

By: Zedler

H.B. No. 337

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of owners, operators, employees, and  
3 independent contractors of sexually oriented businesses to reduce  
4 risks to public and occupational health and to prevent human  
5 trafficking; providing penalties.

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

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

9 CHAPTER 2158. SEXUALLY ORIENTED BUSINESSES

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 2158.001. DEFINITIONS. In this chapter:

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

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

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

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

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

22 Sec. 2158.003. MUNICIPAL AND COUNTY REGULATION. This  
23 chapter is in addition to any municipal or county regulation. To  
24 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, to participate in the activity  
9 or conduct of a class, a student must enroll in the class at least  
10 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 the department's files and records  
25 regarding whether a named individual is licensed under this  
26 chapter.

27 (b) 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 Chapter 552, Government Code, except that an  
4 applicant or license holder may be furnished a copy of disclosable  
5 records regarding that applicant or license holder on request and  
6 the payment of a reasonable fee.

7 [Sections 2158.055-2158.100 reserved for expansion]

8 SUBCHAPTER C. LICENSE REQUIREMENTS

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

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

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

27 (b) The department shall establish separate categories of

1 licenses issued under this chapter for:

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

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

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

7 Sec. 2158.103. FORM OF LICENSE. A license issued to an  
8 individual under this subchapter:

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 DUE  
19 TO 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 an offense under Section 25.02,  
19 Penal Code (prohibited sexual conduct); 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 the license  
23 was issued.

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

1 a license until the license is renewed.

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

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

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

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

18 [Sections 2158.108-2158.150 reserved for expansion]

19 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

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

25 (b) The department shall:

26 (1) provide to a license applicant, with the  
27 application form on which the person is to apply for a license,



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

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

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

15 [Sections 2158.153-2158.200 reserved for expansion]

16 SUBCHAPTER E. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           Sec. 2158.205. LICENSE DENIAL, REVOCATION, OR SUSPENSION  
26 FOR CRIMINAL CONVICTION. (a) The department may deny a license  
27 application or request for renewal, or may suspend or revoke a

1 license, if the applicant or license holder has been convicted of:

2 (1) a felony; or

3 (2) a misdemeanor involving:

4 (A) prostitution;

5 (B) promotion of prostitution;

6 (C) obscenity;

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

9 (E) public lewdness;

10 (F) indecent exposure; or

11 (G) harboring a runaway child.

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

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

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

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

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

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

23 (C) dismisses an information or indictment.

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

27 Sec. 2158.206. SCHEDULE OF SANCTIONS; RULES. The

1 department shall use the schedule of sanctions adopted by executive  
2 commissioner rule for any sanction imposed as the result of a  
3 hearing conducted by the department.

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

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

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

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

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

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

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

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

27 (1) action is taken to initiate proceedings for a

1 hearing before the State Office of Administrative Hearings  
2 simultaneously with the temporary suspension; and

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

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

12 [Sections 2158.210-2158.250 reserved for expansion]

13 SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

14 Sec. 2158.251. DECEPTIVE TRADE PRACTICE. A violation of  
15 Section 2158.101 is a deceptive trade practice under Subchapter E,  
16 Chapter 17, Business & Commerce Code.

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

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

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

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

1       (b) The department or the attorney general may institute an  
2 action in a district court in Travis County or in the county in  
3 which the person who is alleged to have violated Section 2158.101  
4 resides.

5           [Sections 2158.255-2158.300 reserved for expansion]

6                   SUBCHAPTER G. ADMINISTRATIVE PENALTY

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

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

16       (b) The amount shall be based on:

17           (1) the seriousness of the violation, including the  
18 nature, circumstances, extent, and gravity of the violation;

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

20           (3) the history of previous violations;

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

22           (5) the risk to public health or occupational health  
23 posed by the violation;

24           (6) efforts to correct the violation; and

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

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

27 (a) If the department determines that a violation occurred, the

1 department may issue a report stating:

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

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

6 (b) Not later than the 14th day after the date the report is  
7 issued, the department shall give written notice of the report to  
8 the person. The notice must:

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

10 (2) state the amount of the recommended administrative  
11 penalty; and

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

15 Sec. 2158.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
16 Not later than the 10th day after the date the person receives the  
17 notice, the person in writing may:

18 (1) accept the determination and recommended  
19 administrative penalty of the department; or

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

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

25 Sec. 2158.305. HEARING. (a) If the person requests a  
26 hearing or fails to respond to the notice within the period  
27 prescribed by Section 2158.304(a), the department shall set a

1 hearing and give written notice of the hearing to the person.

2 (b) An administrative law judge of the State Office of  
3 Administrative Hearings shall hold the hearing.

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

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

11 (1) a violation occurred and impose an administrative  
12 penalty; or

13 (2) a violation did not occur.

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

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

18 (a) Not later than the 30th day after the date the department's  
19 order becomes final, the person shall:

20 (1) pay the administrative penalty; or

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

23 (b) A person who files a petition for judicial review within  
24 the period prescribed by Subsection (a) may:

25 (1) stay enforcement of the penalty by:

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



1                   (B) giving the court a supersedeas bond approved  
2 by the court that:

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

6                   (2) request the court to stay enforcement of the  
7 penalty by:

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

11                   (B) giving a copy of the affidavit to the  
12 department by certified mail.

13                   (c) If the department receives a copy of an affidavit under  
14 Subsection (b)(2), the department may file with the court, not  
15 later than the fifth day after the date the copy is received, a  
16 contest to the affidavit.

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

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

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

27                   Sec. 2158.309. DETERMINATION BY COURT. (a) If the court

1 sustains the determination that a violation occurred, the court may  
2 uphold or reduce the amount of the administrative penalty and order  
3 the person to pay the full or reduced amount of the penalty.

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

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

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

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

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

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

24 SECTION 2. Not later than February 1, 2014, the executive  
25 commissioner of the Health and Human Services Commission shall  
26 adopt rules and the Department of State Health Services shall set  
27 fees and prescribe forms necessary to implement Chapter 2158,

1 Occupations Code, as added by this Act.

2 SECTION 3. (a) Except as required by Subsection (b) of this  
3 section, this Act takes effect September 1, 2013.

4 (b) Section 2158.101 and Subchapters E, F, and G, Chapter  
5 2158, Occupations Code, as added by this Act, take effect September  
6 1, 2014.