87R4666 DRS-D

By:  Beckley H.B. No. 2054

A BILL TO BE ENTITLED

AN ACT

relating to municipal and county regulation of sex parlors, including the imposition of civil and criminal penalties.

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

SECTION 1.  Chapter 243, Local Government Code, is amended by designating Sections 243.001 through 243.011 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. SEXUALLY ORIENTED BUSINESSES

SECTION 2.  Section 243.001, Local Government Code, is amended to read as follows:

Sec. 243.001.  PURPOSE; EFFECT ON OTHER REGULATORY AUTHORITY. (a) The legislature finds that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this subchapter [~~chapter~~] is to provide local governments a means of remedying this problem.

(b)  This subchapter [~~chapter~~] does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.

SECTION 3.  Section 243.002, Local Government Code, is amended to read as follows:

Sec. 243.002.  DEFINITION. In this subchapter [~~chapter~~], "sexually oriented business" means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

SECTION 4.  Section 243.004, Local Government Code, is amended to read as follows:

Sec. 243.004.  EXEMPT BUSINESS. The following are exempt from regulation under this subchapter [~~chapter~~]:

(1)  a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002;

(2)  a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

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

SECTION 5.  Section 243.005, Local Government Code, is amended to read as follows:

Sec. 243.005.  BUSINESS LICENSED UNDER ALCOHOLIC BEVERAGE CODE: BUSINESS HAVING COIN-OPERATED MACHINES. (a) A business is not exempt from regulation under this subchapter [~~chapter~~] because it holds a license or permit under the Alcoholic Beverage Code authorizing the sale or service of alcoholic beverages or because it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(b)  A regulation adopted under this subchapter [~~chapter~~] may not discriminate against a business on the basis of whether the business holds a license or permit under the Alcoholic Beverage Code or on the basis of whether it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(c)  This subchapter [~~chapter~~] does not affect the existing preemption by the state of the regulation of alcoholic beverages and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

SECTION 6.  Section 243.007(b), Local Government Code, is amended to read as follows:

(b)  The municipal or county regulations adopted under this subchapter [~~chapter~~] may provide for the denial, suspension, or revocation of a license or other permit by the municipality or county.

SECTION 7.  Section 243.008, Local Government Code, is amended to read as follows:

Sec. 243.008.  INSPECTION. A municipality or county may inspect a sexually oriented business to determine compliance with this subchapter [~~chapter~~] and regulations adopted under this subchapter [~~chapter~~] by the municipality or county.

SECTION 8.  Section 243.009, Local Government Code, is amended to read as follows:

Sec. 243.009.  FEES. A municipality or county may impose fees on applicants for a license or other permit issued under this subchapter [~~chapter~~] or for the renewal of the license or other permit. The fees must be based on the cost of processing the applications and investigating the applicants.

SECTION 9.  Section 243.010, Local Government Code, is amended to read as follows:

Sec. 243.010.  ENFORCEMENT. (a) A municipality or county may sue in the district court for an injunction to prohibit the violation of a regulation adopted under this subchapter [~~chapter~~].

(b)  A person commits an offense if the person violates a municipal or county regulation adopted under this subchapter [~~chapter~~]. An offense under this subsection is a Class A misdemeanor.

SECTION 10.  Section 243.011, Local Government Code, is amended to read as follows:

Sec. 243.011.  EFFECT ON OTHER LAWS. This subchapter [~~chapter~~] does not legalize anything prohibited under the Penal Code or other state law.

SECTION 11.  Subchapter D, Chapter 234, Local Government Code, is transferred to Chapter 243, Local Government Code, redesignated as Subchapter B, Chapter 243, Local Government Code, and amended to read as follows:

SUBCHAPTER B [~~D~~]. SEX [~~MASSAGE~~] PARLORS

Sec. 243.051  [~~234.101~~]. DEFINITIONS. In this subchapter:

(1)  "Nude" and "sexual contact" have the meanings assigned by Section 455.202, Occupations Code.

(2)  "Sex parlor" [~~"Massage parlor"~~] means a business establishment that purports to provide [~~massage~~] services involving physical contact with a customer and that allows:

(A)  [~~a nude person to provide massage services to a customer;~~

[~~(B)~~] a person to engage in sexual contact for compensation; or

(B) [~~(C)~~]  a person to provide [~~massage~~] services involving physical contact with a customer in a private or semiprivate location while nude or wearing [~~in~~] clothing intended to arouse or gratify the sexual desire of any person.

[~~(2) "Nude" and "sexual contact" have the meanings assigned by Section 455.202, Occupations Code.~~]

Sec. 243.052  [~~234.102~~]. AUTHORITY TO REGULATE. To promote public health, safety, and welfare, the governing body of a municipality by ordinance or the commissioners court of a county by order may prohibit or otherwise regulate sex [~~massage~~] parlors [~~located in the unincorporated area of the county~~].

Sec. 243.053  [~~234.103~~]. INJUNCTION. If a sex [~~massage~~] parlor has previously violated a prohibition or other regulation adopted under this subchapter, a district or county attorney may bring suit to enjoin the operation of a sex [~~massage~~] parlor in violation or threatened violation of a prohibition or other regulation adopted under this subchapter.

Sec. 243.054  [~~234.104~~]. CIVIL PENALTY. (a) A person who violates a prohibition or regulation adopted by a municipality or [~~the~~] county under this subchapter is liable to the municipality or county, as applicable, for a civil penalty of not more than $1,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.

(b)  A municipality or county may bring suit in a district court to recover a civil penalty authorized by Subsection (a).

Sec. 243.055  [~~234.105~~]. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly operates a sex [~~massage~~] parlor in violation of a prohibition or regulation adopted under this subchapter [~~by the commissioners court~~].

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

Sec. 243.056  [~~234.106~~]. CUMULATIVE EFFECT. Authority under this subchapter is cumulative of other authority that a county or municipality has to regulate sex [~~massage~~] parlors and does not limit that other authority.

Sec. 243.057  [~~234.107~~]. EFFECT ON OTHER LAWS. (a) This subchapter does not legalize anything prohibited under the Penal Code or other state law.

(b)  A person who is subject to prosecution under this section and any other law may be prosecuted under either or both laws.

SECTION 12.  Section 109.57(d), Alcoholic Beverage Code, is amended to read as follows:

(d)  This section does not affect the authority of a governmental entity to regulate, in a manner as otherwise permitted by law, the location of:

(1)  a sex [~~massage~~] parlor, nude modeling studio, or other sexually oriented business;

(2)  an establishment that derives 75 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages; or

(3)  an establishment that:

(A)  derives 50 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages; and

(B)  is located in a municipality or county, any portion of which is located not more than 50 miles from an international border.

SECTION 13.  This Act takes effect September 1, 2021.