

Committee Substitute for House Bill 1549 by State Representative Hillary Hickland

Relating to restrictions on the sale of obscene devices; providing a civil penalty.

What CSHB 1549 Would Do:

- ❖ Ensures that public retail spaces commonly frequented by families and children are free from devices that are inappropriate for young audiences.
- ❖ Restricts the sale of obscene devices to sexually oriented businesses operating in accordance with Texas law, businesses that prohibit individuals younger than 18 years of age from entering the premises, or businesses that sell or offer the devices only on an internet website.
- ❖ Establishes an enforcement mechanism for county and district attorneys to enforce civil penalties to those violating the law.

Background & Issues:

- ❖ A resident of House District 55 shared his concerns with Representative Hickland after seeing a prominent display of obscene devices in a local big-box retailer, where they were easily visible to children.
- ❖ While the location of these devices varies from store to store, one thing that is consistent is that they are often times in the line of sight of children whether the children are walking by or are sitting in a shopping cart.

Key Provisions:

- ❖ The Committee Substitute for House Bill 1549 adopts the definition for “obscene device” as assigned by § 43.21 (7) of the Penal Code.
- ❖ Adopts the definition of “sexually oriented business” as provided in § 243.002 of the Local Government Code.
- ❖ Businesses in Texas would be prohibited from selling obscene devices unless:
 - they qualify as a sexually oriented business (SOB) in accordance with state law;
 - they prohibit individuals younger than 18 years of age from entering the premises of the business; or
 - the business sells or offers the devices only online.
- ❖ With this bill, county or district attorneys may file an injunction against violators and request additional legal remedies.
- ❖ Businesses found in violation may be subject to:
 - The imposition of a civil penalty in an amount not to exceed \$5,000 for each violation.
 - Reimbursement to the county or district for the reasonable value of investigating and prosecuting a violation.

Legal and Policy Clarifications:

- ❖ In 2008, a court ruled that the Texas Penal Code § 43.23, to the extent that it applied to obscene devices as defined by §43.21 (7) of the Penal Code, was declared to be facially

unconstitutional and unenforceable throughout the State of Texas. While § 43.23 of the Penal Code as it related to penalties for the sale, promotion, or possession of obscene devices was deemed unconstitutional, ***the definition for obscene devices was NOT.***

- ❖ Local Government Code § 243.002 defines an SOB 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 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.
- ❖ A business cannot just register as an SOB if they do not meet this statutory requirement.
- ❖ According to § 102.0031 of the Business and Commerce Code, an SOB may not allow an individual younger than 18 years of age to enter the premises of the business.
- ❖ § 102.052 of the Business and Commerce Code imposes a fee on certain SOB's. The requirement to impose a fee ***ONLY*** applies to SOB's which this section defines as a nightclub, bar, restaurant, or similar commercial enterprise that provides nude entertainment and authorizes on-premise consumption of alcoholic beverages.
- ❖ We have found that establishments we consider as "sex shops" or "adult novelty boutiques" while by statutory definition should be considered SOB's, they are not.
- ❖ Cities, citing the definition's vagueness, have implemented their own rules on who is and is not an SOB.
- ❖ Stores like this restrict entry to those that are 18 and older.

Differences Between the Bill as Filed and the Committee Substitute:

- ❖ The bill as filed, restricted the sale of obscene devices to SOB's.
- ❖ The committee substitute expands the places in which obscene devices can be sold to include:
 - Sexually oriented business;
 - Businesses which prohibit individuals younger than 18 from entering the premises; or
 - Businesses that sell or offer the obscene devices ***only*** on an internet website.
- ❖ Additionally, the committee substitute for this bill makes it a legislative council draft.