or

20 (15) harboring a runaway child.

21 Sec. 2158.106. LICENSE EXPIRATION AND RENEWAL. (a) A
22 license expires on the second anniversary of the date it was issued.

23 (b) A person who is otherwise eligible to renew a license
24 may renew an unexpired license by paying the required renewal fee to
25 the department before the expiration date of the license. A person
26 whose license has expired may not engage in activities that require
27 a license until the license is renewed.

1 (c) A person whose license has been expired for 90 days or
2 less may renew the license by paying to the department a renewal fee
3 that is equal to 1-1/2 times the normally required renewal fee.

4 (d) A person whose license has been expired for more than 90
5 days but less than one year may renew the license by paying to the
6 department a renewal fee that is equal to two times the normally
7 required renewal fee.

8 (e) A person whose license has been expired for one year or
9 more may not renew the license. The person may obtain a new license
10 by complying with the requirements and procedures for obtaining an
11 original license.

12 Sec. 2158.107. NOTICE OF RENEWAL. Not later than the 30th
13 day before the date a person's license is scheduled to expire, the
14 department shall send written notice of the impending expiration to
15 the person at the person's last known address according to the
16 records of the department.

17 [Sections 2158.108-2158.150 reserved for expansion]

18 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

19 Sec. 2158.151. CONTINUING EDUCATION. (a) The department
20 may recognize, prepare, or administer continuing education
21 programs for its license holders under this chapter. A license
22 holder may not renew the person's license unless the person meets
23 any continuing education requirements.

24 (b) The department shall:

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

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

4 Sec. 2158.152. DISPLAY OF LICENSE. (a) An owner, operator,
5 employee, or independent contractor licensed under this chapter
6 must conspicuously display the person's license on their person
7 when conducting business at the sexually oriented business at which
8 the person is employed.

9 (b) In a prosecution for a violation under this section, a
10 presumption exists that the owner, operator, employee, or
11 independent contractor did not have a license issued under this
12 chapter if the license is not on display as required by this
13 section.

14 [Sections 2158.153-2158.200 reserved for expansion]

15 SUBCHAPTER E. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

16 Sec. 2158.201. ADMINISTRATIVE SANCTIONS. (a) The
17 department shall revoke, suspend, or refuse to issue or renew a
18 license or shall reprimand a license holder for a violation of this
19 chapter or a rule adopted under this chapter.

20 (b) The department may place on probation a person whose
21 license is suspended. If a license suspension is probated, the
22 department may require the person:

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

25 (2) to limit business activities to the areas
26 prescribed by the department; or

27 (3) to continue or review professional education until

1 the person attains a degree of skill satisfactory to the department
2 in those areas that are the basis of the probation.

3 Sec. 2158.202. COMPLAINTS. Any person may file a complaint
4 with the department alleging a violation of this chapter or a rule
5 adopted under this chapter.

6 Sec. 2158.203. PROHIBITED ACTIONS. A license holder may
7 not:

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

10 (2) sell, barter, or offer to sell or barter a license;
11 or

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

15 Sec. 2158.204. MONITORING OF LICENSE HOLDER; RULES. (a)
16 The executive commissioner by rule may develop a system for
17 monitoring a license holder's compliance with this chapter.

18 (b) Rules adopted under this section may include procedures
19 to:

20 (1) monitor for compliance a license holder who is
21 ordered by the department to perform certain acts; and

22 (2) identify and monitor license holders who represent
23 a risk to the public.

24 Sec. 2158.205. LICENSE DENIAL, REVOCATION, OR SUSPENSION
25 FOR CRIMINAL CONVICTION. (a) The department may deny a license
26 application or request for renewal, or may suspend or revoke a
27 license, if the applicant or license holder has been convicted of:

1 (1) a felony; or

2 (2) a misdemeanor involving:

3 (A) prostitution;

4 (B) promotion of prostitution;

5 (C) obscenity;

6 (D) sale, distribution, or display of harmful
7 material to a minor;

8 (E) public lewdness;

9 (F) indecent exposure; or

10 (G) harboring a runaway child.

11 (b) The department may take action authorized by this
12 section:

13 (1) after the time for appeal of the person's
14 conviction has elapsed;

15 (2) after the judgment or conviction has been affirmed
16 on appeal; or

17 (3) on issuance of an order granting probation
18 suspending the imposition of the person's sentence, without regard
19 to whether a subsequent order:

20 (A) allows withdrawal of a plea of guilty;

21 (B) sets aside a verdict of guilty; or

22 (C) dismisses an information or indictment.

23 (c) A plea or verdict of guilty or a conviction following a
24 plea of nolo contendere is a conviction for purposes of this
25 section.

26 Sec. 2158.206. SCHEDULE OF SANCTIONS; RULES. The
27 department shall use the schedule of sanctions adopted by executive

1 commissioner rule for any sanction imposed as the result of a
2 hearing conducted by the department.

3 Sec. 2158.207. REINSTATEMENT. (a) A person may apply for
4 reinstatement of a revoked license on or after the first
5 anniversary of the date of revocation.

6 (b) The department may accept or reject the application.

7 Sec. 2158.208. REPRIMAND; CONTINUING EDUCATION. (a) In
8 addition to other disciplinary action authorized by this
9 subchapter, the department may:

10 (1) issue a written reprimand to a license holder who
11 violates this chapter; or

12 (2) require that a license holder who violates this
13 chapter attend continuing education programs.

14 (b) The department may specify the number of hours of
15 continuing education that must be completed by a license holder to
16 fulfill the requirement of Subsection (a)(2).

17 Sec. 2158.209. EMERGENCY SUSPENSION. (a) The department
18 or a three-member committee of members designated by the department
19 shall temporarily suspend the license of a license holder if the
20 department or committee determines from the evidence or information
21 presented to it that continued practice by the license holder would
22 constitute a continuing and imminent threat to the public health or
23 welfare.

24 (b) A license may be suspended under this section without
25 notice or hearing on the complaint if:

26 (1) action is taken to initiate proceedings for a
27 hearing before the State Office of Administrative Hearings

1 simultaneously with the temporary suspension; and

2 (2) a hearing is held as soon as practicable under this
3 chapter and Chapter 2001, Government Code.

4 (c) The State Office of Administrative Hearings shall hold a
5 preliminary hearing not later than the 14th day after the date of
6 the temporary suspension to determine if there is probable cause to
7 believe that a continuing and imminent threat to the public health
8 or welfare still exists. A final hearing on the matter shall be
9 held not later than the 61st day after the date of the temporary
10 suspension.

11 [Sections 2158.210-2158.250 reserved for expansion]

12 SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

13 Sec. 2158.251. DECEPTIVE TRADE PRACTICE. A violation of
14 Section 2158.101 is a deceptive trade practice.

15 Sec. 2158.252. INJUNCTION. The department may apply to a
16 district court in any county for an injunction or another order to
17 restrain the violation of this chapter by a person other than a
18 license holder under this chapter.

19 Sec. 2158.253. CRIMINAL OFFENSE. (a) A person commits an
20 offense if the person violates Section 2158.101.

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

22 Sec. 2158.254. CIVIL PENALTY. (a) A person who violates
23 Section 2158.101 is liable to the state for a civil penalty in an
24 amount not to exceed \$1,000 for each violation. Each day a
25 violation occurs is a separate violation.

26 (b) The department or the attorney general may institute an
27 action in a district court in Travis County or in the county in

1 which the person who is alleged to have violated Section 2158.101
2 resides.

3 [Sections 2158.255-2158.300 reserved for expansion]

4 SUBCHAPTER G. ADMINISTRATIVE PENALTY

5 Sec. 2158.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The
6 department may impose an administrative penalty on a person
7 licensed under this chapter who violates this chapter or a rule or
8 order adopted under this chapter.

9 Sec. 2158.302. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
10 amount of the administrative penalty may not be less than \$500 or
11 more than \$5,000 for each violation. Each day a violation continues
12 or occurs is a separate violation for the purpose of imposing a
13 penalty.

14 (b) The amount shall be based on:

15 (1) the seriousness of the violation, including the
16 nature, circumstances, extent, and gravity of the violation;

17 (2) the economic harm caused by the violation;

18 (3) the history of previous violations;

19 (4) the amount necessary to deter a future violation;

20 (5) the risk to public health or occupational health
21 posed by the violation;

22 (6) efforts to correct the violation; and

23 (7) any other matter that justice may require.

24 Sec. 2158.303. REPORT AND NOTICE OF VIOLATION AND PENALTY.

25 (a) If the department determines that a violation occurred, the
26 department may issue a report stating:

27 (1) the facts on which the determination is based; and

1 (2) the department's recommendation on the imposition
2 of an administrative penalty, including a recommendation on the
3 amount of the penalty.

4 (b) Within 14 days after the date the report is issued, the
5 department shall give written notice of the report to the person.

6 The notice must:

7 (1) include a brief summary of the alleged violation;

8 (2) state the amount of the recommended administrative
9 penalty; and

10 (3) inform the person of the person's right to a
11 hearing on the occurrence of the violation, the amount of the
12 penalty, or both.

13 Sec. 2158.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
14 Within 10 days after the date the person receives the notice, the
15 person in writing may:

16 (1) accept the determination and recommended
17 administrative penalty of the department; or

18 (2) make a request for a hearing on the occurrence of
19 the violation, the amount of the penalty, or both.

20 (b) If the person accepts the determination and recommended
21 penalty of the department, the department by order shall approve
22 the determination and impose the recommended penalty.

23 Sec. 2158.305. HEARING. (a) If the person requests a
24 hearing or fails to respond in a timely manner to the notice, the
25 department shall set a hearing and give written notice of the
26 hearing to the person.

27 (b) An administrative law judge of the State Office of

1 Administrative Hearings shall hold the hearing.

2 (c) The administrative law judge shall make findings of fact
3 and conclusions of law and promptly issue to the department a
4 proposal for a decision about the occurrence of the violation and
5 the amount of a proposed administrative penalty.

6 Sec. 2158.306. DECISION BY DEPARTMENT. (a) Based on the
7 findings of fact, conclusions of law, and proposal for decision,
8 the department by order may determine that:

9 (1) a violation occurred and impose an administrative
10 penalty; or

11 (2) a violation did not occur.

12 (b) The notice of the department's order given to the person
13 must include a statement of the right of the person to judicial
14 review of the order.

15 Sec. 2158.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

16 (a) Within 30 days after the date the department's order becomes
17 final, the person shall:

18 (1) pay the administrative penalty; or

19 (2) file a petition for judicial review contesting the
20 occurrence of the violation, the amount of the penalty, or both.

21 (b) Within the 30-day period prescribed by Subsection (a), a
22 person who files a petition for judicial review may:

23 (1) stay enforcement of the penalty by:

24 (A) paying the penalty to the court for placement
25 in an escrow account; or

26 (B) giving the court a supersedeas bond approved
27 by the court that:

1 (i) is for the amount of the penalty; and
2 (ii) is effective until all judicial review
3 of the department's order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court a sworn affidavit
7 stating that the person is financially unable to pay the penalty and
8 is financially unable to give the supersedeas bond; and

9 (B) giving a copy of the affidavit to the
10 department by certified mail.

11 (c) If the department receives a copy of an affidavit under
12 Subsection (b)(2), the department may file with the court, within
13 five days after the date the copy is received, a contest to the
14 affidavit.

15 (d) The court shall hold a hearing on the facts alleged in
16 the affidavit as soon as practicable and shall stay the enforcement
17 of the penalty on finding that the alleged facts are true. The
18 person who files an affidavit has the burden of proving that the
19 person is financially unable to pay the penalty and to give a
20 supersedeas bond.

21 Sec. 2158.308. COLLECTION OF PENALTY. (a) If the person
22 does not pay the administrative penalty and the enforcement of the
23 penalty is not stayed, the penalty may be collected.

24 (b) The attorney general may sue to collect the penalty.

25 Sec. 2158.309. DETERMINATION BY COURT. (a) If the court
26 sustains the determination that a violation occurred, the court may
27 uphold or reduce the amount of the administrative penalty and order

1 the person to pay the full or reduced amount of the penalty.

2 (b) If the court does not sustain the finding that a
3 violation occurred, the court shall order that a penalty is not
4 owed.

5 Sec. 2158.310. REMITTANCE OF PENALTY AND INTEREST. (a) If
6 the person paid the administrative penalty and if the amount of the
7 penalty is reduced or the penalty is not upheld by the court, the
8 court shall order, when the court's judgment becomes final, that
9 the appropriate amount plus accrued interest be remitted to the
10 person.

11 (b) The interest accrues at the rate charged on loans to
12 depository institutions by the New York Federal Reserve Bank.

13 (c) The interest shall be paid for the period beginning on
14 the date the penalty is paid and ending on the date the penalty is
15 remitted.

16 (d) If the person gave a supersedeas bond and the penalty is
17 not upheld by the court, the court shall order, when the court's
18 judgment becomes final, the release of the bond.

19 (e) If the person gave a supersedeas bond and the amount of
20 the penalty is reduced, the court shall order the release of the
21 bond after the person pays the reduced amount.

22 SECTION 2. (a) Except as required by Subsection (b) of this
23 section, this Act takes effect September 1, 2011.

24 (b) Section 2158.101 and Subchapters E, F, and G, Chapter
25 2158, Occupations Code, as added by this Act, take effect September
26 1, 2012.