

By: Dutton

H.B. No. 3635

A BILL TO BE ENTITLED

AN ACT

relating to the registration of and taxes and fees imposed on sexually oriented businesses; providing a civil penalty.

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. REGISTRATION OF SEXUALLY ORIENTED BUSINESSES

Sec. 2158.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Financial interest" includes a legal or equitable interest, including the ownership of shares or bonds of a corporation.

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

Sec. 2158.002. REGISTRATION CERTIFICATE REQUIRED. (a) Before conducting business in this state, a sexually oriented business shall obtain a registration certificate from the department.

(b) To obtain a registration certificate, a sexually oriented business shall:

(1) file an application that:

1 (A) contains the name and address of:

2 (i) the business; and

3 (ii) each person who has a financial
4 interest in the business, including the nature, type, and extent of
5 the interest;

6 (B) identifies the category of the business,
7 according to the categories of sexually oriented businesses
8 established by the department; and

9 (C) fully discloses any litigation or unresolved
10 complaint relating to the operation of the business filed with a
11 governmental authority of this state or contains a notarized
12 statement that there has been no litigation or unresolved complaint
13 of that type; and

14 (2) pay the required registration fee.

15 (c) Upon receiving a completed application and the required
16 registration fee, the department shall issue a registration
17 certificate to the sexually oriented business no later than the
18 30th day after receiving the completed application and registration
19 fee.

20 (d) A sexually oriented business shall, at all times,
21 prominently display the registration certificate for the business
22 at the registered premises.

23 (e) A person who submits an application for a registration
24 certificate consents to an inspection of the registered premises by
25 an authorized representative of the department or a peace officer
26 at any time during the hours of operation of the sexually oriented
27 business to ensure compliance with this chapter.

1 (f) A registration certificate expires on the first
2 anniversary of its date of issuance. A registered sexually oriented
3 business may renew a registration certificate by filing a renewal
4 application, in the form prescribed by the department, and paying
5 the annual registration fee.

6 (g) The registration certificate required under this
7 chapter is in addition to any license or permit required under the
8 Alcoholic Beverage Code.

9 Sec. 2158.003. UPDATE OF REGISTRATION CERTIFICATE. (a) If
10 information contained in the registration certificate changes, a
11 sexually oriented business shall file with the department an
12 application to amend the registration certificate and pay any
13 required fee not later than the 90th day after the date on which the
14 information changes.

15 (b) Upon receipt of a completed application to amend a
16 registration certificate and any required fee, the department shall
17 issue an amended registration certificate to the sexually oriented
18 business no later than the 30th day after receiving the completed
19 application and any required fee.

20 Sec. 2158.004. FEES. (a) The commission shall adopt rules
21 to charge and collect fees in amounts reasonable and necessary to
22 cover the costs of administering this chapter, including a fee for:

23 (1) filing an original application for a registration
24 certificate;

25 (2) annual renewal of a registration certificate; and

26 (3) filing an application for an amended registration
27 certificate.

1 (b) The fee for filing an original application for a
2 registration certificate and the fee for annual renewal of a
3 registration certificate is the amount of the fee set by the
4 commission under Subsection (a) and a fee surcharge of \$1000.

5 (c) Of the fee surcharge collected under Subsection (b),
6 \$250 shall be deposited to the credit of the foundation school fund
7 and \$750 shall be deposited to the credit of the general revenue
8 fund.

9 Sec. 2158.005. CIVIL PENALTY. (a) Except as provided by
10 Subsection (c), a sexually oriented business that operates without
11 a registration certificate required by this chapter or fails to
12 display the registration certificate for the business is subject to
13 a civil penalty of not less than \$50 or more than \$1,000 for each act
14 of violation and for each day of violation after notice of a
15 violation is provided to the business by the department.

16 (b) Revenue from civil penalties collected under this
17 section shall be deposited to the credit of the general revenue
18 fund.

19 (c) A sexually oriented business is not subject to a civil
20 penalty under this section if:

21 (1) the business filed an application for a
22 registration certificate and paid the required registration fee;
23 and

24 (2) the department has not issued the registration
25 certificate.

26 Sec. 2158.006. RULES. The commission shall adopt rules
27 necessary to implement this chapter.

1 SECTION 2. Subtitle G, Title 2, Tax Code, is amended by
2 adding Chapter 184 to read as follows:

3 CHAPTER 184. SEXUALLY ORIENTED BUSINESSES ADMISSIONS TAX

4 Sec. 184.001. DEFINITIONS. In this chapter:

5 (1) "Admissions fee" means a fee imposed on a customer
6 for admission into any portion of the premises of a sexually
7 oriented business.

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

10 Sec. 184.002. IMPOSITION AND RATE OF TAX. (a) A tax is
11 imposed on each sexually oriented business.

12 (b) For a sexually oriented business that charges an
13 admissions fee, the rate of the tax imposed by this chapter is 10
14 percent of the gross receipts received by the sexually oriented
15 business from admissions fees, except that the tax imposed under
16 this subsection may not exceed the sum of \$2 for each entry by each
17 customer admitted to the business during the tax reporting period.
18 For purposes of this subsection, Section 184.005(b), and Section
19 184.006(2), an incidental exit and reentry by a customer during a
20 daily business cycle of the business does not constitute a separate
21 entry. For purposes of Section 151.007, Tax Code, the amount of the
22 tax imposed under this subsection is not considered part of the
23 sales price of the service for which the sales tax is otherwise
24 imposed or part of the receipts of a sexually oriented business.

25 (c) For a sexually oriented business that does not charge an
26 admissions fee, the rate of the tax imposed by this chapter is \$1
27 for each entry by each customer admitted to the business. For

1 purposes of this subsection, Section 184.005(c), and Section
2 184.006(2), an incidental exit and reentry by a customer during a
3 daily business cycle of the business does not constitute a separate
4 entry. For purposes of Section 151.007, Tax Code, the amount of the
5 tax imposed under this subsection is not considered part of the
6 sales price of the service for which the sales tax is otherwise
7 imposed or part of the receipts of a sexually oriented business.

8 Sec. 184.003. CREDIT. (a) A sexually oriented business
9 that paid a fee under Subchapter B, Chapter 102, Business & Commerce
10 Code, before the repeal of that subchapter by the Act that added
11 this chapter is entitled to a credit against the tax imposed by this
12 chapter in an amount equal to the amount of the fee paid.

13 (b) The total credit claimed on a tax report may not exceed
14 the amount of tax due for the report.

15 (c) If a person is eligible for a credit that exceeds the
16 limitation under Subsection (b), the person may carry the credit
17 forward for subsequent reporting periods.

18 Sec. 184.004. TAX DUE DATES. The tax imposed by this
19 chapter is due and payable to the comptroller on or before the last
20 day of the first month following the end of each calendar quarter.

21 Sec. 184.005. REPORT. (a) A person required to pay a tax
22 under this chapter shall file a tax report with the comptroller on a
23 form prescribed by the comptroller. The tax report is due on the
24 date the tax is due under Section 184.004.

25 (b) A tax report from a sexually oriented business subject
26 to Section 184.002(b) must include a statement of the gross
27 receipts received from admissions fees and the sum of each entry by

1 each customer admitted to the business during the quarterly period
2 to which the report applies.

3 (c) A tax report from a sexually oriented business subject
4 to Section 184.002(c) must include the sum of each entry by each
5 customer admitted to the business during the quarterly period to
6 which the report applies.

7 (d) The tax report must also include any other information
8 required by the comptroller.

9 Sec. 184.006. RECORDS. A person on whom the tax is imposed
10 by this chapter shall keep a record of:

11 (1) the gross receipts received each day from
12 admissions fees, for a sexually oriented business subject to
13 Section 184.002(b);

14 (2) each entry by each customer admitted to the
15 business each day, for a sexually oriented business subject to
16 Section 184.002(b) or (c); and

17 (3) any other information required by the comptroller.

18 Sec. 184.007. PENALTY FOR FAILURE TO FILE REPORT OR PAY TAX.

19 (a) A person who fails to file a report as required by this chapter
20 or who fails to pay a tax imposed by this chapter when due forfeits
21 five percent of the amount of the tax due as a penalty, and if the
22 person fails to file the report or pay the tax within 30 days after
23 the day on which the tax or report is due, the person forfeits an
24 additional five percent.

25 (b) The minimum penalty imposed by this section is \$1.

26 Sec. 184.008. NATURE OF TAX. A tax imposed by this chapter
27 is an occupation tax.

1 Sec. 184.009. ALLOCATION OF TAX REVENUE. (a) The net
2 revenue from the tax collected under this chapter is allocated as
3 follows:

- 4 (1) one-fourth to the foundation school fund; and
5 (2) three-fourths to the general revenue fund.

6 (b) The comptroller shall transfer to the sexual assault
7 program fund established under Section 420.008, Government Code,
8 the net revenue collected under this chapter that is allocated to
9 the general revenue fund under Subsection (a)(2) in any state
10 fiscal biennium.

11 SECTION 3. Section 420.008(b), Government Code, is amended
12 to read as follows:

13 (b) The fund consists of fees or revenue collected under:

- 14 (1) Section 19(e), Article 42.12, Code of Criminal
15 Procedure;
16 (2) Section 508.189, Government Code; and
17 (3) Chapter 184, Tax Code, and deposited under Section
18 184.009(b), Tax Code [~~Subchapter B, Chapter 102, Business &~~
19 ~~Commerce Code, and deposited under Section 102.054].~~

20 SECTION 4. Subchapter B, Chapter 102, Business & Commerce
21 Code, is repealed.

22 SECTION 5. (a) If this Act takes effect July 1, 2011:

23 (1) the first report and tax payment required under
24 Chapter 184, Tax Code, as added by this Act, are due on or before
25 October 31, 2011; and

26 (2) a sexually oriented business in operation before
27 the effective date of this Act is required to file an application

1 for a registration certificate and pay the annual registration fee
2 pursuant to Chapter 2158, Occupations Code, as added by this Act on
3 or before July 31, 2011. The department may not assess a civil
4 penalty under Chapter 2158, Occupations Code, as added by this Act,
5 against a sexually oriented business that was operating prior to
6 July 1, 2011 if the business filed the required application and paid
7 the required registration fee by the deadline established by this
8 subsection.

9 (b) If this Act takes effect on October 1, 2011:

10 (1) the first report and tax payment required under
11 Chapter 184, Tax Code, as added by this Act, are due on January 31,
12 2012; and

13 (2) a sexually oriented business in operation before
14 the effective date of this Act is required to file an application
15 for a registration certificate and pay the annual registration fee
16 pursuant to Chapter 2158, Occupations Code, as added by this Act on
17 or before October 31, 2011. The department may not assess a civil
18 penalty under Chapter 2158, Occupations Code, as added by this Act,
19 against a sexually oriented business that was operating prior to
20 October 1, 2011 if the business filed the required application and
21 paid the required registration fee by the deadline established by
22 this subsection.

23 SECTION 6. This Act takes effect on July 1, 2011, if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary to become effective
27 on July 1, 2011, this Act takes effect October 1, 2011.