

By: Zedler

H.B. No. 3768

A BILL TO BE ENTITLED

AN ACT

1  
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; requiring an occupational license; imposing fees;  
6 providing civil penalties; creating a criminal offense.

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

8 SECTION 1. The legislature finds that:

9 (1) human trafficking is an affront to the rights and  
10 liberties of free people and an anathema to the living principles  
11 enshrined within the United States Constitution and the Texas  
12 Constitution;

13 (2) human trafficking is a form of modern-day slavery,  
14 where human beings are traded for sexual exploitation or forced  
15 labor;

16 (3) the moral problem of human trafficking exists in  
17 Texas, where the United States Department of Justice identified the  
18 Interstate 10 corridor as the number one human trafficking route in  
19 the United States, with as many as one out of four victims passing  
20 through Texas;

21 (4) human trafficking in Texas has been known to occur  
22 in strip clubs, spas, massage parlors, modeling studios, and adult  
23 theaters;

24 (5) the Internet and other technologies are being used

1 to facilitate human trafficking;

2 (6) demand for commercial sex fuels the criminal  
3 enterprise of human trafficking;

4 (7) human trafficking in Texas involves the  
5 disproportionate exploitation of children; and

6 (8) the legislature has a justified interest in  
7 leveraging the full power of the state toward the curtailment and  
8 eradication of practices enabling human trafficking.

9 SECTION 2. Subtitle D, Title 13, Occupations Code, is  
10 amended by adding Chapter 2159 to read as follows:

11 CHAPTER 2159. SEXUALLY ORIENTED BUSINESSES

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 2159.001. DEFINITIONS. In this chapter:

14 (1) "Commission" means the Public Safety Commission.

15 (2) "Department" means the Department of Public  
16 Safety.

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

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

21 Sec. 2159.002. ADMINISTRATION BY DEPARTMENT OF PUBLIC  
22 SAFETY. The department shall administer this chapter.

23 Sec. 2159.003. MUNICIPAL AND COUNTY REGULATION. This  
24 chapter is in addition to any municipal or county regulation. To  
25 the extent of a conflict between this chapter and a municipal or  
26 county regulation, this chapter controls.

27 Sec. 2159.004. EXEMPTIONS. (a) This chapter does not apply

1 to:

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

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

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

14 (4) an activity conducted or sponsored:

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

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

22 (5) a person licensed as an occupational therapist  
23 under Chapter 454;

24 (6) a person who is providing a repair, maintenance,  
25 air conditioning, or delivery service on the premises of a sexually  
26 oriented business; or

27 (7) a nonsexual nudist camp.

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

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

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

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

11                   SUBCHAPTER B. POWERS AND DUTIES

12       Sec. 2159.051. FEES. (a) The department shall set fees in  
13 an amount sufficient to cover the cost of administering this  
14 chapter.

15       (b) The department shall reimburse sheriff's departments  
16 for the cost of processing license applications and issuing license  
17 cards or certificates under this chapter.

18       Sec. 2159.052. RULES. (a) The commission shall adopt rules  
19 necessary to administer and enforce this chapter.

20       (b) Rules adopted under this section must:

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

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

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

1           (B) the proper safeguards for sanitation, public  
2 health, and occupational health in the operation of a sexually  
3 oriented business or in the conduct of an employee on the premises  
4 of a sexually oriented business; and

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

8           Sec. 2159.053. RECORDS DISCLOSURE; CONFIDENTIALITY. (a)  
9 The department shall disclose to a law enforcement agency  
10 information contained in the department's files and records  
11 regarding whether a named individual is licensed under this  
12 chapter.

13           (b) Except as otherwise provided by this section, all  
14 records maintained under this chapter regarding an applicant or  
15 license holder are confidential and are not subject to mandatory  
16 disclosure under Chapter 552, Government Code, except that an  
17 applicant or license holder may be furnished a copy of disclosable  
18 records regarding that applicant or license holder on request and  
19 the payment of a reasonable fee.

20           Sec. 2159.054. HUMAN TRAFFICKING EDUCATIONAL COURSE. (a)  
21 The commission by rule shall establish the content of and approval  
22 requirements for the human trafficking educational course an  
23 applicant is required to take to be eligible for a license under  
24 Section 2159.105.

25           (b) In adopting the rules, the commission shall establish a  
26 task force to collaborate with nonprofit organizations designated  
27 by the department to develop the content for the course. The

1 department shall make the course available to applicants through  
2 the department's Internet website.

3 SUBCHAPTER C. LICENSE REQUIREMENTS

4 Sec. 2159.101. LICENSE REQUIRED. (a) A person may not own,  
5 operate, or otherwise engage in a business transaction as an owner  
6 or operator at a sexually oriented business unless the person holds  
7 a license under this chapter.

8 (b) A person may not employ or hire a person to work at, or  
9 contract with an independent contractor to work at, a sexually  
10 oriented business unless the person employed or the independent  
11 contractor entering into the contract holds a license under this  
12 chapter.

13 (c) A sexually oriented business shall maintain a copy of  
14 the license of any owner, operator, employee, or independent  
15 contractor associated with the business for at least 30 days after  
16 the last day the owner, operator, employee, or independent  
17 contractor is associated with the business.

18 Sec. 2159.102. ISSUANCE OF LICENSE. (a) The department  
19 shall issue a sexually oriented business license to an applicant  
20 that meets the requirements of this chapter. The sheriff's  
21 departments of each county shall assist the department in  
22 administering the issuance of licenses under this chapter. The  
23 department shall establish procedures for sheriff's departments to  
24 accept applications for and to issue license cards or certificates  
25 issued under this chapter.

26 (b) The department may not issue a license under this  
27 chapter before the fifth day after the date the application for the

1 license is submitted to the department.

2 (c) The department shall establish separate categories of  
3 licenses issued under this chapter for:

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

6 (2) an employee of or independent contractor for a  
7 sexually oriented business.

8 (d) A license issued under this chapter is not transferable.

9 Sec. 2159.103. FORM OF LICENSE. A license issued to an  
10 individual under this chapter must be in the form of a card or  
11 certificate and be capable of being verified as belonging to the  
12 license holder on inspection by the department or a law enforcement  
13 agency.

14 Sec. 2159.104. LICENSE APPLICATION. (a) A license  
15 applicant must apply to the department on a form and in the manner  
16 the department prescribes. A sheriff's department may accept and  
17 process a license application for the department.

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

20 Sec. 2159.105. ELIGIBILITY FOR LICENSE; INELIGIBILITY DUE  
21 TO CERTAIN OFFENSES. (a) To be eligible for a license under this  
22 chapter, an applicant must:

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

24 (2) be a United States citizen or legal resident of the  
25 United States;

26 (3) submit a complete set of fingerprints for purposes  
27 of obtaining criminal history record information;

1           (4) successfully complete a human trafficking  
2 educational course approved by the department; and

3           (5) meet any other requirements approved by the  
4 department.

5           (b) A person is ineligible to be issued a license under this  
6 chapter if the person has been convicted of:

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

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

11           (3) prostitution;

12           (4) promotion of prostitution;

13           (5) aggravated promotion of prostitution;

14           (6) compelling prostitution;

15           (7) obscenity;

16           (8) sale, distribution, or display of harmful material  
17 to a minor;

18           (9) possession of child pornography;

19           (10) public lewdness;

20           (11) indecent exposure;

21           (12) indecency with a child;

22           (13) sexual assault or aggravated sexual assault;

23           (14) incest, including an offense under Section 25.02,  
24 Penal Code (prohibited sexual conduct); or

25           (15) harboring a runaway child.

26           Sec. 2159.106. LICENSE EXPIRATION AND RENEWAL. (a) An  
27 initial license expires on the 180th day after the date the license



1 was issued. The first renewal of an initial license expires on the  
2 first anniversary of the date the initial license was issued.  
3 Subsequent renewals of the license expire on the first anniversary  
4 of the date the license was renewed.

5 (b) A person who is otherwise eligible to renew a license  
6 may renew an unexpired license by paying the required renewal fee to  
7 the department before the expiration date of the license. A person  
8 whose license has expired may not engage in activities that require  
9 a license until the license is renewed.

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

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

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

21 Sec. 2159.107. NOTICE OF RENEWAL. Not later than the 30th  
22 day before the date a person's license is scheduled to expire, the  
23 department shall send written notice of the impending expiration to  
24 the person at the person's last known address according to the  
25 records of the department.

26 Sec. 2159.108. LICENSE AVAILABILITY FOR INSPECTION. (a)  
27 An owner, operator, employee, or independent contractor licensed

1 under this chapter must have the person's license available for  
2 inspection by the department or a law enforcement agency at the  
3 premises of the sexually oriented business when conducting business  
4 or working at the sexually oriented business.

5 (b) In a prosecution for a violation under this section, a  
6 presumption exists that the owner, operator, employee, or  
7 independent contractor did not have a license issued under this  
8 chapter if the license is not at the premises of the business as  
9 required by this section.

10 SUBCHAPTER D. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

11 Sec. 2159.151. ADMINISTRATIVE SANCTIONS. (a) The  
12 department shall revoke, suspend, or refuse to issue or renew a  
13 license or shall reprimand a license holder for a violation of this  
14 chapter or a rule adopted under this chapter.

15 (b) The department may place on probation a person whose  
16 license is suspended. If a license suspension is probated, the  
17 department may require the person:

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

20 (2) to limit business activities to the areas  
21 prescribed by the department; or

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

25 Sec. 2159.152. COMPLAINTS. Any person may file a complaint  
26 with the department alleging a violation of this chapter or a rule  
27 adopted under this chapter.

1 Sec. 2159.153. PROHIBITED ACTIONS. A license holder may

2 not:

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

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

6 or

7 (3) engage in unprofessional conduct that endangers or  
8 is likely to endanger the health, welfare, or safety of the public  
9 as defined by a commission rule.

10 Sec. 2159.154. MONITORING OF LICENSE HOLDER; RULES. (a)

11 The commission by rule may develop a system for monitoring a license  
12 holder's compliance with this chapter.

13 (b) Rules adopted under this section may include procedures  
14 to:

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

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

19 Sec. 2159.155. LICENSE DENIAL, REVOCATION, OR SUSPENSION

20 FOR CRIMINAL CONVICTION. (a) The department may deny a license  
21 application or request for renewal, or may suspend or revoke a  
22 license, if the applicant or license holder has been convicted of:

23 (1) a felony; or

24 (2) a misdemeanor involving:

25 (A) prostitution;

26 (B) promotion of prostitution;

27 (C) obscenity;

1                    (D) sale, distribution, or display of harmful  
2 material to a minor;

3                    (E) public lewdness;

4                    (F) indecent exposure; or

5                    (G) harboring a runaway child.

6            (b) The department may take action authorized by this  
7 section:

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

10                   (2) after the judgment or conviction has been affirmed  
11 on appeal; or

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

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

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

17                    (C) dismisses an information or indictment.

18            (c) A plea or verdict of guilty or a conviction following a  
19 plea of nolo contendere is a conviction for purposes of this  
20 section.

21            Sec. 2159.156. SCHEDULE OF SANCTIONS; RULES. The  
22 department shall use the schedule of sanctions adopted by  
23 commission rule for any sanction imposed as the result of a hearing  
24 conducted by the department.

25            Sec. 2159.157. REINSTATEMENT. (a) A person may apply for  
26 reinstatement of a revoked license on or after the first  
27 anniversary of the date of revocation.

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

2 Sec. 2159.158. EMERGENCY SUSPENSION. (a) The department  
3 or a three-member committee of members designated by the department  
4 shall temporarily suspend the license of a license holder if the  
5 department or committee determines from the evidence or information  
6 presented to it that continued practice by the license holder would  
7 constitute a continuing and imminent threat to the public health or  
8 welfare.

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

11 (1) action is taken to initiate proceedings for a  
12 hearing before the State Office of Administrative Hearings  
13 simultaneously with the temporary suspension; and

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

16 (c) The State Office of Administrative Hearings shall hold a  
17 preliminary hearing not later than the 14th day after the date of  
18 the temporary suspension to determine if there is probable cause to  
19 believe that a continuing and imminent threat to the public health  
20 or welfare still exists. A final hearing on the matter shall be  
21 held not later than the 61st day after the date of the temporary  
22 suspension.

23 SUBCHAPTER E. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

24 Sec. 2159.201. INJUNCTION. The department may apply to a  
25 district court in any county for an injunction or another order to  
26 restrain the violation of this chapter by a person other than a  
27 license holder under this chapter.

1       Sec. 2159.202. CRIMINAL OFFENSES. (a) A person commits an  
2 offense if the person violates Section 2159.101.

3       (b) A person commits an offense if the person:

4           (1) works as an employee or independent contractor for  
5 a sexually oriented business; and

6           (2) does not have a license issued under this chapter.

7       (c) An offense under Subsection (a) is a Class A  
8 misdemeanor. An offense under Subsection (b) is a Class C  
9 misdemeanor.

10       (d) On a finding by a justice or municipal court that an  
11 individual has committed an offense under Subsection (b), the court  
12 has jurisdiction to enter an order, in lieu of a fine, that requires  
13 the individual to perform community service for a nonprofit  
14 organization.

15       (e) A justice or municipal court shall dismiss the complaint  
16 against an individual alleging that the individual committed an  
17 offense under Subsection (b) if the court finds that the  
18 individual has successfully complied with the conditions imposed on  
19 the individual by the court under Subsection (d).

20       Sec. 2159.203. CIVIL PENALTY. (a) A person who violates  
21 Section 2159.101 is liable to the state for a civil penalty in an  
22 amount not to exceed \$1,000 for each violation. Each day a  
23 violation occurs is a separate violation.

24       (b) The attorney general, a district attorney, or a county  
25 attorney may institute an action to recover a civil penalty under  
26 this section. Venue for the action is a district court in Travis  
27 County or the county in which the person who is alleged to have

1 violated Section 2159.101 resides.

2 (c) If the attorney general institutes an action under this  
3 section, a civil penalty recovered in the action shall be deposited  
4 in the state treasury to the credit of the general revenue fund. If  
5 a district or county attorney institutes the action, the penalty  
6 shall be deposited to the credit of the county's general fund.

7 SUBCHAPTER F. ADMINISTRATIVE PENALTY

8 Sec. 2159.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
9 department may impose an administrative penalty on a person  
10 licensed under this chapter who violates Section 2159.101 or a rule  
11 or order adopted under that section.

12 Sec. 2159.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
13 amount of the administrative penalty may not be less than \$500 or  
14 more than \$20,000 for each violation. Each day a violation  
15 continues or occurs is a separate violation for the purpose of  
16 imposing a penalty.

17 (b) The amount shall be based on:

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

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

21 (3) the history of previous violations;

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

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

25 (6) efforts to correct the violation; and

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

27 Sec. 2159.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

1 (a) If the department determines that a violation of Section  
2 2159.101 occurred, the department may issue a report stating:

- 3 (1) the facts on which the determination is based; and  
4 (2) the department's recommendation on the imposition  
5 of an administrative penalty, including a recommendation on the  
6 amount of the penalty.

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

- 10 (1) include a brief summary of the alleged violation;  
11 (2) state the amount of the recommended administrative  
12 penalty; and  
13 (3) inform the person of the person's right to a  
14 hearing on the occurrence of the violation, the amount of the  
15 penalty, or both.

16 Sec. 2159.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
17 Not later than the 10th day after the date the person receives the  
18 notice, the person in writing may:

- 19 (1) accept the determination and recommended  
20 administrative penalty of the department; or  
21 (2) make a request for a hearing on the occurrence of  
22 the violation, the amount of the penalty, or both.

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

26 Sec. 2159.255. HEARING. (a) If the person requests a  
27 hearing or fails to respond to the notice within the period



1 prescribed by Section 2159.254(a), the department shall set a  
2 hearing and give written notice of the hearing to the person.

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

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

9 Sec. 2159.256. DECISION BY DEPARTMENT. (a) Based on the  
10 findings of fact, conclusions of law, and proposal for decision,  
11 the department by order may determine that:

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

14 (2) a violation did not occur.

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

18 Sec. 2159.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

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

21 (1) pay the administrative penalty; or

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

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

26 (1) stay enforcement of the penalty by:

27 (A) paying the penalty to the court for placement

1 in an escrow account; or

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

4 (i) is for the amount of the penalty; and

5 (ii) is effective until all judicial review  
6 of the department's order is final; or

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

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

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

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

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

24 Sec. 2159.258. COLLECTION OF PENALTY. (a) If the person  
25 does not pay the administrative penalty and the enforcement of the  
26 penalty is not stayed, the penalty may be collected.

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

1       Sec. 2159.259. DETERMINATION BY COURT. (a) If the court  
2 sustains the determination that a violation occurred, the court may  
3 uphold or reduce the amount of the administrative penalty and order  
4 the person to pay the full or reduced amount of the penalty.

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

8       Sec. 2159.260. REMITTANCE OF PENALTY AND INTEREST. (a) If  
9 the person paid the administrative penalty and if the amount of the  
10 penalty is reduced or the penalty is not upheld by the court, the  
11 court shall order, when the court's judgment becomes final, that  
12 the appropriate amount plus accrued interest be remitted to the  
13 person.

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

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

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

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

25       SECTION 3. Not later than February 1, 2016, the Public  
26 Safety Commission shall adopt rules and the Department of Public  
27 Safety shall set fees, prescribe forms, and approve the human

1 trafficking educational course necessary to implement Chapter  
2 2159, Occupations Code, as added by this Act.

3 SECTION 4. (a) Except as required by Subsection (b) of this  
4 section, this Act takes effect September 1, 2015.

5 (b) Section 2159.101 and Subchapters D, E, and F, Chapter  
6 2159, Occupations Code, as added by this Act, take effect September  
7 1, 2016.