

CS FOR HOUSE BILL NO. 367(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/3/04

Referred: 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 adult-oriented businesses; and**
2 **providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE PURPOSE AND FINDINGS REGARDING ADULT-ORIENTED
7 BUSINESSES. The legislature finds that

8 (1) the legislature intends to regulate adult-oriented entertainment businesses
9 in order to reduce the incidence of and opportunities for illegal activity such as lewd acts,
10 solicitation of prostitution, and prostitution and to mitigate the demonstrated negative
11 secondary effects of adult-oriented entertainment businesses on the neighboring communities;

12 (2) the legislature does not intend by these amendments to deny adults access
13 to adult-oriented activities protected by the First Amendment to the Constitution of the United
14 States or to deny access by the distributors and exhibitors of adult-oriented entertainment to

1 their intended market; the legislature finds that adult-oriented entertainment businesses,
 2 because of their operational characteristics, create significant secondary effects on the
 3 neighborhoods and communities in which they are located;

4 (3) special regulation of adult-oriented entertainment businesses is necessary
 5 to ensure that the recognized negative secondary effects, including accosting and harassment
 6 of law-abiding residents and the proliferation of litter, particularly litter of an adult nature
 7 associated with these businesses, will not have a deleterious effect on adjacent neighborhoods
 8 and communities;

9 (4) it is the purpose and intent of these amendments to provide for the orderly
 10 regulation of adult-oriented entertainment businesses in the state by establishing certain
 11 minimum standards for the conduct of this type of business to protect the public order and the
 12 health, safety, and general welfare of the residents of the state by preventing prostitution, lewd
 13 acts, the spread of disease, and the deterioration and blighting of neighborhoods, reducing
 14 crime in and around adult-oriented entertainment businesses, and preserving the quality of
 15 urban life in the state; and

16 (5) the legislature does not intend by these amendments to authorize, legalize,
 17 or permit the establishment or operation of any business, building, or use that violates any
 18 other state or federal statute.

19 * **Sec. 2.** AS 08.01.010 is amended by adding a new paragraph to read:

20 (38) regulation of adult-oriented businesses under AS 08.90.

21 * **Sec. 3.** AS 08 is amended by adding a new chapter to read:

22 **Chapter 90. Adult-Oriented Businesses.**

23 **Article 1. Licensing.**

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

25 (1) operate an adult-oriented business without a license to operate an
 26 adult-oriented business issued under this chapter;

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

29 **Sec. 08.90.020. Adult-oriented business license.** An applicant for a license
 30 to operate an adult-oriented business shall submit to the department, in the manner and
 31 on forms prescribed by the department, written evidence, verified by oath, that the

1 applicant meets the qualifications to operate an adult-oriented entertainment business,
 2 and that the owner of the premises consents to the operation of the adult-oriented
 3 business on the premises.

4 **Sec. 08.90.030. Regulations for adult-oriented business licenses.** The
 5 department shall by regulation establish requirements for licensing businesses
 6 providing adult-oriented entertainment at the premises specified in the application,
 7 licensure and renewal procedures, inspection procedures, standards, fees, and
 8 requirements for operation. In adopting regulations under this section, the department
 9 shall require the following:

10 (1) unless the adult-oriented business owner resides on the business
 11 premises and the adult-oriented business owner is a legal guardian of minors residing
 12 in the residential unit, a licensed adult-oriented business premises may not share with
 13 any residential unit inhabited by minors a

14 (A) public entrance;

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

16 (C) hallway;

17 (2) the interior layout of the premises of an adult-oriented business
 18 must physically separate adult-oriented business entertainers from patrons during
 19 performances and ensure that any booth, stall, room, or partitioned portion of a room
 20 is open to view from a public room of the premises, except for private offices or other
 21 rooms that are not open to any person other than employees, or individual restrooms
 22 on the premises;

23 (3) an applicant shall provide satisfactory evidence that the owner of
 24 the real property in which the adult-oriented business is conducted consents to the
 25 operation of the adult-oriented business;

26 (4) an individual whose name and address is required to be provided
 27 with an application for a license under AS 08.90.040 may not have been convicted of
 28 any of the following offenses:

29 (A) prostitution or promotion of prostitution; unlawful
 30 exploitation of a minor; possession or distribution of child pornography;
 31 indecent exposure; sexual assault; sexual abuse of a minor; or any similar sex-

1 related offenses to those described above under the criminal or penal code of
 2 this state, other states, or other countries; tax evasion; underage employment;
 3 alcohol violations; illegal drugs; allowing a minor to enter and remain within
 4 premises where adult entertainment is offered; or any offense causing
 5 revocation of an adult-oriented business license; or

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

9 **Sec. 08.90.040. Application for license.** (a) An applicant for a license shall
 10 file with the department a written application on a form designated by the department,
 11 signed and sworn to by the applicant, giving the applicant's name and address. If the
 12 applicant is a corporation, the application shall be executed by the authorized officers
 13 of the corporation. If the applicant is a partnership, including a limited partnership,
 14 the application shall be executed by an authorized general partner. The application
 15 must include

16 (1) the license fee; and

17 (2) any other information required by the department.

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

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

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

30 **Sec. 08.90.050. Notice of application for adult-oriented business license.**

31 (a) Before a new license is issued, the applicant shall post a copy of the application

1 for 10 days at the location of the proposed licensed premises and at any additional
 2 locations designated by the department. The department may require the applicant to
 3 provide

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

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

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

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

13 (A) the community council; and

14 (B) any nonprofit community organization that has requested
 15 notification in writing; and

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

18 (A) the community council; and

19 (B) any nonprofit community organization that has requested
 20 notification in writing.

21 **Sec. 08.90.060. Fees.** The department shall set fees under AS 08.01.065 for
 22 the application for or renewal of a license to operate an adult-oriented business.

23 **Sec. 08.90.070. Grounds for denial, suspension, or revocation of license.**
 24 The department may deny, suspend, or revoke the license of a person who

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

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

29 or

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

1 **Sec. 08.90.080. Person and location for adult-oriented business license.** (a)

2 Each license to operate an adult-oriented business shall be issued to a specific
3 individual or individuals, to a partnership, including a limited partnership, to a limited
4 liability organization, or to a corporation. If the license is issued to a corporation or a
5 limited liability organization, the registered agent of the corporation or limited liability
6 organization is required to be an individual resident of the state.

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

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

13 (d) A licensee shall report to the department

14 (1) permanent closing of a licensed premises; and

15 (2) other matters and occurrences the department may require by
16 regulation.

17 **Article 2. Business Operations.**

18 **Sec. 08.90.200. Entertainers employed by business.** (a) A licensee of an
19 adult-oriented business may not with criminal negligence allow a person under 21
20 years of age to be employed as an adult-oriented business entertainer in the licensee's
21 premises. In this section, "criminal negligence" has the meaning given in
22 AS 11.81.900.

23 (b) The department shall develop and provide adult-oriented businesses with
24 written material to be made available to all employees who are adult-oriented business
25 entertainers and to be prominently displayed in two locations within the premises
26 approved by the department. This written material must explain the wage and hour
27 issues relevant to adult-oriented business entertainers, including information about
28 independent contractors and employees, the minimum wage, and allowable deductions
29 from wages by an employer.

30 (c) A licensee may not employ an adult-oriented entertainer who has been
31 convicted of any of the following offenses:

- 1 (1) prostitution or promotion of prostitution;
 2 (2) unlawful exploitation of a minor;
 3 (3) possession or distribution of child pornography;
 4 (4) indecent exposure;
 5 (5) sexual assault;
 6 (6) sexual abuse of a minor;
 7 (7) any sex-related offense that is similar to those described in (1) - (6)
 8 of this subsection under the criminal or penal code of this state, other states, or other
 9 countries; or
 10 (8) possession, distribution, or sale of illegal drugs.

11 (d) The licensee shall maintain on the premises a written application form
 12 signed by each person employed at the licensed premises as an adult-oriented business
 13 entertainer evidencing that the adult-oriented business entertainer states that the person
 14 has never been convicted of any of the offenses listed in (c) of this section.

15 **Sec. 08.90.210. Business hours.** A person who is licensed to operate an
 16 adult-oriented business may not allow patrons to be present on the licensed premises
 17 between the hours of 5:00 a.m. and 8:00 a.m. each day. In addition, for adult-oriented
 18 businesses located within a municipality, the restriction against allowing patrons on
 19 the premises must include any additional hours set by a municipality for the closure of
 20 licensed premises providing entertainment under AS 04.

21 **Sec. 08.90.220. Access of persons under 21 years of age to licensed**
 22 **premises.** A licensee or an agent or employee of a licensee of an adult-oriented
 23 business may not with criminal negligence allow a person under 21 years of age to
 24 enter and remain within licensed premises. In this section, "criminal negligence" has
 25 the meaning given in AS 11.81.900.

26 **Sec. 08.90.230. Proof of age.** (a) If an adult-oriented business licensee or an
 27 agent or employee of the adult-oriented business licensee questions or has reason to
 28 question whether a person entering licensed premises has attained the age of 21 years,
 29 the licensee, agent, or employee shall require the person to furnish proof of age
 30 acceptable under (b) of this section in a form determined by the department. If the
 31 person questioned does not furnish proof of age acceptable under (b) of this section, or

1 if a licensee, agent, or employee questions or has reason to question the validity of the
 2 proof of age furnished, the licensee, employee, or agent shall require the person to sign
 3 a statement that the person is 21 years of age or older. This statement shall be made
 4 on a form prepared by and furnished to the licensee by the department.

5 (b) A valid driver's license or a valid identification card is acceptable as proof
 6 of age when used for identification in securing entry to and remaining on the premises
 7 of an adult-oriented business if the license or identification card is made of or encased
 8 in plastic and contains a photograph of the licensee or card holder and a statement of
 9 age or date of birth.

10 (c) A licensee or an agent or employee of the licensee may not be charged for
 11 a violation of AS 08.90.220 if a signed statement as provided in (a) of this section is
 12 secured in good faith, or if a valid driver's license or identification card is presented
 13 indicating that the owner and possessor of the presented driver's license or
 14 identification card is 21 years of age or older.

15 **Sec. 08.90.240. Responsibility of licensees, agents, and employees.** An
 16 adult-oriented business licensee has a duty to exercise that degree of care that a
 17 reasonable person would observe to ensure that a business under the person's control is
 18 lawfully conducted. This duty of the licensee includes ensuring the compliance

19 (1) by agents or employees with this chapter and regulations adopted
 20 under this chapter, including acting with reasonable diligence to determine that agents
 21 or employees are advised of the provisions of this chapter and the regulations adopted
 22 under this chapter, either by securing the agent's or employee's written
 23 acknowledgment of posted instructions or otherwise; and

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

26 **Article 3. Miscellaneous Provisions.**

27 **Sec. 08.90.300. Disciplinary sanctions.** (a) If, after a hearing, the
 28 department finds that a licensee has committed an act set out in AS 08.90.070, the
 29 department may

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

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

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

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

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

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

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

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

29 **Sec. 08.90.330. Accessibility of license and licensed premises to inspection.**

30 (a) A licensee who operates an adult-oriented business shall, upon request, make the
31 licensed premises available for inspection by officers charged with the enforcement of

1 this chapter, including employees of the department, during all regular business hours.

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

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

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

10 **Sec. 08.90.350. Municipal regulation.** A municipality may place
11 prohibitions or restrictions on adult-oriented entertainment that are in addition to or
12 stricter than those in this chapter.

13 **Article 4. General Provisions.**

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

15 (1) "adult-oriented business" means a person who regularly offers
16 adult-oriented entertainment at a premises for compensation;

17 (2) "adult-oriented business entertainer" means an employee of an
18 adult-oriented business who performs adult-oriented entertainment;

19 (3) "adult-oriented business licensee" or "licensee" means a person
20 licensed under AS 08.90.020 to operate an adult-oriented business;

21 (4) "adult-oriented entertainment" means entertainment by nude or
22 semi-nude individuals who personally appear before an audience, and the primary
23 purpose of the entertainment is for the sexual interests or titillation of the audience;

24 (5) "department" means the Department of Community and Economic
25 Development;

26 (6) "employee" means a person who performs any service on the
27 premises of an adult-oriented business on a full-time, part-time, contract, or
28 independent basis, whether or not the person is an employee, independent contractor,
29 agent, or otherwise and whether or not the said person is paid a salary, wage, or other
30 compensation by the operator of the adult-oriented business; "employee" does not
31 include a person exclusively on the premises for repair or maintenance of the premises

1 or equipment on the premises, or for the delivery of goods to the premises, nor does
2 "employee" include a person exclusively on the premises as a patron or customer;

3 (7) "license" means a license to operate an adult-oriented business
4 issued under AS 08.90.020;

5 (8) "nude" or "semi-nude" means the appearance of an anus, anal area,
6 public area, male genitals, female genitals, or vulva, either bare or with less than a
7 fully opaque covering; or a female breast with less than a fully opaque covering of any
8 part of the areola;

9 (8) "premises" means the real property on which the adult-oriented
10 business is located, including the adult-oriented business, the grounds, private
11 walkways, parking lots, and parking garages of the adult-oriented business under the
12 ownership, control, or supervision of the licensee, as described in the application for a
13 license to operate an adult-oriented business under this chapter.

14 * **Sec. 4.** AS 08.90.200 is amended by adding a new subsection to read:

15 (e) An adult-oriented business shall require each adult-oriented business
16 entertainer who is under 21 years of age to demonstrate, within the first 80 hours of
17 the entertainer's employment, that the entertainer has been informed of certain
18 information specified by the department. The information must cover the following
19 topics: educational opportunities within the state, financial assistance programs for
20 education, and vocational education. Attendance at a department-approved counseling
21 session of not more than one hour fulfills this information requirement. The
22 department may allow a certificate of counseling signed by a school official to be
23 substituted for the counseling session. If the adult-oriented business entertainer is
24 charged for the cost of the required counseling session, the licensee shall promptly
25 reimburse the entertainer.

26 * **Sec. 5.** AS 08.90.220 is amended to read:

27 **Sec. 08.90.220. Access of persons under 18 [21] years of age to licensed**
28 **premises.** A licensee or an agent or employee of a licensee of an adult-oriented
29 business may not with criminal negligence allow a person under 18 [21] years of age
30 to enter and remain within licensed premises. In this section, "criminal negligence"
31 has the meaning given in AS 11.81.900.

1 * **Sec. 6.** AS 08.90.230(a) is amended to read:

2 (a) If an adult-oriented business licensee or an agent or employee of the adult-
 3 oriented business licensee questions or has reason to question whether a person
 4 entering licensed premises has attained the age of **18** [21] years, the licensee, agent, or
 5 employee shall require the person to furnish proof of age acceptable under (b) of this
 6 section in a form determined by the department. If the person questioned does not
 7 furnish proof of age acceptable under (b) of this section, or if a licensee, agent, or
 8 employee questions or has reason to question the validity of the proof of age
 9 furnished, the licensee, employee, or agent shall require the person to sign a statement
 10 that the person is **18** [21] years of age or older. This statement shall be made on a
 11 form prepared by and furnished to the licensee by the department.

12 * **Sec. 7.** AS 08.90.230(c) is amended to read:

13 (c) A licensee or an agent or employee of the licensee may not be charged for
 14 a violation of AS 08.90.220 if a signed statement as provided in (a) of this section is
 15 secured in good faith, or if a valid driver's license or identification card is presented
 16 indicating that the owner and possessor of the presented driver's license or
 17 identification card is **18** [21] years of age or older.

18 * **Sec. 8.** AS 08.90.200(a) is repealed.

19 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

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

22 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 CONTINGENT EFFECT. (a) Sections 4 and 8 of this Act take effect only if a court
 25 of competent jurisdiction whose decisions are binding in this state enters a final judgment on
 26 the merits that AS 08.90.200(a), added by sec. 3 of this Act, violates the Constitution of the
 27 United States or the Constitution of the State of Alaska.

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

30 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 CONTINGENT EFFECT. (a) Sections 5 - 7 of this Act take effect only if a court of
2 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
3 merits that AS 08.90.220, added by sec. 3 of this Act, violates the Constitution of the United
4 States or the Constitution of the State of Alaska.

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

7 * **Sec. 12.** Sections 4 and 8 of this Act take effect on the date of the attorney general's
8 notification to the lieutenant governor and to the revisor of statutes under sec. 10(b) of this
9 Act that a court has entered final judgment that AS 08.90.200, added by sec. 3 of this Act,
10 violates the Constitution of the United States or the Constitution of the State of Alaska and
11 that the time for an appeal of that judgment has expired or, if an appeal was taken, a final
12 order on the appeal has been entered that AS 08.90.200(a) violates the Constitution of the
13 United States or the Constitution of the State of Alaska.

14 * **Sec. 13.** Sections 5 - 7 of this Act take effect on the date of the attorney general's
15 notification to the lieutenant governor and to the revisor of statutes under sec. 11(b) of this
16 Act that a court has entered final judgment that AS 08.90.220, added by sec. 3 of this Act,
17 violates the Constitution of the United States or the Constitution of the State of Alaska and
18 that the time for an appeal of that judgment has expired or, if an appeal was taken, a final
19 order on the appeal has been entered that AS 08.90.220 violates the Constitution of the United
20 States or the Constitution of the State of Alaska.

21 * **Sec. 14.** Sections 1 - 3, and 9 - 11 of this Act take effect July 1, 2005.