

SUBJECT: Imposing a fee on entrants to certain sexually oriented businesses

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 5 ayes — Keffer, Ritter, Otto, Bonnen, Peña
0 nays
4 absent — Y. Davis, Flores, Paxton, Pitts

WITNESSES: For — Torie Camp, Texas Association Against Sexual Assault; Lynette Eilers, Hays Caldwell Women’s Center; Nina Hallmark, Friends for Hope, Inc.; Richard Jordan, Fannin County Family Crisis Center; Becky Rivera, Safe Place, Inc.; and three others; (*Registered, but did not testify*: Richard, Gipprich, Jr., The Rape Crisis Center; Laura Wolf, Texas Council on Family Violence; Joyce Young, New Horizon Family Center; and five others)

Against — Steven H. Swander

On — Nancy Carrales, Office of the Attorney General; Gary De Los Santos, Texas DPS - Texas Rangers; John Heleman, Comptroller’s Office; Noel Busch; (*Registered, but did not testify*: Michelle Cook, Department of State Health Services)

BACKGROUND: Government Code sec. 420.008 governs the sexual assault program fund, a special account in the general revenue fund that is funded by community supervision fees and parolee supervision fees from defendants convicted of certain offenses. The Legislature may appropriate money deposited to the fund only for a grant program for sexual assault prevention and crisis services.

DIGEST: CSHB 1751 would impose a fee of \$5 on a sexually oriented business providing live nude entertainment or performances for each entry by each customer to the business. The money generated by the fee, up to \$18 million per fiscal biennium, would go into the sexual assault program fund. The amount of money received from the fee that exceeded \$18 million would go to the general revenue fund.

“Sexually oriented business” would be defined as 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 that offered services or sold items intended to provide sexual stimulation or sexual gratification to the customer.

“Nude” would be defined as :

- entirely unclothed; or
- clothed in a manner that left uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola if the person was a woman or any portion of the genitals or buttocks.

Sexual assault program fund. The bill would expand the type of programs eligible for funding from the sexual assault program fund.

The Legislature could appropriate money from the fund to the attorney general for:

- sexual violence prevention campaigns;
- grants to faith-based groups, school districts, and community action organizations for sexual assault prevention programs;
- grants for equipment for sexual assault nurse examiner programs;
- the training and continuing education of future and current sexual assault nurse examiners;
- grants to increase the level of sexual assault services in the state;
- grants to victim assistance coordinators; and
- grants for technology in rape crisis centers.

Money from the fund also could be appropriated to the Texas Department of Criminal Justice for:

- increasing the capacity of the sex offender civil commitment program;
- pilot programs to monitor sex offenders on parole; and
- increasing the number of adult incarcerated sex offenders receiving treatment.

Money from the fund also could be appropriated to:

- the Department of State Health Services, to measure the prevalence of sex assault in the state;
- the Institute on Domestic Violence and Sexual Assault at the University of Texas at Austin, to conduct research on sexual assault and domestic violence;
- Texas State University, for training and technical assistance to school districts for campus safety;
- the Office of the Governor, for grants to support sexual assault prosecution projects;
- the Department of Public Safety, to support sexual assault training for the Texas Rangers; and
- the Texas Youth Commission, for increasing the number of incarcerated juvenile sex offenders receiving treatment.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1751 would provide a dedicated source of revenue to support essential sexual abuse prevention and survivor support programs. The bill would allow the state to devote resources to aid the survivors of sexual assault and support training and prevention programs to reduce future incidents of sexual assault.

The bill would provide a dedicated source of \$18 million to a range of programs to aid sexual assault survivors and reduce the incidence of sexual assault. Additional money raised would go to general revenue, leaving the potential for additional funding for these programs in subsequent state budgets.

CSHB 1751 would claim no defined link between sexual assault and strip clubs. The bill simply would use a fee generated from inessential and entirely discretionary behavior to fund important services to victims of sexual assault. Sexually oriented businesses employ women, and CSHB 1751 would benefit survivors of sexual assault, a group that disproportionately includes women.

Constitutional objections to a fee on patrons to strip clubs are unfounded. Contrary to those who argue that a fee on customers to sexually oriented businesses would be unconstitutional, CSHB 1751 would not suppress or make illegal the activities at any sexually oriented business. Texas uses

narrowly applied fees to fund many areas of state government, so there is ample precedent for the program contemplated under the bill.

Enforcement of the fee should not be problematic, as the vast majority of these entities sell alcohol and already are licensed, regulated, audited by Texas Alcoholic Beverage Commission (TABC). The Comptroller's Office could partner with TABC to ensure enforcement of this program, and easily could handle the auditing duties of the few entities that do not sell alcohol on its own.

Individuals pay cover charges of as much as \$20 to \$30 to visit these establishments, and an additional fee of \$5 likely would not be unmanageable. The bill would provide additional revenue without affecting the average taxpayer, only those who voluntarily choose to attend strip clubs.

Taxing an activity does not mean condoning it. Texas assesses a variety of "sin taxes" on tobacco, alcohol, and other activities that many Texans may not condone. Moreover, the state does not tax sales to penalize commerce, nor does it fine bad drivers to promote traffic violations. Because a certain segment of the population will visit strip clubs regardless of cost, the state is perfectly justified in taxing that activity and funding other state requirements with the proceeds.

OPPONENTS
SAY:

While the \$5 fee in CSHB 1751 would support a worthy cause, the fee instituted on patrons of strip clubs is unrelated to this goal. No link exists between strip clubs and sexual assault, meaning that the bill would institute unfair tax profiling on individuals who legally visit these establishments. The sexual assault counseling and prevention programs listed in CSHB 1751 certainly deserve financial support from the state of Texas, but they should not be paid for by a discriminatory tax unrelated to the problem that those programs are trying to address.

CSHB 1751 is potentially unconstitutional. The United State Supreme Court in several cases has ruled that taxation of protected speech under the First Amendment is unconstitutional. For example, under *Simon & Schuster, Inc. v. Members of the New York Crime Victims Board*, the court found that "regulations which permit the government to discriminate on the basis of the content of the message cannot be tolerated under the first amendment." Additionally, the court has ruled that erotic expression is protected under the First Amendment. In any event, it is likely that the

state of Texas would incur significant legal expenses due to the likely court challenges to the fee if CSHB 1751 were enacted.

The fee imposed under CSHB 1751 could prove difficult to implement for the Comptroller's Office, which would have to audit and ensure that the amount of money collected was accurate. Some businesses do not collect door charges. Other businesses may collect door charges but keep the count of customers low in order to inappropriately divert the money to their own coffers.

The state should not use behavior that many Texans find objectionable and offensive to fund important state priorities. To do so would be hypocritical and could send a message that this type of behavior somehow is encouraged.

NOTES:

According to the Legislative Budget Board, CSHB 1751 would generate \$51.3 million in general revenue in fiscal 2008-09.