

HOUSE BILL NO. 367

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MCGUIRE AND GARA, Dahlstrom, Anderson

Introduced: 1/12/04

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the licensing and regulation of sex-oriented businesses and sex-**
2 **oriented business entertainers; relating to protection of the safety and health of and to**
3 **education of young persons who perform in adult entertainment establishments; and**
4 **providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

7 (38) regulation of sex-oriented businesses and sex-oriented business
8 entertainers under AS 08.90.

9 *** Sec. 2.** AS 08 is amended by adding a new chapter to read:

10 **Chapter 90. Sex-Oriented Businesses and Entertainers.**

11 **Article 1. Licensing.**

12 **Sec. 08.90.010. License required.** A person may not

13 (1) work as a sex-oriented business entertainer without a sex-oriented
14 business entertainer license;

1 (2) work as a sex-oriented business entertainer in a sex-oriented
2 business except in a business licensed under this chapter;

3 (3) operate a sex-oriented business without a sex-oriented business
4 license;

5 (4) permit a sex-oriented business entertainer to work in a sex-oriented
6 business without a sex-oriented business entertainer license;

7 (5) permit the use of the person's sex-oriented business entertainer
8 license by another person;

9 (6) obtain or attempt to obtain a license under this chapter by
10 fraudulent means.

11 **Sec. 08.90.020. Sex-oriented business license.** An applicant for a license to
12 operate a sex-oriented business at a licensed premises shall submit to the department,
13 in the manner and on forms prescribed by the department, written evidence, verified
14 by oath, that the applicant meets the qualifications to operate a sex-oriented
15 entertainment business, and that the owner of the premises consents to the operation of
16 the sex-oriented business on the premises.

17 **Sec. 08.90.030. Sex-oriented business entertainer license.** (a) An applicant
18 for a license to work as a sex-oriented business entertainer shall submit to the
19 department, in the manner and on forms prescribed by the department, written
20 evidence, verified by oath, that the applicant meets the qualifications to work as a sex-
21 oriented business entertainer.

22 (b) A sex-oriented business entertainer license may only be issued to a natural
23 person.

24 **Sec. 08.90.040. Regulations for sex-oriented business licenses.** The
25 department shall by regulation establish requirements for licensing businesses
26 providing sex-oriented entertainment at the premises specified in the application,
27 licensure and renewal procedures, inspection procedures, standards, fees, and
28 requirements for operation. In adopting regulations under this section, the department
29 shall regulate the following standards of conduct and physical characteristics of
30 licensed premises:

31 (1) unless the sex-oriented business owner resides on the business

1 premises and the sex-oriented business owner is a legal guardian of minors residing in
 2 the residential unit, a licensed sex-oriented business premises may not share with any
 3 residential unit inhabited by minors a

4 (A) public entrance;

5 (B) restroom or entrance to a restroom; or

6 (C) hallway;

7 (2) the interior layout of the premises of a sex-oriented business must
 8 physically separate sex-oriented business entertainers from patrons during
 9 performances and ensure that any booth, stall, room, or partitioned portion of a room
 10 is open to view from a public room of the premises, except for private offices or other
 11 rooms that are not open to any person other than employees, or individual restrooms
 12 on the premises;

13 (3) an applicant shall provide satisfactory evidence that the owner of
 14 the real property in which the sex-oriented business is conducted consents to the
 15 operation of the sex-oriented business;

16 (4) an individual whose name and address is required to be provided
 17 with an application for a license under AS 08.90.070 may not have been convicted of
 18 any of the following offenses:

19 (A) prostitution or promotion of prostitution; unlawful
 20 exploitation of a minor; possession or distribution of child pornography;
 21 indecent exposure; sexual assault; sexual abuse of a minor; or any similar sex-
 22 related offenses to those described above under the criminal or penal code of
 23 this state, other states, or other countries; tax evasion; underage employment;
 24 alcohol violations; illegal drugs; allowing a minor to enter and remain within
 25 premises where adult entertainment is offered; or any offense causing
 26 revocation of a sex-oriented business license or sex-oriented business
 27 entertainer license; or

28 (B) an offense for which less than 10 years have elapsed since
 29 the date of conviction or the date of release from confinement imposed for a
 30 conviction, whichever date is later, if the conviction is of a felony offense.

31 **Sec. 08.90.050. Regulations for sex-oriented business entertainer licenses.**

1 The department shall by regulation establish requirements for licensing sex-oriented
 2 business entertainers, including licensure and renewal procedures. In adopting
 3 regulations under this section, the department shall require sex-oriented business
 4 entertainers to

5 (1) be at least 19 years of age;

6 (2) receive education about

7 (A) assertiveness training to protect sex-oriented business
 8 entertainers against sexual and or physical assaults;

9 (B) wage and hour laws to protect sex-oriented business
 10 entertainers against improper pay deduction claims and working hour or
 11 condition requirements; and

12 (C) any other area the department considers necessary for
 13 protection of the health or safety of sex-oriented business entertainers; and

14 (3) have the other qualifications and training that the department
 15 considers necessary.

16 **Sec. 08.90.060. Additional provisions for sex-oriented business entertainer**
 17 **licenses for persons who are 19 or 20 years of age.** In addition to educational
 18 information required under AS 08.90.050, the department shall by regulation establish
 19 educational requirements for entertainer license applicants who are 19 or 20 years of
 20 age. An entertainer license applicant shall attend a course developed by the
 21 department to inform applicants of career and educational opportunities that are not
 22 part of the sex-oriented entertainment business and shall be given counseling on the
 23 prevention of sexually transmitted diseases.

24 **Sec. 08.90.070. Application for license.** (a) An applicant for a license shall
 25 file with the department a written application, signed and sworn to by the applicant,
 26 giving the applicant's name and address. If the applicant is a corporation, the
 27 application shall be executed by the authorized officers of the corporation. If the
 28 applicant is a partnership, including a limited partnership, the application shall be
 29 executed by an authorized general partner. The application must include

30 (1) the type of license desired;

31 (2) the license fee;

1 (3) any other information required by the department.

2 (b) A corporation applying for a sex-oriented business license shall provide
3 the names and addresses of the president, vice-president, secretary, managing officer,
4 and all stockholders who own 10 percent or more of the stock in the corporation,
5 together with any other information required by the department.

6 (c) A partnership, including a limited partnership, that applies for a license
7 shall provide information required by the department including the names and
8 addresses of all general partners and all partners with an interest of 10 percent or
9 more.

10 (d) A limited liability organization that applies for a license shall provide
11 information required by the department, including the names and addresses of all
12 members with an ownership interest of 10 percent or more and the names and
13 addresses of all managers.

14 **Sec. 08.90.075. Notice of application for sex-oriented business license.** (a)
15 Before a new license is issued, the applicant shall post a copy of the application for 10
16 days at the location of the proposed licensed premises and at any additional locations
17 designated by the department. The department may require the applicant to provide

18 (1) a copy of the application to newspapers and radio and television
19 stations for public service announcement; or

20 (2) paid notice of the application once each week for three successive
21 weeks in a newspaper or by radio.

22 (b) Upon receipt of an application for the issuance or renewal of a license for
23 premises or proposed premises that are located within one-half mile of the boundary of
24 a community council established by municipal charter or ordinance, the department
25 shall

26 (1) immediately provide written notice of the application to

27 (A) the community council; and

28 (B) any nonprofit community organization that has requested
29 notification in writing; and

30 (2) at least 10 days before the date set for departmental action on the
31 application, provide written notice of the proposed action and the time and place for a

1 hearing to

2 (A) the community council; and

3 (B) any nonprofit community organization that has requested
4 notification in writing.

5 **Sec. 08.90.080. Fees.** (a) The department shall set fees under AS 08.01.065
6 for each of the following:

7 (1) a sex-oriented business license application or renewal; and

8 (2) a sex-oriented business entertainer license application or renewal.

9 (b) A sex-oriented business licensee who employs sex-oriented business
10 entertainers who are 19 or 20 years of age shall be assessed fees to fully defray the
11 cost of providing the educational and counseling requirement described in
12 AS 08.90.060.

13 **Sec. 08.90.090. Grounds for denial, suspension, or revocation of license.**

14 The department may deny, suspend, or revoke the license of a person who

15 (1) has obtained or attempted to obtain a license under this chapter by
16 fraud or deceit;

17 (2) has been convicted of a felony or other crime if the felony or other
18 crime is substantially related to the qualifications, functions, or duties of the licensee;
19 or

20 (3) has wilfully or repeatedly violated a provision of this chapter or
21 regulations adopted under it.

22 **Sec. 08.90.100. Criminal justice information and records.** (a) With the
23 application, the department may require an applicant for the issuance of a license
24 under this chapter to submit the applicant's fingerprints and the fees required by the
25 Department of Public Safety for criminal justice information and a national criminal
26 history record check. The department may require an applicant for renewal of a
27 license under this title to submit fingerprints and pay fees as required by this
28 subsection. The department may submit the fingerprints to the Department of Public
29 Safety to obtain a report of criminal justice information under AS 12.62 and a national
30 criminal history record check. The Department of Public Safety may submit the
31 fingerprints to the Federal Bureau of Investigation for a national criminal history

1 record check. The department shall use the information obtained under this section in
 2 its determination of an applicant's qualification for issuance, transfer, or renewal of a
 3 license.

4 (b) In this section,

5 (1) "applicant" means all individuals whose names and addresses are
 6 required to be provided with an application for a license under AS 08.90.070;

7 (2) "criminal justice information" has the meaning given in
 8 AS 12.62.900.

9 **Sec. 08.90.110. Person and location for sex-oriented business license.** (a)

10 Each sex-oriented business license shall be issued to a specific individual or
 11 individuals, to a partnership, including a limited partnership, to a limited liability
 12 organization, or to a corporation. If the license is issued to a corporation or a limited
 13 liability organization, the registered agent of the corporation or limited liability
 14 organization is required to be an individual resident of the state.

15 (b) A specific location shall be indicated on the license as the licensed
 16 premises, the principal address of which shall be indicated on the license. The mailing
 17 address of a licensee or, if the licensee is a corporation, the address of the registered
 18 office of the corporation must be kept current and on file in the main office of the
 19 department.

20 (c) A license issued by the department is not transferable or assignable.

21 (d) A licensed facility shall report to the department

22 (1) permanent closing; and

23 (2) other matters and occurrences the department may require by
 24 regulation.

25 **Article 2. Miscellaneous Provisions.**

26 **Sec. 08.90.300. Disciplinary sanctions.** (a) If, after a hearing, the
 27 department finds that a licensee has committed an act set out in AS 08.90.090, the
 28 department may

29 (1) permanently revoke a license issued under this chapter or suspend a
 30 license for a determinate period of time; and

31 (2) impose a civil fine of not more than \$10,000.

1 (b) The department may summarily suspend a license before final hearing or
 2 during the appeals process if the department finds that the licensee poses a clear and
 3 immediate danger to the public health and safety if the licensee continues to work or
 4 operate under a license issued under this chapter. A person whose license is
 5 suspended under this subsection is entitled to a hearing by the department not later
 6 than seven days after the effective date of the order.

7 (c) A person who receives a disciplinary sanction under this section may
 8 appeal the sanction to a court of competent jurisdiction.

9 (d) The department shall be consistent in the application of disciplinary
 10 sanctions. A significant departure from earlier decisions of the department involving
 11 similar situations must be explained in findings of fact or orders made by the
 12 department.

13 **Sec. 08.90.310. Violations.** (a) A person who violates this chapter is guilty
 14 of a misdemeanor and, upon conviction, is punishable by a fine of not more than
 15 \$5,000, or by imprisonment for not more than one year, or by both. Each day of
 16 illegal practice is a separate offense.

17 (b) A person who knowingly provides false information in an application for a
 18 sex-oriented business license or a sex-oriented business entertainer license is guilty of
 19 a misdemeanor and, upon conviction, is punishable by a fine of not more than \$5,000,
 20 or by imprisonment for not more than one year, or by both, except that a person who
 21 knowingly provides false information about the applicant's specified criminal activity
 22 is guilty of a class C felony.

23 **Sec. 08.90.320. Limitation of liability.** An action may not be brought against
 24 a person for damages resulting from a report made in good faith to a public agency by
 25 the person or participation by the person in an investigation by a public agency or an
 26 administrative or judicial proceeding relating to the report if the report relates to a
 27 person who has a license under this chapter.

28 **Sec. 08.90.330. Accessibility of license and licensed premises to inspection.**
 29 (a) A sex-oriented business licensee shall, upon request, make the licensed premises
 30 available for inspection by officers charged with the enforcement of this chapter,
 31 including employees of the department, during all regular business hours.

1 (b) A license for a sex-oriented business issued under this chapter shall be
 2 conspicuously posted within the licensed premises so as to be easily viewed by the
 3 public and available for inspection upon request by a peace officer or other person
 4 during regular business hours.

5 **Sec. 08.90.340. License a privilege.** (a) A license issued under this chapter
 6 is a personal privilege, not a property right.

7 (b) The privilege conferred upon the licensee is personal in nature and affords
 8 protection to the licensee only.

9 **Sec. 08.90.345. Access of persons under 18 years of age to licensed**
 10 **premises.** A licensee or an agent or employee of the licensee may not with criminal
 11 negligence allow a person under 18 years of age to enter and remain within licensed
 12 premises. In this section, "criminal negligence" has the meaning given in
 13 AS 11.81.900.

14 **Sec. 08.90.350. Proof of age.** (a) If a licensee or an agent or employee of the
 15 licensee questions or has reason to question whether a person entering licensed
 16 premises has attained the age of 18 years, the licensee, agent, or employee shall
 17 require the person to furnish proof of age acceptable under (b) of this section in a form
 18 determined by the department. If the person questioned does not furnish proof of age
 19 acceptable under (b) of this section, or if a licensee, agent, or employee questions or
 20 has reason to question the validity of the proof of age furnished, the licensee,
 21 employee, or agent shall require the person to sign a statement that the person is over
 22 18 years of age. This statement shall be made on a form prepared by and furnished to
 23 the licensee by the department.

24 (b) A valid driver's license or a valid identification card is acceptable as proof
 25 of age when used for identification in securing entry to and remaining on the premises
 26 of a sex-oriented business if the license or identification card is made of or encased in
 27 plastic and contains a photograph of the licensee or card holder and a statement of age
 28 or date of birth.

29 (c) A licensee or an agent or employee of the licensee may not be charged for
 30 a violation of AS 08.90.345 if a signed statement as provided in (a) of this section is
 31 secured in good faith, or if a valid driver's license or identification card is presented

1 indicating that the owner and possessor of the presented driver's license or
2 identification card is 18 years of age or older.

3 **Sec. 08.90.360. Responsibility of licensees, agents, and employees.** A sex-
4 oriented business licensee has a duty to exercise that degree of care that a reasonable
5 person would observe to ensure that a business under the person's control is lawfully
6 conducted. This duty of the licensee includes ensuring the compliance

7 (1) by agents or employees with this chapter and regulations adopted
8 under this chapter, including acting with reasonable diligence to determine that agents
9 or employees are advised of the provisions of this chapter and the regulations adopted
10 under this chapter, either by securing the agent's or employee's written
11 acknowledgment of posted instructions or otherwise; and

12 (2) of the premises with public health, fire, and safety codes and
13 ordinances of the state or municipality having jurisdiction.

14 **Article 3. General Provisions.**

15 **Sec. 08.90.500. Definitions.** In this chapter,

16 (1) "department" means the Department of Community and Economic
17 Development;

18 (2) "employee" means a person who performs any service on the
19 premises of a sex-oriented business on a full-time, part-time, contract, or independent
20 basis, whether or not the person is an employee, independent contractor, agent, or
21 otherwise and whether or not the said person is paid a salary, wage, or other
22 compensation by the operator of the sex-oriented business; "employee" does not
23 include a person exclusively on the premises for repair or maintenance of the premises
24 or equipment on the premises, or for the delivery of goods to the premises, nor does
25 "employee" include a person exclusively on the premises as a patron or customer;

26 (3) "nudity" means the appearance of an anus, anal area, pubic area,
27 male genitals, female genitals, or vulva, either bare or with less than a fully opaque
28 covering; or a female breast with less than a fully opaque covering of any part of the
29 areola;

30 (4) "premises" means the real property on which the sex-oriented
31 business is located, including the sex-oriented business, the grounds, private

1 walkways, parking lots, and parking garages of the sex-oriented business under the
 2 ownership, control, or supervision of the licensee, as described in the application for a
 3 sex-oriented business license under this chapter;

4 (5) "semi-nude" or "semi-nudity" means the appearance of the female
 5 breast below a horizontal line across the top of the areola at its highest point; this term
 6 includes the entire lower portion of the human female breast, but does not include any
 7 portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt,
 8 leotard, bathing suit, or other wearing apparel if the areola is not exposed in whole or
 9 in part;

10 (6) "sex-oriented business" means a business that offers to the public
 11 for the sexual interests or titillation of an audience or customers entertainment
 12 involving a person who appears in a state of nudity or semi-nudity;

13 (7) "sex-oriented business entertainer" means an employee of a sex-
 14 oriented business who performs one or more services described in (6) of this section to
 15 the public for the sexual interests or titillation of an audience or customers.

16 * **Sec. 3.** AS 08.90.050(1) is repealed and reenacted to read:

17 (1) be at least 18 years of age;

18 * **Sec. 4.** AS 08.90.060 is repealed and reenacted to read:

19 **Sec. 08.90.060. Additional provisions for sex-oriented business entertainer**
 20 **licenses for persons who are under 21 years of age.** In addition to educational
 21 information required under AS 08.90.050, the department shall by regulation establish
 22 educational requirements for entertainer license applicants who are under 21 years of
 23 age. An entertainer license applicant shall attend a course developed by the
 24 department to inform applicants of career and educational opportunities that are not
 25 part of the sex-oriented entertainment business and shall be given counseling on the
 26 prevention of sexually transmitted diseases.

27 * **Sec. 5.** AS 08.90.080(b) is repealed and reenacted to read:

28 (b) A sex-oriented business licensee who employs sex-oriented business
 29 entertainers who are under 21 years of age shall be assessed fees to fully defray the
 30 cost of providing the educational and counseling requirements described in
 31 AS 08.90.060.

1 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 SEVERABILITY. Under AS 01.10.030, the provisions of this Act are severable.

4 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 CONTINGENT EFFECT. (a) Sections 3 - 5 of this Act take effect only if a court of
7 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
8 merits that AS 08.90.050(1), added by sec. 2 of this Act, violates the Constitution of the
9 United States or the Constitution of the State of Alaska.

10 (b) The attorney general shall promptly notify the lieutenant governor and the revisor
11 of statutes of the occurrence of the contingency described in (a) of this section.

12 * **Sec. 8.** Sections 3 - 5 of this Act take effect on the date of the attorney general's
13 notification to the lieutenant governor and to the revisor of statutes under sec. 7(b) of this Act
14 that a court has entered final judgment that AS 08.90.050(1), added by sec. 2 of this Act,
15 violates the Constitution of the United States or the Constitution of the State of Alaska and
16 that the time for an appeal of that judgment has expired or, if an appeal was taken, a final
17 order on the appeal has been entered that AS 08.90.050(1) violates the Constitution of the
18 United States or the Constitution of the State of Alaska.

19 * **Sec. 9.** Sections 1, 2, 6, and 7 of this Act take effect January 1, 2005.