

- SUBJECT:** Tax on admissions charged by sexually oriented businesses
- COMMITTEE:** Licensing and Administrative Procedures — favorable, with amendment
- VOTE:** 8 ayes — Kuempel, Thompson, Chisum, Geren, Gutierrez, Hamilton, Jones, Menendez
- 0 nays
- 1 absent — Quintanilla
- WITNESSES:** For — Steve Swander, Texas Entertainment Association; Stewart Whitehead, Texas Entertainment Association
- Against — None
- BACKGROUND:** HB 1751 by Cohen, enacted by the 80th Legislature during the 2007 regular session (Business & Commerce Code, ch. 47, subch. B) charges a fee of \$5 per customer admitted to a sexually oriented business providing live nude entertainment or performances and authorizing consumption of alcohol on the premises. The first \$25 million collected is allocated to the Sexual Assault Program Fund and the remaining fees are allocated to the Texas Health Opportunity Pool.
- In March 2008, a state district court in Austin held that this provision violates the First Amendment of the U.S. Constitution and therefore is invalid. The fee was found to be a content-based tax aimed at restricting the protected speech of nude performance, and the statute was not found to be narrowly tailored to serve a compelling state interest. In addition, the court found that even if the fee was content-neutral, an insufficient nexus exists between nude performance and sexual assault or inadequate healthcare. The state has appealed this decision to the Third Court of Appeals in Austin. The fee still is being collected, but the funds are being held by the Comptroller's Office while the court's opinion is pending.
- DIGEST:** HB 982 would levy a 10-percent tax on admissions fees charged by sexually oriented businesses and repeal the \$5 fee established by HB 1751. One-fourth of the revenue collected from the tax would be allocated to the

Foundation School Fund and three-fourths to the General Revenue Fund, which the comptroller would transfer to the Sexual Assault Program Fund.

A sexually oriented business that paid the fee under HB 1751 prior to its repeal would receive a credit against the tax equal to the amount of fees paid.

A sexually oriented business would have the same definition as Local Government Code, sec. 243.002 and would include 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 has as its primary business 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.

The tax and tax report would be due quarterly. The penalty for failure to pay the tax or file the report would be forfeiture of 5 percent of the amount of the tax due, plus an additional 5 percent for failure to pay within 30 days after the report or tax was due.

A person taxed under this bill would be required to keep a record of each day's admissions-fees receipts and any other information required by the comptroller.

The bill would take effect July 1, 2009, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect October 1, 2009.

**SUPPORTERS
SAY:**

HB 982 would quell the constitutional concerns raised by the fee added by HB 1751 enacted by the Legislature last session. The occupation tax established by HB 982 would be applied to all sexually oriented businesses, using a definition already established in statute, and would not target those with nude entertainment or performances, an expression protected by the First Amendment. The structure of HB 982 is the same as statutes enacted in 10 different states, all found constitutional. One-fourth of the collected revenue from this occupation tax would be allocated to the Foundation School Fund, as required by the Texas Constitution, Art. 7, sec. 3(a).

The bill would provide necessary revenue to the under-funded Sexual Assault Program Fund. The revenue raised by this tax would provide aid and treatment to survivors of sexual assault and fund prevention programs to reduce future incidents of sexual assault.

By applying this tax to all sexually oriented businesses and removing the \$25 million cap set by HB 1751, HB 982 as amended would increase potential revenue and allow more money to be allocated to the sexual assault program fund.

Enactment of HB 982 would end the litigation against HB 1751, allow the state to distribute the money collected under HB 1751, and give the businesses that paid the fee a credit against the tax equal to the amount of fees previously paid.

Since the Comptroller's Office already collects a sales tax on admissions fees, enforcement of this new tax would not be difficult to implement.

Taxing an activity neither endorses nor penalizes that activity. Texas imposes taxes on a variety of activities, from buying cigarettes to purchasing food, without attempting to encourage or discourage the activity.

OPPONENTS
SAY:

By instituting this tax and using the revenue to fund state programs, HB 982 would legitimize and encourage objectionable behavior.

This bill selectively would penalize individuals who patronize or own sexually oriented businesses.

OTHER
OPPONENTS
SAY:

By repealing HB 1751 and imposing an occupation tax rather than a fee, HB 982 would split the revenue allocation between the Foundation School Fund and the Sexual Assault Program Fund. By shifting a quarter of the revenue to public schools, this change could provide less funding to sexual assault treatment and prevention programs. Also, the existing fee applies to each customer admitted, regardless of the admission price or whether an admission price is charged at all, while a tax would be levied only on the admission price.

NOTES:

Under the original version of HB 982, the first \$25 million of revenue collected from the tax and allocated to the General Revenue Fund would be transferred to the Sexual Assault Program Fund. The committee

amendment would eliminate the \$25 million cap and transfer all of the general revenue generated by the tax to the Sexual Assault Program Fund.

The companion bill to HB 982, SB 2187 by Gallegos, has been referred to the Senate Criminal Justice Committee.

A related bill, HB 2070 by Cohen, would reduce the \$5 fee to \$3 on entry to sexually oriented businesses. It also would also allocate all collected funds to the Sexual Assault Program Fund by removing the current \$25 million cap and repealing the allocation to the Texas Health Opportunity Pool. HB 2070 was referred to the Ways and Means Committee, which was scheduled to hear the bill yesterday. Its companion bill, SB 1289 by West, has been referred to the Senate Criminal Justice Committee.