

CS FOR HOUSE BILL NO. 367(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/5/04

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES MCGUIRE AND GARA, Dahlstrom, Anderson

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; and providing for an effective date."**

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

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

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

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

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

9 **Article 1. Licensing.**

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

11 (1) work as a sex-oriented business entertainer without a sex-oriented
12 business entertainer license;

13 (2) operate a sex-oriented business without a sex-oriented business
14 license;

1 (3) permit a sex-oriented business entertainer to work in a sex-oriented
2 business without a sex-oriented business entertainer license;

3 (4) permit the use of the person's sex-oriented business entertainer
4 license by another person;

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

7 **Sec. 08.90.020. Sex-oriented business license.** An applicant for a license to
8 operate a sex-oriented business employing sex-oriented business entertainers shall
9 submit to the department, in the manner and on forms prescribed by the department,
10 written evidence, verified by oath, that the applicant meets the qualifications to
11 operate a sex-oriented entertainment business, and that the owner of the premises
12 consents to the operation of the sex-oriented business on the premises.

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

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

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

27 (1) unless the sex-oriented business owner resides on the business
28 premises and the sex-oriented business owner is a legal guardian of minors residing in
29 the residential unit, a licensed sex-oriented business premises may not share with any
30 residential unit inhabited by minors a

31 (A) public entrance;

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

2 (C) hallway;

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

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

12 (4) an individual whose name and address is required to be provided
13 with an application for a license under AS 08.90.060 may not have been convicted of
14 any of the following offenses:

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

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

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

28 The department shall by regulation establish requirements for licensing sex-oriented
29 business entertainers, including licensure and renewal procedures. In adopting
30 regulations under this section, the department shall require sex-oriented business
31 entertainers to

1 (1) be at least 21 years of age;

2 (2) receive education about

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

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

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

10 (3) have the other qualifications and training that the department
11 considers necessary.

12 **Sec. 08.90.060. Application for license.** (a) An applicant for a license shall
13 file with the department a written application, signed and sworn to by the applicant,
14 giving the applicant's name and address. If the applicant is a corporation, the
15 application shall be executed by the authorized officers of the corporation. If the
16 applicant is a partnership, including a limited partnership, the application shall be
17 executed by an authorized general partner. The application must include

18 (1) the type of license desired;

19 (2) the license fee;

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

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

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

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

1 addresses of all managers.

2 **Sec. 08.90.070. Notice of application for sex-oriented business license.** (a)

3 Before a new license is issued, the applicant shall post a copy of the application for 10
4 days at the location of the proposed licensed premises and at any additional locations
5 designated by the department. The department may require the applicant to provide

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

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

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

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

15 (A) the community council; and

16 (B) any nonprofit community organization that has requested
17 notification in writing; and

18 (2) at least 10 days before the date set for departmental action on the
19 application, provide written notice of the proposed action to

20 (A) the community council; and

21 (B) any nonprofit community organization that has requested
22 notification in writing.

23 **Sec. 08.90.080. Fees.** The department shall set fees under AS 08.01.065 for
24 each of the following:

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

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

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

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

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

31 (2) has been convicted of a felony or other crime if the felony or other

1 crime is substantially related to the qualifications, functions, or duties of the licensee;
2 or

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

5 **Sec. 08.90.100. Person and location for sex-oriented business license.** (a)
6 Each sex-oriented business license shall be issued to a specific individual or
7 individuals, to a partnership, including a limited partnership, to a limited liability
8 organization, or to a corporation. If the license is issued to a corporation or a limited
9 liability organization, the registered agent of the corporation or limited liability
10 organization is required to be an individual resident of the state.

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

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

17 (d) A licensed facility shall report to the department
18 (1) permanent closing; and
19 (2) other matters and occurrences the department may require by
20 regulation.

21 **Article 2. Miscellaneous Provisions.**

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

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

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

28 (b) The department may summarily suspend a license before final hearing or
29 during the appeals process if the department finds that the licensee poses a clear and
30 immediate danger to the public health and safety if the licensee continues to work or
31 operate under a license issued under this chapter. A person whose license is

1 suspended under this subsection is entitled to a hearing by the department not later
2 than seven days after the effective date of the order.

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

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

9 **Sec. 08.90.310. Violations.** (a) A person who violates this chapter is guilty
10 of a misdemeanor and, upon conviction, is punishable by a fine of not more than
11 \$5,000, or by imprisonment for not more than one year, or by both. Each day of
12 illegal practice is a separate offense.

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

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

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

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

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

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

5 **Sec. 08.90.350. Access of persons under 21 years of age to licensed**
6 **premises.** A licensee or an agent or employee of a sex-oriented business licensee may
7 not with criminal negligence allow a person under 21 years of age to enter and remain
8 within licensed premises. In this section, "criminal negligence" has the meaning given
9 in AS 11.81.900.

10 **Sec. 08.90.360. Proof of age.** (a) If a sex-oriented business licensee or an
11 agent or employee of the sex-oriented business licensee questions or has reason to
12 question whether a person entering licensed premises has attained the age of 21 years,
13 the licensee, agent, or employee shall require the person to furnish proof of age
14 acceptable under (b) of this section in a form determined by the department. If the
15 person questioned does not furnish proof of age acceptable under (b) of this section, or
16 if a licensee, agent, or employee questions or has reason to question the validity of the
17 proof of age furnished, the licensee, employee, or agent shall require the person to sign
18 a statement that the person is 21 years of age or older. This statement shall be made
19 on a form prepared by and furnished to the licensee by the department.

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

25 (c) A licensee or an agent or employee of the licensee may not be charged for
26 a violation of AS 08.90.350 if a signed statement as provided in (a) of this section is
27 secured in good faith, or if a valid driver's license or identification card is presented
28 indicating that the owner and possessor of the presented driver's license or
29 identification card is 21 years of age or older.

30 **Sec. 08.90.370. Responsibility of licensees, agents, and employees.** A sex-
31 oriented business licensee has a duty to exercise that degree of care that a reasonable

1 person would observe to ensure that a business under the person's control is lawfully
2 conducted. This duty of the licensee includes ensuring the compliance

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

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

10 **Article 3. General Provisions.**

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

12 (1) "department" means the Department of Community and Economic
13 Development;

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

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

26 (4) "premises" means the real property on which the sex-oriented
27 business is located, including the sex-oriented business, the grounds, private
28 walkways, parking lots, and parking garages of the sex-oriented business under the
29 ownership, control, or supervision of the licensee, as described in the application for a
30 sex-oriented business license under this chapter;

31 (5) "semi-nude" or "semi-nudity" means the appearance of the female

1 breast below a horizontal line across the top of the areola at its highest point; this term
 2 includes the entire lower portion of the human female breast, but does not include any
 3 portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt,
 4 leotard, bathing suit, or other wearing apparel if the areola is not exposed in whole or
 5 in part;

6 (6) "sex-oriented business" means a person who offers entertainment at
 7 a premises for compensation for the sexual interests or titillation of an audience or
 8 customers' entertainment involving a person who personally appears before the
 9 audience or customers in a state of nudity or semi-nudity;

10 (7) "sex-oriented business entertainer" means an employee of a sex-
 11 oriented business who performs one or more services described in (6) of this section
 12 for the sexual interests or titillation of an audience or customers;

13 (8) "sex-oriented business license" means a license issued under
 14 AS 08.90.020;

15 (9) "sex-oriented business licensee" means a person licensed under
 16 AS 08.90.020.

17 * **Sec. 3.** AS 08.90.010 is repealed and reenacted to read:

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

19 (1) work as a sex-oriented business entertainer without a sex-oriented
 20 business entertainer license;

21 (2) operate a sex-oriented business without a 21 and over sex-oriented
 22 business license or an 18 and over sex-oriented business license;

23 (3) permit a sex-oriented business entertainer to work in a sex-oriented
 24 business without a sex-oriented business entertainer license;

25 (4) permit the use of the person's sex-oriented business entertainer
 26 license by another person;

27 (5) obtain or attempt to obtain a license under this chapter by
 28 fraudulent means.

29 * **Sec. 4.** AS 08.90.020 is repealed and reenacted to read:

30 **Sec. 08.90.020. Sex-oriented business license for premises employing**
 31 **entertainers at least 21 years old.** An applicant for a license to operate a sex-

1 oriented business employing sex-oriented business entertainers 21 years of age and
 2 older at a licensed premises shall submit to the department, in the manner and on
 3 forms prescribed by the department, written evidence, verified by oath, that the
 4 applicant meets the qualifications to operate a sex-oriented entertainment business,
 5 and that the owner of the premises consents to the operation of the sex-oriented
 6 business on the premises. A licensee under this section may not employ a sex-oriented
 7 business entertainer who is less than 21 years of age.

8 * **Sec. 5.** AS 08.90 is amended by adding a new section to read:

9 **Sec. 08.90.025. Sex-oriented business license for premises employing**
 10 **entertainers at least 18 years old.** An applicant for a license to operate a sex-
 11 oriented business employing sex-oriented business entertainers 18 years of age and
 12 older at a licensed premises shall submit to the department, in the manner and on
 13 forms prescribed by the department, written evidence, verified by oath, that the
 14 applicant meets the qualifications to operate a sex-oriented entertainment business,
 15 and that the owner of the premises consents to the operation of the sex-oriented
 16 business on the premises. A licensee under this section may not employ a sex-oriented
 17 business entertainer who is less than 18 years of age.

18 * **Sec. 6.** AS 08.90.050 is repealed and reenacted to read:

19 **Sec. 08.90.050. Regulations for sex-oriented business entertainer licenses.**
 20 The department shall by regulation establish requirements for licensing sex-oriented
 21 business entertainers, including licensure and renewal procedures. In adopting
 22 regulations under this section, the department shall require sex-oriented business
 23 entertainers to

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

25 (2) receive education about

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

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

31 (C) any other area the department considers necessary for

1 protection of the health or safety of sex-oriented business entertainers; and

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

4 * **Sec. 7.** AS 08.90 is amended by adding a new section to read:

5 **Sec. 08.90.055. Additional provisions for sex-oriented business entertainer**
6 **licenses for persons who are under 21 years of age.** In addition to educational
7 information required under AS 08.90.050, the department shall by regulation establish
8 educational requirements for entertainer license applicants who are under 21 years of
9 age. An entertainer license applicant shall attend a course developed by the
10 department to inform applicants of career and educational opportunities that are not
11 part of the sex-oriented entertainment business and shall be given counseling on the
12 prevention of sexually transmitted diseases.

13 * **Sec. 8.** AS 08.90.080 is repealed and reenacted to read:

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

16 (1) a 21 and over sex-oriented business license application or renewal;

17 (2) an 18 and over sex-oriented business license application or
18 renewal; and

19 (3) a sex-oriented business entertainer license application or renewal.

20 (b) A sex-oriented business licensee who is entitled to employ sex-oriented
21 business entertainers who are under 21 years of age shall be assessed fees to fully
22 defray the cost of providing the educational and counseling requirements described in
23 AS 08.90.055.

24 * **Sec. 9.** AS 08.90.350 is repealed and reenacted to read:

25 **Sec. 08.90.350. Access of persons under 18 years of age to licensed**
26 **premises.** A licensee or an agent or employee of a sex-oriented business licensee may
27 not with criminal negligence allow a person under 18 years of age to enter and remain
28 within licensed premises. In this section, "criminal negligence" has the meaning given
29 in AS 11.81.900.

30 * **Sec. 10.** AS 08.90.360 is repealed and reenacted to read:

31 **Sec. 08.90.360. Proof of age.** (a) If a sex-oriented business licensee or an

1 agent or employee of the sex-oriented business licensee questions or has reason to
 2 question whether a person entering licensed premises has attained the age of 18 years,
 3 the licensee, agent, or employee shall require the person to furnish proof of age
 4 acceptable under (b) of this section in a form determined by the department. If the
 5 person questioned does not furnish proof of age acceptable under (b) of this section, or
 6 if a licensee, agent, or employee questions or has reason to question the validity of the
 7 proof of age furnished, the licensee, employee, or agent shall require the person to sign
 8 a statement that the person is 18 years of age or older. This statement shall be made
 9 on a form prepared by and furnished to the licensee by the department.

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

15 (c) A licensee or an agent or employee of the licensee may not be charged for
 16 a violation of AS 08.90.350 if a signed statement as provided in (a) of this section is
 17 secured in good faith, or if a valid driver's license or identification card is presented
 18 indicating that the owner and possessor of the presented driver's license or
 19 identification card is 18 years of age or older.

20 * **Sec. 11.** AS 08.90.500(8) is amended to read:

21 (8) "sex-oriented business license" means a license issued under
 22 AS 08.90.020 or 08.90.025;

23 * **Sec. 12.** AS 08.90.500(9) is amended to read:

24 (9) "sex-oriented business licensee" means a person licensed under
 25 AS 08.90.020 or 08.90.025.

26 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

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

29 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 CONTINGENT EFFECT. (a) Sections 3 - 12 of this Act take effect only if a court of

1 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
2 merits that AS 08.90.050(1), added by sec. 2 of this Act, violates the Constitution of the
3 United States or the Constitution of the State of Alaska.

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

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

13 * **Sec. 16.** Sections 1, 2, 13, and 14 of this Act take effect July 1, 2005.