

Regular Session, 2013

HOUSE BILL NO. 651

BY REPRESENTATIVE HODGES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT: Provides for age and work-status verification in sexually oriented business employment to prevent human trafficking

1 AN ACT

2 To enact Part XIV of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950,
3 comprised of R.S. 23:1019.1 through 1019.8, relative to employment; to provide for
4 verification of age and work-eligibility status for employment in sexually oriented
5 businesses; to provide with respect to human trafficking; to provide for notices to be
6 posted; to provide definitions; to provide for enforcement; to provide for penalties;
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part XIV of Chapter 9 of Title 23 of the Louisiana Revised Statutes of
10 1950, to be comprised of R.S. 23:1019.1 through 1019.8 is hereby amended and reenacted
11 to read as follows:

12 PART XIV. HUMAN TRAFFICKING PREVENTION ACT

13 §1019.1. Legislative intent; policy; purpose

14 A. The legislature finds all of the following:

15 (1) For more than one hundred years, Louisiana has outlawed and forbidden
16 slavery. Recently, a new form of slavery, which is rooted in forced prostitution and
17 human trafficking, has emerged to enslave victims in this state once again, the
18 majority of which are women.

1 (2) Businesses that operate in this state provide opportunities for vice are
2 avenues which can encourage human trafficking and contribute to the lack of safety
3 of the community.

4 (3) The legislature further finds that past proliferation of sexually oriented
5 business encourage vice, and the secondary effects associated there with, have
6 discouraged wholesome businesses from operating in the state and led to the safety
7 and economic woes of the people of this state.

8 (4) Sexually oriented businesses, as a category of commercial enterprises,
9 are associated with a wide variety of adverse secondary effects including but not
10 limited to, human trafficking, personal and property crimes, prostitution, potential
11 spread of disease, lewdness, public indecency, obscenity, illicit drug use, negative
12 impacts on surrounding properties, urban blight, litter, sexual assault, and sexual
13 exploitation.

14 (5) Each of the foregoing negative secondary effects constitutes a harm
15 which the state has a substantial government interest in preventing or abating. This
16 substantial government interest in preventing secondary effects, which is the state's
17 rationale for this Part, exists independent of any comparative analysis between
18 sexually oriented and non-sexually oriented businesses. Additionally, the state's
19 interest in regulating sexually oriented businesses extends to preventing future
20 secondary effects of either current or future sexually oriented businesses that may
21 locate in the state. The state finds that the cases and documentation relied on in this
22 Part are reasonably believed to be relevant to said secondary effects, particularly
23 human trafficking.

24 B. The legislature declares that the policy of this state shall be to regulate
25 and discourage sexually oriented businesses within every legal means permissible
26 with the understanding that such action is constrained by the decisions of the United
27 States Supreme Court and, therefore, the state is constrained from establishing
28 further protections for the people from the secondary effects of the crime and moral

1 and economic decay associated with sexually oriented businesses and in particular,
2 those businesses which provide opportunities for human trafficking.

3 C. (1) It shall be the purpose of this Part to regulate employers of sexually
4 oriented businesses in order to promote the health, safety, and general welfare of the
5 citizens of the state, and to establish reasonable and uniform regulations to prevent
6 the deleterious secondary effects of sexually oriented businesses within the state.
7 The provisions of this Part shall have neither the purpose nor the effect of imposing
8 a limitation or restriction on the content or reasonable access by adults to any
9 communicative materials, including sexually oriented materials which are protected
10 by court decisions regarding the First Amendment of the United States Constitution.
11 Additionally, it shall be neither the intent nor the effect of this Part to restrict or deny
12 access by adults to sexually oriented materials protected by court decisions
13 associated with the First Amendment of the United States Constitution, or to deny
14 access by the distributors and exhibitors of sexually oriented entertainment to their
15 intended market. It shall be neither the intent nor the effect of this Part to condone
16 or legitimize the distribution of obscene material.

17 (2) Employers of sexually oriented businesses who mis-classify employees
18 as independent contractors create an excuse to abate the legal requirements to
19 determine whether an employee is a minor or their immigration status of the
20 employee which may expose whether or not the employee was brought to this
21 country by means of human trafficking. It is the purpose of this Part is to remedy
22 that excuse null and void

23 §1019.2. Definitions

24 The following terms shall have the meaning ascribed herein as used in this
25 Part:

26 (1) "Adult arcade" means any place to which the public is permitted or
27 invited in which coin-operated, slug-operated, or electronically, electrically, or
28 mechanically controlled still or motion picture machines, projectors, or other
29 image-producing devices are regularly maintained to show images to five or fewer

1 persons per machine at any one time, and in which the images so displayed are
2 distinguished or characterized by their emphasis upon matter exhibiting or describing
3 specified sexual activities or specified anatomical areas.

4 (2) "Adult bookstore," "adult novelty store," or "adult video store" means
5 a commercial establishment that, for any form of consideration, has as a significant
6 or substantial portion of its stock-in-trade in, derives a significant or substantial
7 portion of its revenues from, devotes a significant or substantial portion of its interior
8 business or advertising to, or maintains a substantial section of its sales or display
9 space for the sale or rental of any of the following:

10 (a) Books, magazines, periodicals, or other printed matter, or photographs,
11 films, motion pictures, video cassettes, compact discs, slides, or other visual
12 representations, that are characterized by their emphasis upon the exhibition or
13 description of specified sexual activities or specified anatomical areas.

14 (b) Instruments, devices, or paraphernalia that are designed for use or
15 marketed primarily for stimulation of human genital organs or for sadomasochistic
16 use or abuse of self or others.

17 (3) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club,
18 gentleman's club, strip club, or similar commercial establishment, whether or not
19 alcoholic beverages are served, that regularly features any of the following:

20 (a) Persons who appear in a state of nudity or seminudity.

21 (b) Live performances that are characterized by the exposure of specified
22 anatomical areas or specified sexual activities.

23 (c) Films, motion pictures, video cassettes, slides, or other photographic
24 reproductions that are distinguished or characterized by their emphasis upon the
25 exhibition or description of specified sexual activities or specified anatomical areas.

26 (6) "Adult motion picture theater" means a commercial establishment where
27 films, motion pictures, video cassettes, slides, or similar photographic reproductions
28 that are distinguished or characterized by their emphasis upon the exhibition or

1 description of specified sexual activities or specified anatomical areas are regularly
2 shown for any form of consideration.

3 (7) "Adult theater" means a theater, concert hall, auditorium, or similar
4 commercial establishment that, for any form of consideration, regularly features
5 persons who appear in a state of nudity or seminudity or live performances that are
6 characterized by their emphasis upon the exposure of specified anatomical areas or
7 specified sexual activities.

8 (8) "Employee" means any individual who performs any service on the
9 premises of a sexually oriented business on a full-time, part-time, or contract basis,
10 regardless of whether the individual is denominated an employee, independent
11 contractor, agent, or otherwise, but does not include an individual exclusively on the
12 premises for repair or maintenance of the premises or for the delivery of goods to the
13 premises.

14 (9) "Operator" means either of the following:

15 (a) Any individual who owns a sexually oriented business.

16 (b) Any individual who is on the premises of a sexually oriented business
17 who causes the business to function or who puts or keeps in operation the business
18 or who is authorized to manage the business or exercise overall operational control
19 of the business premises.

20 (10) "Sexually oriented business" shall include adult arcades, adult book,
21 novelty, or video game stores, adult cabaret, gentleman's club, go-go club, or strip
22 bar, adult motel or adult hotel, adult motion picture theaters or adult theater, escort
23 or escort agencies, massage parlors, nude model studios, and sexual encounter
24 centers.

25 §1019.3. Employee eligibility verification

26 A. The operator shall verify the age and work authorization status of each
27 employee by requesting the potential employee produce one of the following:

28 (1) United States birth certificate or certified birth card.

29 (2) Naturalization certificate.

1 (3) Certificate of citizenship.

2 (4) Alien registration receipt card.

3 (5) United States immigration for I-94 with employment authorized stamp.

4 B. The operator shall retain the document in his records for at least three
5 years after the last day of the employee's employment. with the sexually oriented
6 business.

7 §1019.4. Questionnaire

8 A. Before hiring an employee, the operator shall ask the following questions
9 of the employee:

10 (1) Is your freedom of movement restricted?

11 (2) How do you learn about job opportunities?

12 (3) Did you come to this country for a specific job that you were promised?

13 (4) What forms of media or telecommunication do you have access to?

14 (5) Do you or does someone else retain your identification documents?

15 (6) Were you provided with false documents or identification?

16 (7) How was payment for your travel handled?

17 (8) Do you owe your employer any money?

18 B. The employee shall ask the questions verbally to the employee to gauge
19 the employee's response, record the answers on the questionnaire, and then each
20 party shall sign the questionnaire affirming the accuracy of the answers.

21 C. The operator shall retain a copy of the questionnaire for his records for
22 at least three years after the last day of the employee's employment with the sexually
23 oriented business.

24 D. The Louisiana Workforce Commission shall prepare a standard form
25 questionnaire to be used in compliance with this Section.

26 §1019.5. Mandatory reporting

27 If any operator of a sexually oriented business believes that he has come in
28 contact with a victim of human trafficking, he shall contact local law enforcement

1 or call the Trafficking Information and Referral Hotline to coordinate with local
2 resources.

3 §1019.6. Notices to be posted

4 Every operator of a sexually oriented business shall post and keep posted in
5 conspicuous places upon its premises a notice, in both English and Spanish, to be
6 prepared by the Louisiana Workforce Commission, setting forth the following
7 information:

8 "If you are mistreated or your rights are violated, call these toll-free telephone numbers:

9 National Human Trafficking Resource Center's 24 Hour Toll-Free Hotline

10 1-888-373-7888 (Run by a non-governmental organization)

11 Trafficking in Persons and Worker Exploitation Task Force Complaint Line

12 (Monday-Friday, 8am-4pm)

13 1-888-428-7581 (Run by the U.S. Dept. of Justice)

14 If you are in immediate physical danger, call 911."

15 §1901.7. Enforcement; penalties

16 A. The executive director of the Louisiana Workforce Commission shall be
17 empowered to enforce the civil provisions of this Part and to conduct such
18 investigations as he deems necessary to ensure enforcement of this Part.

19 B. Any operator who violates, neglects, or refuses to comply with any
20 provision of this Part, shall be subject to the following penalties:

21 (1) For a first offense, a fine not less than five hundred dollars, nor more than
22 one thousand dollars, or imprisonment for not less than thirty days, nor more than
23 ninety days, or both.

24 (2) For a second offense, a fine not less than one thousand dollars, nor more
25 than five thousand dollars, and his occupational license shall be suspended for a
26 thirty-day period.

27 (3) For a third offense, his occupational license shall be revoked and he shall
28 not thereafter be permitted to engage in the operation of a sexually oriented business
29 in the state of Louisiana.

1 §1901.8. Rulemaking authority
 2 The executive director of the Louisiana Workforce Commission is hereby
 3 authorized and directed to promulgate rules and regulations in accordance with the
 4 Administrative Procedure Act to provide for the enforcement of the provisions of this
 5 Part.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Hodges

HB No. 651

Abstract: Requires age and work status verification of employees in sexually oriented businesses to prevent human trafficking.

Proposed law creates the Human Trafficking Prevention Act.

Proposed law provides for legislative intent, policy, and purpose.

Proposed law provides definitions for various types of sexually oriented businesses.

Proposed law provides that, for purposes of proposed law, an employee is defined as any individual who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the individual is denominated as employee, independent contractor, agent, or otherwise.

Proposed law provides that an employee is not someone who is exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods.

Proposed law requires that the operator of a sexually oriented business verify the age and employment status of each potential employee, and retain the documentation proving such eligibility to work, in his records for at least 3 years.

Proposed law requires that before hiring an employee, the operator shall conduct an interview from a questionnaire, provided by LWC, and retain the answers, for his record. This questionnaire includes leading questions to give an indication whether or not a potential employee could be a victim of human trafficking.

Proposed law requires that if an operator suspects that someone he has come into contact with is a victim of human trafficking, that he contact local law enforcement or the Trafficking Information and Referral Hotline.

Proposed law requires that notices be posted in English and Spanish, regarding human trafficking.

Proposed law directs the executive director of LWC to enforce and promulgate rules in the enforcement of proposed law.

Proposed law provides that for a 1st offense, an operator shall be fined not less than \$500 and not more than \$1000, or be imprisoned for not less than 30 days, nor more than 90 days, or both.

Proposed law provides that for the 2nd offense, an operator shall be fined not less than \$1000, and not more than \$5000, and his occupational license shall be suspended for a 30-day period.

Proposed law provides that for a 3rd offense, an operator's occupational license shall be revoked and he shall not thereafter be permitted to engage in the operation of a sexually oriented business in the state of Louisiana.

(Adds R.S. 23:1019.1-1019.8)