

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~~],

1 "sexually oriented business" means a sex parlor, nude studio,
2 modeling studio, love parlor, adult bookstore, adult movie theater,
3 adult video arcade, adult movie arcade, adult video store, adult
4 motel, or other commercial enterprise the primary business of which
5 is the offering of a service or the selling, renting, or exhibiting
6 of devices or any other items intended to provide sexual
7 stimulation or sexual gratification to the customer.

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

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

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

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

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

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

24 Sec. 243.005. BUSINESS LICENSED UNDER ALCOHOLIC BEVERAGE
25 CODE: BUSINESS HAVING COIN-OPERATED MACHINES. (a) A business is
26 not exempt from regulation under this subchapter [~~chapter~~] because
27 it holds a license or permit under the Alcoholic Beverage Code

1 authorizing the sale or service of alcoholic beverages or because
2 it contains one or more coin-operated machines that are subject to
3 regulation or taxation, or both, under Chapter 8, Title 132,
4 Revised Statutes.

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

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

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

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

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

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

27 SECTION 8. Section 243.009, Local Government Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

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

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

27 (1) "Nude" and "sexual contact" have the meanings

1 assigned by Section 455.202, Occupations Code.

2 (2) "Sex parlor" ["Message parlor"] means a business
3 establishment that purports to provide [message] services
4 involving physical contact with a customer and that allows:

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

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

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

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

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

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

26 Sec. 243.054 [~~234.104~~]. CIVIL PENALTY. (a) A person who
27 violates a prohibition or regulation adopted by a municipality or

1 ~~[the]~~ county under this subchapter is liable to the municipality or
2 county, as applicable, for a civil penalty of not more than \$1,000
3 for each violation. Each day a violation continues is considered a
4 separate violation for purposes of assessing the civil penalty.

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

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

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

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

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

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

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

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

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

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

6 (3) an establishment that:

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

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

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