

BILL ANALYSIS

Senate Research Center

H.B. 982
By: Thompson et al. (Carona)
Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 80th Legislature, Regular Session, 2007, enacted H.B. 1751, imposing an admissions fee on sexually oriented businesses that provide live nude entertainment and allow on-premises consumption of alcoholic beverages. Under H.B. 1751, the revenue generated by the admissions fee is allocated to the Sexual Assault Program Fund and the Texas Health Opportunity Pool. Subsequent to the passage of H.B. 1751, a lawsuit was filed in the state district court challenging the constitutionality of the legislation. In March 2008, the District Court of the 345th Judicial District in Travis County held that the part of the Texas Business & Commerce Code that included the provisions imposing the admissions fee violated the First Amendment to the United States Constitution and was therefore invalid. The comptroller of public accounts (comptroller) and the attorney general have appealed this ruling to the Third Court of Appeals. Pending the outcome of the appeal, the comptroller continues to collect the admissions fee, but no revenue has been distributed to the Sexual Assault Program Fund or the Texas Health Opportunity Pool.

To address the constitutional issues raised in the lawsuit, this bill repeals Subchapter B (Fee Imposed on Certain Sexually Oriented Businesses), Chapter 47 (Sexually Oriented Business), Business & Commerce Code, and implements an occupation tax on the gross receipts from admissions fees charged by all sexually oriented businesses. Sexually oriented businesses that have already paid fees mandated by H.B. 1751, 80th Legislature, Regular Session, 2007, are authorized to credit those payments against the taxes created by this Act. If a sexually oriented business fails to report to the comptroller during the monthly reporting period, a fee of five percent of the gross receipts from admissions fees attaches to their taxes owed as a penalty. If the taxes due or the required report is more than 30 days late, another five percent penalty is required to be forfeited by the sexually oriented business. The bill requires that 25 percent of the revenue from the occupation tax is allocated to the Foundation School Fund and that 75 percent is allocated to the general revenue fund. The bill requires that funds allocated to the general revenue fund under this bill be transferred to the Sexual Assault Program Fund by the comptroller.

H.B. 982 amends current law relating to the imposition of a tax on the gross receipts from admissions fees charged by sexually oriented businesses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 2, Tax Code, by adding Chapter 184, as follows:

CHAPTER 184. SEXUALLY ORIENTED BUSINESSES ADMISSIONS TAX

Sec. 184.001. DEFINITIONS. Defines "admissions fee" and "sexually oriented business."

Sec. 184.002. IMPOSITION AND RATE OF TAX. (a) Provides that a tax is imposed on each sexually oriented business that charges an admissions fee.

(b) Provides that the rate of the tax imposed by this chapter is 10 percent of the gross receipts received by the sexually oriented business from admissions fees.

Sec. 184.003. CREDIT. (a) Entitles a sexually oriented business that paid a fee under Subchapter B (Fee Imposed on Certain Sexually Oriented Businesses), Chapter 47 (Sexually Oriented Business), Business & Commerce Code, as added by Section 3, Chapter 1206 (H.B. 1751), Acts of the 80th Legislature, Regular Session, 2007, before the repeal of that subchapter by the Act that added this chapter to a credit against the tax imposed by this chapter in an amount equal to the amount of the fee paid.

(b) Prohibits the total credit claimed on a tax report from exceeding the amount of tax due for the report.

(c) Authorizes a person who is eligible for a credit that exceeds the limitation under Subsection (b) to carry the credit forward for subsequent reporting periods.

Sec. 184.004. TAX DUE DATES. Provides that a tax imposed by this chapter is due and payable to the comptroller of public accounts (comptroller) on or before the last day of the first month following the end of each calendar quarter.

Sec. 184.005. REPORT. (a) Requires a person required to pay a tax under this chapter to file a tax report with the with the comptroller on a form prescribed by the comptroller. Provides that the tax report is due on the date the tax is due under Section 184.004.

(b) Requires that a tax report include a statement of the gross receipts received from admissions fees during the preceding quarterly period and any other information required by the comptroller.

Sec. 184.006. RECORDS. Requires a person on whom the tax is imposed by this chapter to keep records of the gross receipts received each day from admissions fees and any other information required by the comptroller.

Sec. 184.007. PENALTY FOR FAILURE TO FILE REPORT OR PAY TAX. (a) Provides that a person who fails to file a report as required by this chapter or who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount of the tax due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) Provides that the minimum penalty imposed by this section is \$1.

Sec. 184.008. NATURE OF TAX. Provides that a tax imposed by this chapter is an occupation tax.

Sec. 184.009. ALLOCATION OF TAX REVENUE. (a) Provides that the net revenue from the tax collected under this chapter is allocated as follows: one-fourth to the foundation school fund and three-fourths to the general revenue fund.

(b) Requires the comptroller to transfer to the sexual assault program fund (fund) established under Section 420.008 (Sexual Assault Program Fund), Government Code, the net revenue collected under this chapter that is allocated to the general revenue fund under Subsection (a)(2) (relating to the allocation of tax revenue collected under this chapter) in any state fiscal biennium.

SECTION 2. Amends Section 420.008(b), Government Code, as follows:

(b) Provides that the fund consists of fees or revenue collected under Section 19(e) (relating to certain circumstances under which a defendant is required to pay certain fees as a condition of community supervision), Article 42.12 (Community Supervision), Code of Criminal Procedure; Section 508.189 (Parole Fee for Certain Releasees), Government Code; and Chapter 184, Tax Code, and deposited under Section 184.009(b), rather than

Subchapter B, Chapter 47, Business & Commerce Code and deposited under Section 47.054 (Allocation of Certain Revenue for Sexual Assault Programs).

SECTION 3. Repealer: Subchapter B (Fee Imposed on Certain Sexually Oriented Businesses), Chapter 47 (Sexually Oriented Business), Business & Commerce Code, as added by Section 3, Chapter 1206 (H.B. 1751), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 4. Provides that if this Act takes effect July 1, 2009, the first report and tax payment required under Chapter 184, Tax Code, as added by this Act, are due on or before September 30, 2009. Provides that if this Act takes effect on October 1, 2009, the first report and tax payment required under Chapter 184, Tax Code, as added by this Act, are due on January 31, 2010.

SECTION 5. Provides that to the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. Effective date: July 1, 2009, or October 1, 2009.