

SENATE CS FOR CS FOR HOUSE BILL NO. 367(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/10/04

Referred: Finance

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

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 (5) employers of adult-oriented business entertainers may not charge
 10 an employee or deduct from an employee's wages any fees or charges for anything
 11 needed by the employee to perform the job of adult-oriented business entertainer,
 12 including the use of the stage or props;

13 (6) sexual contact between adult-oriented business entertainers and
 14 patrons is prohibited; in this paragraph, "sexual contact" means the touching of
 15 genitals, anus, or female breast or the intrusion of any object into the genital or anal
 16 opening regardless of whether the act was consensual.

17 **Sec. 08.90.040. Application for license.** (a) An applicant for a license shall
 18 file with the department a written application on a form designated by the department,
 19 signed and sworn to by the applicant, giving the applicant's name and address. If the
 20 applicant is a corporation, the application shall be executed by the authorized officers
 21 of the corporation. If the applicant is a partnership, including a limited partnership,
 22 the application shall be executed by an authorized general partner. The application
 23 must include

24 (1) the license fee; and

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

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

30 (c) A partnership, including a limited partnership, that applies for a license
 31 shall provide information required by the department including the names and

1 addresses of all general partners and all partners with an interest of 10 percent or
2 more.

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

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

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

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

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

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

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

21 (A) the community council; and

22 (B) any nonprofit community organization that has requested
23 notification in writing; and

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

26 (A) the community council; and

27 (B) any nonprofit community organization that has requested
28 notification in writing.

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

31 **Sec. 08.90.070. Grounds for denial, suspension, or revocation of license.**

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

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

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

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

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

10 Each license to operate an adult-oriented business shall be issued to a specific
11 individual or individuals, to a partnership, including a limited partnership, to a limited
12 liability organization, or to a corporation. If the license is issued to a corporation or a
13 limited 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 licensee shall report to the department

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

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

25 **Article 2. Business Operations.**

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

31 (b) The department shall develop and provide adult-oriented businesses with

1 written material to be made available to all employees who are adult-oriented business
 2 entertainers and to be prominently displayed in two locations within the premises
 3 approved by the department. This written material must explain the wage and hour
 4 issues relevant to adult-oriented business entertainers, including information about
 5 independent contractors and employees, the minimum wage, and allowable deductions
 6 from wages by an employer.

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

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

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

22 (e) An adult-oriented business shall require each adult-oriented business
 23 entertainer to demonstrate, within the first 80 hours after the entertainer's employment,
 24 that the entertainer has been informed of certain information specified by the
 25 department. The information must cover the following topics: (1) wage and hour
 26 issues relevant to adult-oriented business entertainers, (2) educational opportunities
 27 within the state, (3) financial assistance programs for education, and (4) vocational
 28 education. Attendance at a department-approved counseling session of not more than
 29 one hour fulfills this information requirement. The department may allow a certificate
 30 of counseling signed by a school official to be substituted for the counseling session.
 31 If the adult-oriented business entertainer is charged for the cost of the required

1 counseling session, the licensee shall promptly reimburse the entertainer.

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

8 **Sec. 08.90.220. Access of persons under 19 years of age to licensed**
9 **premises.** A licensee or an agent or employee of a licensee of an adult-oriented
10 business may not with criminal negligence allow a person under 19 years of age to
11 enter and remain within licensed premises. In this section, "criminal negligence" has
12 the meaning given in AS 11.81.900.

13 **Sec. 08.90.230. Proof of age.** (a) If an adult-oriented business licensee or an
14 agent or employee of the adult-oriented business licensee questions or has reason to
15 question whether a person entering licensed premises has attained the age of 19 years,
16 the licensee, agent, or employee shall require the person to furnish proof of age
17 acceptable under (b) of this section in a form determined by the department. If the
18 person questioned does not furnish proof of age acceptable under (b) of this section, or
19 if a licensee, agent, or employee questions or has reason to question the validity of the
20 proof of age furnished, the licensee, employee, or agent shall require the person to sign
21 a statement that the person is 19 years of age or older. This statement shall be made
22 on a form prepared by and furnished to the licensee by the department.

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

28 (c) A licensee or an agent or employee of the licensee may not be charged for
29 a violation of AS 08.90.220 if a signed statement as provided in (a) of this section is
30 secured in good faith, or if a valid driver's license or identification card is presented
31 indicating that the owner and possessor of the presented driver's license or

1 identification card is 19 years of age or older.

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

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

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

13 **Article 3. Miscellaneous Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Article 4. General Provisions.**

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

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

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

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

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

11 (5) "department" means the Department of Community and Economic
12 Development;

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

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

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

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

1 * **Sec. 4.** AS 08.90.220 is amended to read:

2 **Sec. 08.90.220. Access of persons under 18 [19] years of age to licensed**
 3 **premises.** A licensee or an agent or employee of a licensee of an adult-oriented
 4 business may not with criminal negligence allow a person under 18 [19] years of age
 5 to enter and remain within licensed premises. In this section, "criminal negligence"
 6 has the meaning given in AS 11.81.900.

7 * **Sec. 5.** AS 08.90.230(a) is amended to read:

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

18 * **Sec. 6.** AS 08.90.230(c) is amended to read:

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

24 * **Sec. 7.** AS 08.90.200(a) is repealed.

25 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 26 read:

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

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

30 DEFINITION FOR SEXUAL CONTACT IN SECTION 3 OF THIS ACT. The
 31 definition of "sexual contact" set out in AS 08.90.030(6) conforms to the definition of "sexual

1 contact" as it appears in 13 AAC 104.180(a)(3) adopted by the Department of Public Safety,
2 Alcoholic Beverage Control Board, as that paragraph read on the effective date of this section.

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

5 CONTINGENT EFFECT. (a) Section 7 of this Act takes effect only if a court of
6 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
7 merits that AS 08.90.200(a), added by sec. 3 of this Act, violates the Constitution of the
8 United States or the Constitution of the State of Alaska and that the time for an appeal of that
9 judgment has expired or, if an appeal was taken, a final order on the appeal has been entered
10 that AS 08.90.200(a) violates the Constitution of the United States or the Constitution of the
11 State of Alaska.

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

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

16 CONTINGENT EFFECT. (a) Sections 4 - 6 of this Act take effect only if a court of
17 competent jurisdiction whose decisions are binding in this state enters a final judgment on the
18 merits that AS 08.90.220, added by sec. 3 of this Act, violates the Constitution of the United
19 States or the Constitution of the State of Alaska and that the time for an appeal of that
20 judgment has expired or, if an appeal was taken, a final order on the appeal has been entered
21 that AS 08.90.220(a) violates the Constitution of the United States or the Constitution of the
22 State of Alaska.

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

25 * **Sec. 12.** Section 7 of this Act takes effect on the date of the attorney general's notification
26 to the lieutenant governor and to the revisor of statutes under sec. 10(b) of this Act that a court
27 whose decisions are binding in this state has entered a final judgment on the merits that
28 AS 08.90.200(a), added by sec. 3 of this Act, violates the Constitution of the United States or
29 the Constitution of the State of Alaska and that the time for an appeal of that judgment has
30 expired or, if an appeal was taken, a final order on the appeal has been entered that
31 AS 08.90.200(a) violates the Constitution of the United States or the Constitution of the State

1 of Alaska.

2 * **Sec. 13.** Sections 4 - 6 of this Act take effect on the date of the attorney general's
3 notification to the lieutenant governor and to the revisor of statutes under sec. 11(b) of this
4 Act that a court whose decisions are binding in this state has entered a final judgment on the
5 merits that AS 08.90.220, added by sec. 3 of this Act, violates the Constitution of the United
6 States or the Constitution of the State of Alaska and that the time for an appeal of that
7 judgment has expired or, if an appeal was taken, a final order on the appeal has been entered
8 that AS 08.90.220 violates the Constitution of the United States or the Constitution of the
9 State of Alaska.

10 * **Sec. 14.** Sections 1 - 3 and 8 - 11 of this Act take effect July 1, 2005.