

**CS FOR HOUSE BILL NO. 367(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 4/19/04**

**Referred: Rules**

**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) regulation of adult-oriented entertainment businesses is necessary to  
 5 ensure that the recognized negative secondary effects, including accosting and harassment of  
 6 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 (5) sexual abuse of a minor;

2 (6) any sex-related offense that is similar to those described in (1) - (5)  
3 of this subsection under the criminal or penal code of this state, other states, or other  
4 countries; or

5 (7) distribution or sale of illegal drugs.

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

10 (d) An adult-oriented business shall require each adult-oriented business  
11 entertainer to demonstrate, within the first 80 hours after the entertainer's employment,  
12 that the entertainer has been informed of certain information specified by the  
13 department. The information must cover the following topics: (1) wage and hour  
14 issues relevant to adult-oriented business entertainers, (2) educational opportunities  
15 within the state, (3) financial assistance programs for education, and (4) vocational  
16 education. Attendance at a department-approved counseling session of not more than  
17 one hour fulfills this information requirement. The department may allow a certificate  
18 of counseling signed by a school official to be substituted for the counseling session.  
19 If the adult-oriented business entertainer is charged for the cost of the required  
20 counseling session, the licensee shall promptly reimburse the entertainer.

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

27 **Sec. 08.90.220. Access of persons under 18 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 years of age to  
30 enter and remain within licensed premises. In this section, "criminal negligence" has  
31 the meaning given in AS 11.81.900.

1           **Sec. 08.90.230. Proof of age.** (a) If an adult-oriented business licensee or an  
 2 agent or employee of the adult-oriented business licensee questions or has reason to  
 3 question whether a person entering licensed premises has attained the age of 18 years,  
 4 the licensee, agent, or employee shall require the person to furnish proof of age  
 5 acceptable under (b) of this section in a form determined by the department. If the  
 6 person questioned does not furnish proof of age acceptable under (b) of this section, or  
 7 if a licensee, agent, or employee questions or has reason to question the validity of the  
 8 proof of age furnished, the licensee, employee, or agent shall require the person to sign  
 9 a statement that the person is 18 years of age or older. This statement shall be made  
 10 on a form prepared by and furnished to the licensee by the department.

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

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

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

25           (1) by agents or employees with this chapter and regulations adopted  
 26 under this chapter, including acting with reasonable diligence to determine that agents  
 27 or employees are advised of the provisions of this chapter and the regulations adopted  
 28 under this chapter, either by securing the agent's or employee's written  
 29 acknowledgment of posted instructions or otherwise; and

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

1 **Article 3. Miscellaneous Provisions.**

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

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

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

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

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

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

20 **Sec. 08.90.310. Violations.** (a) A person who knowingly violates  
21 AS 08.90.220 is guilty of a misdemeanor and, upon conviction, is punishable by a fine  
22 of not more than \$5,000, or by imprisonment for not more than one year, or by both.  
23 Each day of illegal practice is a separate offense.

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

30 **Sec. 08.90.320. Limitation of liability.** An action may not be brought against  
31 a person for damages resulting from a report made in good faith to a public agency by

1 the person or participation by the person in an investigation by a public agency or an  
 2 administrative or judicial proceeding relating to the report if the report relates to  
 3 activity requiring a license under this chapter.

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

5 (a) A licensee who operates an adult-oriented business shall, upon request, make the  
 6 licensed premises available for inspection by officers charged with the enforcement of  
 7 this chapter, including employees of the department, during all regular business hours.

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

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

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

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

19 **Article 4. General Provisions.**

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

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

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

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

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

30 (5) "department" means the Department of Community and Economic  
 31 Development;

1                   (6) "employee" means a person who performs any service on the  
2 premises of an adult-oriented business on a full-time, part-time, contract, or  
3 independent basis, whether or not the person is an employee, independent contractor,  
4 agent, or otherwise and whether or not the said person is paid a salary, wage, or other  
5 compensation by the operator of the adult-oriented business; "employee" does not  
6 include a person exclusively on the premises for repair or maintenance of the premises  
7 or equipment on the premises, or for the delivery of goods to the premises, nor does  
8 "employee" include a person exclusively on the premises as a patron or customer;

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

11                   (8) "nude" or "semi-nude" means the appearance of an anus, anal area,  
12 pubic area, male genitals, female genitals, or vulva, either bare or with less than a fully  
13 opaque covering; or a female breast with less than a fully opaque covering of any part  
14 of the areola;

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

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

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

23       \* **Sec. 5.** This Act takes effect July 1, 2005.