

Texas

Tex. Penal Code § 43.21. Definitions

- (a) In this subchapter:
 - (1) "Obscene" means material or a performance that:
 - (A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
 - (B) depicts or describes:
 - (i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
 - (C) taken as a whole, lacks serious literary, artistic, political, and scientific value.
 - (2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.
 - (3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.
 - (4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.
 - (5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.
 - (6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.
 - (7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.
- (b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

§ 43.22. Obscene Display or Distribution

- (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.
- (b) An offense under this section is a Class C misdemeanor.

§ 43.23. Obscenity

- (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.
- (b) Except as provided by Subsection (h), an offense under Subsection (a) is a state jail felony.
- (c) A person commits an offense if, knowing its content and character, he:
 - (1) promotes or possesses with intent to promote any obscene material or obscene device; or
 - (2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.
- (d) Except as provided by Subsection (h), an offense under Subsection (c) is a Class A misdemeanor.
- (e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.
- (f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.
- (g) It is an affirmative defense to prosecution under this section that the person who possesses or promotes material or a device proscribed by this section does so for a bona fide medical, psychiatric, judicial, legislative, or law enforcement purpose.
- (h) The punishment for an offense under Subsection (a) is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection (c) is increased to the punishment for a state jail felony if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:
 - (1) a child younger than 18 years of age at the time the image of the child was made;
 - (2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or
 - (3) an image created, adapted, or modified to be the image of an identifiable child.
- (i) In this section, "identifiable child" means a person, recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature:
 - (1) who was younger than 18 years of age at the time the visual depiction was created, adapted, or modified; or
 - (2) whose image as a person younger than 18 years of age was used in creating, adapting, or modifying the visual depiction.
- (j) An attorney representing the state who seeks an increase in punishment under Subsection (h)(3) is not required to prove the actual identity of an identifiable child.

§ 43.24. Sale, Distribution, or Display of Harmful Material to Minor

- (a) For purposes of this section:
 - (1) "Minor" means an individual younger than 18 years.
 - (2) "Harmful material" means material whose dominant theme taken as a whole:
 - (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
 - (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

- (C) is utterly without redeeming social value for minors.
- (b) A person commits an offense if, knowing that the material is harmful:
 - (1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;
 - (2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or
 - (3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2).
- (c) It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification.
- (c-1) It is a defense to prosecution under this section that the actor was the spouse of the minor at the time of the offense.
- (d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) in which event it is a felony of the third degree.

§ 43.25. Sexual Performance by a Child

- (a) In this section:
 - (1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.
 - (2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.
 - (3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.
 - (4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.
 - (5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.
 - (6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.
 - (7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned by Section 43.01.
- (b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.
- (c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed.
- (d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.
- (e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age

- at the time the offense is committed.
- (f) It is an affirmative defense to a prosecution under this section that:
 - (1) the defendant was the spouse of the child at the time of the offense;
 - (2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or
 - (3) the defendant is not more than two years older than the child.
- (g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:
 - (1) personal inspection of the child;
 - (2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;
 - (3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;
 - (4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or
 - (5) any other method authorized by law or by the rules of evidence at common law.

§ 43.251. Employment Harmful to Children

- (a) In this section:
 - (1) "Child" means a person younger than 18 years of age.
 - (2) "Massage" has the meaning assigned to the term "massage therapy" by Section 455.001, Occupations Code.
 - (3) "Massage establishment" has the meaning assigned by Section 455.001, Occupations Code.
 - (4) "Nude" means a child who is:
 - (A) entirely unclothed; or
 - (B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the child is female, or any portion of the genitals or buttocks.
 - (5) "Sexually oriented commercial activity" means a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.
 - (6) "Topless" means a female child clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of her breasts below the top of the areola.
- (b) A person commits an offense if the person employs, authorizes, or induces a child to work:
 - (1) in a sexually oriented commercial activity; or
 - (2) in any place of business permitting, requesting, or requiring a child to work nude or topless.
- (c) [2 Versions: As amended by Acts 2011, 82nd Leg., ch. 515] An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed.
- (c) [2 Versions: As amended by Acts 2011, 82nd Leg., ch. 938] An offense under this section is a Class A misdemeanor, except that the offense is:

- (1) a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted one time of an offense under this section; and
- (2) a felony of the third degree if it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section.

§ 43.26. Possession or Promotion of Child Pornography

- (a) A person commits an offense if:
 - (1) the person knowingly or intentionally possesses visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct; and
 - (2) the person knows that the material depicts the child as described by Subdivision (1).
- (b) In this section:
 - (1) "Promote" has the meaning assigned by Section 43.25.
 - (2) "Sexual conduct" has the meaning assigned by Section 43.25.
 - (3) "Visual material" means:
 - (A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
 - (B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.
- (c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.
- (d) An offense under Subsection (a) is a felony of the third degree.
- (e) A person commits an offense if:
 - (1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and
 - (2) the person knows that the material depicts the child as described by Subsection (a)(1).
- (f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.
- (g) An offense under Subsection (e) is a felony of the second degree.
- (h) It is a defense to prosecution under Subsection (a) or (e) or that the actor is a law enforcement officer or a school administrator who:
 - (1) possessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;
 - (2) allowed other law enforcement or school administrative personnel to access the material only as appropriate based on the allegation described by Subdivision (1); and
 - (3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

§ 43.261. Electronic Transmission of Certain Visual Material Depicting Minor

- (a) In this section:
 - (1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

- (2) "Minor" means a person younger than 18 years of age.
 - (3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.
 - (4) "Promote" has the meaning assigned by Section 43.25.
 - (5) "Sexual conduct" has the meaning assigned by Section 43.25.
 - (6) "Visual material" has the meaning assigned by Section 43.26.
- (b) A person who is a minor commits an offense if the person intentionally or knowingly:
 - (1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material;
or
 - (2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.
- (c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:
 - (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor:
 - (A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or
 - (B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or
 - (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:
 - (A) convicted one or more times of an offense punishable under Subdivision (1)(A); or
 - (B) convicted two or more times of any offense under this section.
- (d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:
 - (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section;
or
 - (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.
- (e) It is an affirmative defense to prosecution under this section that the visual material:
 - (1) depicted only the actor or another minor:
 - (A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense;
or
 - (B) who was the spouse of the actor at the time of the offense; and
 - (2) was promoted or received only to or from the actor and the other minor.
- (f) It is a defense to prosecution under Subsection (b)(2) that the actor:
 - (1) did not produce or solicit the visual material;
 - (2) possessed the visual material only after receiving the material from another minor; and
 - (3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.
- (g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.

- (h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections (c) and (d).

§ 43.27. Duty to Report

- (a) For purposes of this section, "visual material" has the meaning assigned by Section 43.26.
- (b) A business that develops or processes visual material and determines that the material may be evidence of a criminal offense under this subchapter shall report the existence of the visual material to a local law enforcement agency.

Tex. Bus. & Com. Code § 321.101. Transmission of Message Containing Obscene Material or Material Depicting Sexual Conduct; Criminal Penalty.

- (a) A person commits an offense if the person intentionally takes an action to transmit a message that contains **obscene** material or material depicting sexual conduct in violation of Section 321.052(a)(1).
- (b) An offense under this section is a Class B misdemeanor.

Tex. Alco. Bev. Code § 101.64. Indecent Graphic Material

No holder of a license or permit may possess or display on the licensed premises a card, calendar, placard, picture, or handbill that is immoral, indecent, lewd, or profane.

Tex. Bus. & Com. Code § 321.001. Definitions

- In this chapter:
 - (1) "Commercial electronic mail message" means an electronic mail message that advertises, offers for sale or lease, or promotes any goods, services, business opportunity, property, or other article, commodity, or thing of value.
 - (2) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen the message, file, or information.
 - (3) "Electronic mail service provider" means a person who:
 - (A) is authorized to transact business in this state;
 - (B) is an intermediary in transmitting or receiving electronic mail; and
 - (C) provides to an end user of an electronic mail service the ability to transmit or receive electronic mail.
 - (4) "Established business relationship" means a relationship that:
 - (A) is formed by a voluntary two-way communication between a person and another person, regardless of whether consideration is exchanged;
 - (B) pertains to a product or service offered by one of the persons; and
 - (C) has not been terminated by either person.
 - (5) "Obscene" has the meaning assigned by Section 43.21, Penal Code.
 - (6) "Sender" means a person who initiates an electronic mail message.
 - (7) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(8) "Unsolicited commercial electronic mail message" means a commercial electronic mail message transmitted without the consent of the recipient by a person with whom the recipient does not have an established business relationship. The term does not include electronic mail transmitted by an organization using electronic mail to communicate exclusively with members, employees, or contractors of the organization.

Tex. Bus. & Com. Code § 321.052. Requirement for Transmission of Unsolicited Commercial Electronic Mail Messages

- (a) A person may not intentionally take an action to transmit an unsolicited commercial electronic mail message unless:
 - (1) "ADV: " appears first in the subject line of the message or, if the message contains obscene material or material depicting sexual conduct, "ADV: ADULT ADVERTISEMENT" appears first in the subject line; and
 - (2) the sender or a person acting on behalf of the sender provides a functioning return electronic mail address to which a recipient of the message may, at no cost to the recipient, send a reply requesting the removal of the recipient's electronic mail address from the sender's electronic mail list.
- (b) A sender shall remove a person's electronic mail address from the sender's electronic mail list not later than the third day after the date the sender receives a request for removal of that address under Subsection (a)(2).

Tex. Alco. Bev. Code § 104.01. Lewd, Immoral, Indecent Conduct

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

- (1) the use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;
- (2) the exposure of person or permitting a person to expose his person;
- (3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;
- (4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;
- (5) being intoxicated on the licensed premises;
- (6) permitting lewd or vulgar entertainment or acts;
- (7) permitting solicitations of persons for immoral or sexual purposes;
- (8) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or
- (9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

Tex. Local Gov't Code § 243.001 Purpose; Effect on Other Regulatory Authority

(a) The legislature finds that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this chapter is to provide local governments a means of remedying this problem.

(b) This chapter does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.

§ 243.002. Definition

In this chapter, "sexually oriented business" means 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.

§ 243.003. Authority to Regulate

(a) A municipality by ordinance or a county by order of the commissioners court may adopt regulations regarding sexually oriented businesses as the municipality or county considers necessary to promote the public health, safety, or welfare.

(b) A regulation adopted by a municipality applies only inside the municipality's corporate limits.

(c) A regulation adopted by a county applies only to the parts of the county outside the corporate limits of a municipality.

(d) In adopting a regulation, a municipality that has in effect a comprehensive zoning ordinance adopted under Chapter 211 must comply with all applicable procedural requirements of that chapter if the regulation is within the scope of that chapter.

§ 243.004. Exempt Business

The following are exempt from regulation under this chapter:

(1) a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002;

(2) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

(3) a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

§ 243.005. Business Licensed Under Alcoholic Beverage Code: Business Having Coin-Operated Machines

(a) A business is not exempt from regulation under this chapter because it holds a license or permit under the Alcoholic Beverage Code authorizing the sale or service of alcoholic beverages or because it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(b) A regulation adopted under this chapter may not discriminate against a business on the basis of whether the business holds a license or permit under the Alcoholic Beverage Code or on the basis of whether it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(c) This chapter does not affect the existing preemption by the state of the regulation of alcoholic beverages and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

§ 243.006. Scope of Regulation

(a) The location of sexually oriented businesses may be:

(1) restricted to particular areas; or

(2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business.

(b) A municipality or county may restrict the density of sexually oriented businesses.

§ 243.007. Licenses or Permits

(a) A municipality or county may require that an owner or operator of a sexually oriented business obtain a license or other permit or renew a license or other permit on a periodic basis for the operation of a sexually oriented business. An application for a license or other permit must be made in accordance with the regulations adopted by the municipality or county.

(b) The municipal or county regulations adopted under this chapter may provide for the denial, suspension, or revocation of a license or other permit by the municipality or county.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a municipality or county.

§ 243.0075. Notice by Sign

(a) An applicant for a license or permit issued under Section 243.007 for a location not previously licensed or permitted shall, not later than the 60th day before the date the application is filed, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and

business address of the applicant.

(b) A person who intends to operate a sexually oriented business in the jurisdiction of a municipality or county that does not require the owner or operator of a sexually oriented business to obtain a license or permit shall, not later than the 60th day before the date the person intends to begin operation of the business, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the owner and operator.

(c) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The municipality or county in which the sexually oriented business is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

§ 243.008. Inspection

A municipality or county may inspect a sexually oriented business to determine compliance with this chapter and regulations adopted under this chapter by the municipality or county.

§ 243.009. Fees

A municipality or county may impose fees on applicants for a license or other permit issued under this chapter or for the renewal of the license or other permit. The fees must be based on the cost of processing the applications and investigating the applicants.

§ 243.010. Enforcement

(a) A municipality or county may sue in the district court for an injunction to prohibit the violation of a regulation adopted under this chapter.

(b) A person commits an offense if the person violates a municipal or county regulation adopted under this chapter. An offense under this subsection is a Class A misdemeanor.

§ 243.011. Effect on Other Laws

This chapter does not legalize anything prohibited under the Penal Code or other state law.

FILTERING LAWS (do not apply to schools or libraries)

Tex. Bus. & Com. Code § 323.001. Definitions

- In this chapter:
 - (1) "Freeware" means software distributed to a person free of charge,

regardless of whether use of the software is subject to certain restrictions.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Interactive computer service" means any information service or system that provides or enables computer access to the Internet by multiple users.

(4) "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(5) "Shareware" means copyrighted software for which the copyright owner sets certain conditions for the software's distribution and use, including requiring payment to the copyright owner after a person who has secured a copy of the software decides to use the software, regardless of whether the payment is for additional support or functionality of the software.

Tex. Bus. & Com. Code § 323.002. Software or Services That Restrict Access to Certain Internet Material

- (a) This section does not apply to:
 - (1) the Department of Information Resources, in the department's capacity as the telecommunications provider for this state; or
 - (2) an institution of higher education that provides interactive computer service.
- (b) A person who charges a fee to provide an interactive computer service shall provide free of charge to each subscriber of the service in this state a link leading to fully functional shareware, freeware, or a demonstration version of software or to a service that, for at least one operating system, enables the subscriber to automatically block or screen material on the Internet.
- (c) A person who charges a fee to provide an interactive computer service is in compliance with this section if the person places, on the person's first page of world wide web text information accessible to a subscriber, a link leading to the software or service described by Subsection (b). The identity of the link or other on-screen depiction of the link must appear set out from surrounding written or graphical material so as to be conspicuous.
- (d) A person who provides a link that complies with this section is not liable to a subscriber for any temporary inoperability of the link or for the effectiveness of the software or service to which the person links.

Tex. Bus. & Com. Code § 323.003. Civil Penalty

- (a) A person is liable to this state for a civil penalty of \$ 2,000 for each day the person violates Section 323.002. The aggregate civil penalty may not exceed \$ 60,000.
- (b) The attorney general may bring an action against a person who violates Section 323.002 to recover the civil penalty. Before bringing the action, the attorney general shall give the person notice of the person's noncompliance and liability for a civil penalty. If the person complies with Section 323.002 not later than the 30th day after the date of the notice, the violation is cured and the person is not liable for the civil penalty.