
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-5025.1/92

ATTY/TYPIST: KT:sj

BRIEF TITLE:

2 **ESSB 5644** - H COMM AMD
3 By Committee on Judiciary

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. It is the purpose of this chapter to
8 regulate certain adult entertainment businesses to promote the health,
9 safety, and welfare of the citizens of the state of Washington. The
10 legislature finds that these businesses, when unregulated, promote
11 illegal activities including obscenity, pornography, assaults, drug
12 offenses, sexual offenses, and prostitution."

13 "NEW SECTION. Sec. 2. Unless the context clearly requires
14 otherwise, the definitions in this section apply throughout this
15 chapter.

16 (1) "Adult entertainment business" means a nightclub, bar,
17 restaurant, theater, concert hall, auditorium, or similar commercial
18 establishment that regularly features live performances by nude or
19 seminude persons.

20 (2) "Applicant" means a person or persons applying for a license
21 under this chapter.

22 (3) "Business license" means a license issued by the department
23 under this chapter to an adult entertainment business.

24 (4) "Department" means the department of licensing.

25 (5) "Director" means the director of licensing.

26 (6) "Licensee" means a person or persons in whose name a license
27 has been issued under this chapter.

1 (7) "Nude" means a state of dress that exposes a person's bare
2 buttock, anus, genital, or breast, or a state of dress which fails to
3 cover opaquely a person's buttock, anus, genital, or areola of the
4 breast.

5 (8) "Own or operate" means a person has a substantial interest in
6 an adult entertainment business.

7 (9) "Performer's license" means a license issued by the department
8 under this chapter to a performer in an adult entertainment business.

9 (10) "Seminude" means a state of dress other than nude that, with
10 respect to a person's torso, opaquely covers only the buttocks, anus,
11 genitals, and areolae of the breasts, as well as portions of the body
12 covered by supporting straps or devices.

13 (11) "Substantial interest" means the interest possessed by a
14 person when:

15 (a) With respect to a sole proprietorship, the person, or his or
16 her marital community, owns, operates, manages, or conducts, directly
17 or indirectly, the business, or any part of it; or

18 (b) With respect to a partnership, the person or his or her marital
19 community, shares in any of the profits, or potential profits, of the
20 business; or

21 (c) With respect to a corporation, the person or his or her spouse,
22 is an officer, or director, or the person or his or her marital
23 community is a holder, directly or beneficially, of ten percent or more
24 of any class of stock of the business; or

25 (d) With respect to an organization not covered in (a), (b), or (c)
26 of this subsection, the person or his or her spouse, is an officer or
27 manages the business affairs, or the person or his or her marital
28 community is owner of or otherwise controls ten percent or more of the
29 assets of the business; or

1 (e) The person, or his or her marital community, furnishes ten
2 percent or more of the capital, whether in cash, goods, or services,
3 for the operation of the business during any calendar year."

4 "NEW SECTION. Sec. 3. (1) It is a gross misdemeanor for a
5 person to own, operate, or manage, or act as the agent for one who
6 owns, operates, or manages, an adult entertainment business in the
7 state of Washington unless the person has obtained a business license
8 pursuant to this chapter. Subsequent violations of this subsection
9 within a two-year period constitute a class C felony.

10 (2) It is a gross misdemeanor for a performer to appear nude or
11 seminude in an adult entertainment business unless the performer has
12 obtained a performer's license pursuant to this chapter."

13 "NEW SECTION. Sec. 4. (1) Each owner, operator, manager, or
14 agent of a business must obtain and maintain a business license.

15 (2) An application for a business license must be made on a form
16 provided by the department. The applicant shall provide: (a) The
17 name, address, phone number, and date of birth of the applicant; (b)
18 two recent passport-size color photographs of the applicant; (c) the
19 applicant's principal occupation; (d) the nature of the proposed
20 business; (e) the trade name of the proposed business; (f) location of
21 the proposed business; (g) a list of all prior business license
22 numbers; (h) a record of all prior criminal convictions for any offense
23 listed under section 21(1) of this act; and (i) such other information
24 as the department may require by rule.

25 (3) The department shall require the applicant to submit to
26 fingerprinting to assist the Washington state patrol in conducting a
27 background check under section 29 of this act.

1 (4) At the time of applying, the applicant shall post notice of the
2 application at the proposed business location in a form and manner as
3 required by the department by rule."

4 "NEW SECTION. Sec. 5. (1) The department shall grant or refuse
5 a business license in accordance with this chapter.

6 (2) Every business license shall be issued in the name of the
7 applicant or applicants, and the holder of a license shall not allow
8 any other person to use it.

9 (3) No business license may be issued to:

10 (a) An individual, partnership, or corporation, unless qualified to
11 obtain a business license, as provided in this chapter;

12 (b) An applicant whose business is conducted by a manager or agent,
13 unless the manager or agent possesses the same qualifications as are
14 required of the business licensee;

15 (c) A corporation, unless it was created under the laws of the
16 state of Washington or holds a certificate of authority to transact
17 business in the state of Washington;

18 (d) An applicant who is under eighteen years of age;

19 (e) An applicant who knowingly has failed to provide information
20 reasonably necessary for issuance of the business license or who with
21 an intent to misrepresent has falsely answered a question or request
22 for information on the application form; or

23 (f) An applicant who has proposed the location of the business
24 within a zone where such use is prohibited by state or local authority.

25 (4) Upon receipt of an application for a business license, the
26 department shall give notice of the application to the chief executive
27 officer of the incorporated city or town, if the application is for a
28 business license within an incorporated city or town, or to the county
29 legislative authority, if the application is for a business license

1 outside the boundaries of incorporated cities or towns, or to all the
2 appropriate executive officers in the case of a regional adult
3 entertainment business plan. Upon the granting of a business license
4 under this chapter the department shall send a duplicate of the license
5 or written notification to the chief executive officer of the
6 incorporated city or town in which the license is granted, or to the
7 county legislative authority if the license is granted outside the
8 boundaries of incorporated cities or towns, or to all chief executive
9 officers of impacted cities, towns, or counties participating in a
10 regional adult entertainment business plan.

11 (5)(a) Except as set forth in (b) of this subsection, the
12 department shall not issue an initial business license covering any
13 premises, if at the time the initial license is to be issued the
14 premises are within a buffer zone of one thousand feet surrounding any
15 residential zone, single or multifamily dwelling, church, park,
16 playground, day care center, or elementary or secondary school. The
17 one thousand feet shall be measured on a straight line between the
18 closest points of the property on which the premises are located and
19 the property of the residential zone, dwelling, church, park,
20 playground, day care center, or school. For the purpose of this
21 section, church means a building erected for and used exclusively for
22 religious worship and schooling or other activity in connection with
23 the worship and schooling. The department may rely on the measurements
24 of the relevant local jurisdictions in determining the boundaries of a
25 buffer zone.

26 (b) The legislative authority of a city, town, or county:

27 (i) Shall establish a buffer zone less than that established in (a)
28 of this subsection if an applicant submits adequate documentation
29 supporting a variance from the buffer zone and the legislative
30 authority finds (A) that the adverse secondary effects of adult

1 entertainment businesses on public health, safety, or welfare would not
2 be greater as a result of the smaller buffer zone or (B) that failure
3 to establish a smaller buffer zone will effectively prohibit any adult
4 entertainment business in the city, town, or county and there is no
5 regional agreement with neighboring cities, towns, or counties that
6 provides adequate opportunities for such businesses; or

7 (ii) May establish a buffer zone greater than that established in
8 (a) of this subsection if the legislative authority finds (A) that the
9 adverse secondary effects of adult entertainment businesses on public
10 health, safety, or welfare would not be reasonably and effectively
11 mitigated without the larger buffer zone and (B) that establishing a
12 larger buffer zone will not effectively prohibit any adult
13 entertainment business in the city, town, or county, or that there is
14 a regional agreement with neighboring cities, towns, or counties that
15 provides adequate opportunities for such businesses.

16 (c) If the location requirements established pursuant to this
17 chapter effectively preclude location of adult entertainment businesses
18 within a city, town, or county, such city, town, or county shall join
19 with neighboring cities, towns, or counties in a regional adult
20 entertainment business location plan in order to provide reasonable
21 opportunity for location of adult entertainment businesses in the
22 regional area."

23 "NEW SECTION. Sec. 6. (1) The department may, subject to the
24 provisions of this chapter and as provided by rule, suspend or cancel
25 a business license; and all rights of the licensee under this chapter
26 shall be suspended or terminated, as the case may be.

27 (2) Upon receipt of notice of the suspension or cancellation of a
28 business license, the licensee shall forthwith deliver the license to
29 the department. Where the business license has been suspended only,

1 the department shall return the license to the licensee at the
2 expiration or termination of the period of suspension."

3 "NEW SECTION. Sec. 7. (1) Every business license issued under
4 this chapter is subject to all conditions and restrictions imposed by
5 this chapter. All conditions and restrictions imposed by the
6 department in the issuance of an individual business license shall be
7 listed on the face of the individual license along with the trade name,
8 address, and expiration date.

9 (2) Every business licensee shall post and keep posted its license
10 in a conspicuous place on the premises."

11 "NEW SECTION. Sec. 8. The department shall not issue a
12 business license to a transferee until the transferee has applied for
13 and received a business license under this chapter."

14 "NEW SECTION. Sec. 9. (1)(a) At the time of the original
15 issuance of a business license, the department shall prorate the
16 license fee charged to the new licensee according to the number of
17 calendar quarters, or portion thereof, remaining until the first
18 renewal of that license is required.

19 (b) Unless canceled sooner, every business license issued by the
20 department shall expire at midnight of the thirtieth day of June of the
21 fiscal year for which it was issued. However, if the department deems
22 it feasible and desirable to do so, it may establish, by rule pursuant
23 to chapter 34.05 RCW, a system for staggering the annual renewal dates
24 for business licenses. If such a system of staggered annual renewal
25 dates is established by the department, the business license fees
26 provided by this chapter shall be appropriately prorated during the
27 first year that the system is in effect.

1 (2) The adult entertainment business license fee shall be
2 established under RCW 43.24.086, but shall be at least seven hundred
3 fifty dollars per annum, and shall be paid at the time of application.
4 One-half of the fee shall be refunded if the application is withdrawn
5 prior to a denial of the license by the department."

6 "NEW SECTION. Sec. 10. (1) A person who is named on a business
7 license may not assign or transfer, in whole or in part, his or her
8 interest in the license, except that a transfer may be made to the
9 surviving spouse of a deceased licensee if the transferor and
10 transferee were maintaining a marital community and the license was
11 issued in the name of the deceased licensee. The transfer permitted
12 under this subsection must be reported to the department within thirty
13 days of the transfer. The department shall charge a fee established
14 under RCW 43.24.086 of at least seventy-five dollars for the processing
15 of a transfer.

16 (2) At the expiration of the transferred license, the surviving
17 spouse must meet the requirements of this chapter."

18 "NEW SECTION. Sec. 11. The department in suspending a business
19 license may further provide in the order of suspension that such
20 suspension shall be vacated upon payment to the department by the
21 licensee of a monetary penalty in an amount fixed by the department but
22 not to exceed ten thousand dollars."

23 "NEW SECTION. Sec. 12. (1)(a) An application for a performer's
24 license must be made on a form provided by the department. The
25 performer shall provide the following: (i) The performer's name,
26 including all aliases, address, phone number, and date of birth; (ii)
27 two passport-size color photographs of the performer; (iii) principal

1 occupation; (iv) the name and address of any business, if known, at
2 which the performer will perform; (v) a list of all prior performer's
3 license numbers; (vi) a record of all prior criminal convictions for
4 any offense listed under section 21(1) of this act; and (vii) such
5 other information as the department may require by rule.

6 (b) The department shall require the applicant to submit to
7 fingerprinting to assist the Washington state patrol in conducting a
8 background check under section 29 of this act.

9 (c) Identifying information provided by an applicant under this
10 subsection is exempt from public disclosure, and the department shall
11 not disclose such information except to the extent necessary to carry
12 out its responsibilities under this chapter, or to comply with a
13 request from another governmental entity, or to comply with a court
14 order.

15 (2) No performer's license may be issued to:

16 (a) A person who is under eighteen years of age;

17 (b) A person who knowingly has failed to provide information
18 reasonably necessary for issuance of the license or who with an intent
19 to misrepresent has falsely answered a question or request for
20 information on the application form.

21 (3) The performer's license fee shall be established under RCW
22 43.24.086, but shall be at least seventy-five dollars per annum and
23 shall be paid at the time of application. One-half of the fee shall be
24 refunded if the application is withdrawn prior to denial of the license
25 by the department.

26 (4) Every performer shall keep his or her performer's license on
27 the premises while performing."

28 "NEW SECTION. Sec. 13. Every business licensed under section 5
29 of this act shall file monthly reports with the department pursuant to

1 rule. The reports shall include the following: (1) The name, address,
2 date of birth, and the performer's license number for all performers
3 appearing nude or seminude during the month; and (2) such further
4 information as the department may require."

5 "NEW SECTION. Sec. 14. An action, order, or decision of the
6 department as to a denial of an application for the issuance or renewal
7 of a business or performer's license or as to a revocation, suspension,
8 or modification of a license is subject to the applicable provisions of
9 chapter 34.05 RCW.

10 (1) An opportunity for a hearing must be provided a licensee prior
11 to a revocation or modification of a business or performer's license
12 and, except as provided in subsection (3) of this section, prior to the
13 suspension of a license.

14 (2) No hearing shall be required until demanded by the applicant or
15 licensee.

16 (3) The department may summarily suspend a business or performer's
17 license for a period of up to thirty days without a prior hearing if it
18 finds that public health, safety, or welfare imperatively requires
19 emergency action, and incorporates a finding to that effect in its
20 order; and proceedings for revocation or other action must be promptly
21 instituted and determined."

22 "NEW SECTION. Sec. 15. No provision in this chapter limits the
23 authority of cities, towns, and counties from further regulating adult
24 entertainment businesses as to hours of operation, location of
25 premises, or manner of operation.

26 The provisions of this chapter relating to the licensing of any
27 adult entertainment business shall not be exclusive and any city, town,
28 or county within whose jurisdiction the adult entertainment business is

1 located may require any registrations or licenses, or charge any fee
2 for the same or similar purpose; and nothing in this chapter shall
3 limit or abridge the authority of any city, town, or county to levy and
4 collect a general and nondiscriminatory license fee levied upon all
5 businesses, or to levy a tax based upon the gross business receipts of
6 any firm within the city, town, or county."

7 "NEW SECTION. Sec. 16. The director has the following
8 authority:

9 (1) To adopt, amend, or repeal such rules as are deemed necessary
10 to carry out this chapter;

11 (2) To investigate all complaints or reports of conduct in
12 violation of this chapter and to hold hearings as provided in this
13 chapter;

14 (3) To issue subpoenas and administer oaths in connection with any
15 investigation, hearing, or proceeding held under this chapter;

16 (4) To take or cause depositions to be taken and use other
17 discovery procedures as needed in any investigation, hearing, or
18 proceeding held under this chapter;

19 (5) To compel attendance of witnesses at hearings;

20 (6) To take emergency action ordering summary suspension of a
21 business or performer's license, or restriction or limitation of the
22 licensee's practice pending further disciplinary action under section
23 21 of this act;

24 (7) To use the office of administrative hearings as authorized in
25 chapter 34.12 RCW to conduct hearings. However, the director or the
26 director's designee shall make the final decision in the hearing;

27 (8) To enter into contracts for professional services determined to
28 be necessary for adequate enforcement of this chapter;

1 (9) To grant or deny business or performer's license applications,
2 and to impose any sanction against a license applicant or license
3 holder provided by this chapter;

4 (10) To establish or increase in accordance with RCW 43.24.086
5 business and performer's license fees above the minimum set by this
6 chapter;

7 (11) To enter into an assurance of discontinuance in lieu of
8 issuing a statement of charges or conducting a hearing. The assurance
9 shall consist of a statement of the law in question and an agreement
10 not to violate the stated provision. The applicant or license holder
11 shall not be required to admit to any violation of the law, nor shall
12 the assurance be construed as such an admission. Violation of an
13 assurance under this subsection is grounds for disciplinary action;

14 (12) To designate individuals authorized to sign subpoenas and
15 statements of charges; and

16 (13) To employ such investigative, administrative, and clerical
17 staff as necessary for the enforcement of this chapter."

18 "NEW SECTION. Sec. 17. A person, including but not limited to
19 a customer, licensee, corporation, organization, or state or local
20 governmental agency, may submit a written complaint to the department
21 charging a business or performer's license holder or applicant with a
22 violation of this chapter. If the department determines that the
23 complaint merits investigation, or if the department has reason to
24 believe, without a formal complaint, that a license holder or applicant
25 may have violated this chapter, the department may investigate to
26 determine whether there has been a violation. A person who files a
27 complaint under this section in good faith is immune from suit in any
28 civil action related to the filing or contents of the complaint."

1 "NEW SECTION. **Sec. 18.** (1) If the department determines, upon
2 investigation pursuant to section 17 of this act, that there is reason
3 to believe a violation of this chapter has occurred, a statement of
4 charge or charges may be prepared and served upon the business or
5 performer's license holder or applicant. The statement of charge or
6 charges shall be accompanied by a notice that the license holder or
7 applicant may request a hearing to contest the charge or charges. The
8 license holder or applicant must file a request for hearing with the
9 department within twenty days after being served the statement of
10 charges. The failure to request a hearing constitutes a default, upon
11 which the director or the director's designee may enter an order
12 pursuant to RCW 34.05.440(1).

13 (2) If a hearing is requested, the time of the hearing shall be
14 scheduled but the hearing shall not be held earlier than thirty days
15 after service of the charges upon the license holder or applicant. A
16 notice of hearing shall be issued at least twenty days prior to the
17 hearing, specifying the time, date, and place of the hearing."

18 "NEW SECTION. **Sec. 19.** The procedures governing adjudicative
19 proceedings before agencies under chapter 34.05 RCW, the administrative
20 procedure act, govern all hearings requested under section 18 of this
21 act."

22 "NEW SECTION. **Sec. 20.** (1) Upon a finding that a business or
23 performer's license holder or applicant has engaged in conduct or
24 violated conditions that are grounds for denial of a license or for
25 disciplinary action under section 21 of this act, the director may
26 issue an order providing for one or any combination of the following:

27 (a) Revocation of the license;

28 (b) Suspension of the license for a fixed or indefinite term;

1 (c) Censure or reprimand;

2 (d) Compliance with conditions of probation for a designated period
3 of time;

4 (e) Payment of a fine for each violation of this chapter, not to
5 exceed one thousand dollars per violation, which shall be paid to the
6 department;

7 (f) Denial of the license request.

8 (2) Any of the actions under this section may be totally or partly
9 stayed by the director. All costs associated with compliance with
10 orders issued under this section are the obligation of the license
11 holder or applicant."

12 "NEW SECTION. Sec. 21. The following conduct, acts, or
13 conditions, constitute grounds for denial of a license or for
14 disciplinary action against any business or performer's license holder
15 or applicant under the jurisdiction of this chapter:

16 (1) With respect to a license holder or applicant, commission of an
17 act that constitutes an obscenity or pornography offense under chapter
18 9.68 RCW, a sexual exploitation of children offense under chapter 9.68A
19 RCW, an assault under chapter 9A.36 RCW, a sexual offense under chapter
20 9A.44 RCW, a prostitution or indecent exposure offense under chapter
21 9A.88 RCW, a drug offense under chapter 69.41, 69.50, 69.52, or 69.53
22 RCW, or a substantially similar ordinance adopted by the legislative
23 authority of a city, town, or county or other state or federal statute.
24 Conviction in a criminal proceeding is not a condition precedent to
25 disciplinary action under this section. Upon a conviction, however,
26 the judgment and sentence is conclusive evidence at an ensuing
27 disciplinary hearing of the guilt of the license holder or applicant of
28 the crime described in the indictment or information, and of the
29 person's violation of the statute on which it is based. For the

1 purposes of this section, conviction means an adjudication of guilt
2 pursuant to Title 10 RCW and includes a verdict of guilty, a finding of
3 guilty, and acceptance of a plea of guilty;

4 (2) Misrepresentation or concealment of a material fact in
5 obtaining a license or in license reinstatement;

6 (3) All advertising that is false, fraudulent, or misleading;

7 (4) Failure to cooperate with the department in the conduct of an
8 investigation by:

9 (a) Not furnishing any requested papers or documents;

10 (b) Not furnishing in writing a full and complete explanation
11 regarding the matter under investigation upon written request of the
12 department; or

13 (c) Not responding to subpoenas issued by the director, whether or
14 not the recipient of the subpoena is the subject of the investigation;

15 (5) Failure to comply with an order issued by the director or an
16 assurance of discontinuance entered into with the director;

17 (6) Aiding and abetting an unlicensed person to own or operate a
18 business or to perform when a license is required;

19 (7) Interference with an investigation or disciplinary proceeding
20 by willful misrepresentation of facts before the director or the
21 director's authorized representative, or by the use of threats or
22 harassment against any witness to prevent him or her from providing
23 evidence in a disciplinary proceeding or any other legal action;

24 (8) Violating this chapter or any rule adopted pursuant to this
25 chapter."

26 "NEW SECTION. Sec. 22. (1) The director shall investigate
27 complaints under this chapter concerning ownership or operation of a
28 business without a license or performing without a license. In the
29 investigation of the complaints, the director shall have the same

1 authority as provided the director under section 16 of this act. The
2 director shall issue a cease and desist order to a person after notice
3 and hearing and upon a determination that the person has owned or
4 operated a business without a license, or has performed without a
5 license, in violation of this chapter. If the director makes a written
6 finding of fact that the public interest will be irreparably harmed by
7 delay in issuing an order, the director may issue a temporary cease and
8 desist order before the notice and hearing. A cease and desist order
9 does not relieve the person so owning or operating a business or
10 performing without a license from criminal prosecution. The remedy of
11 a cease and desist order is in addition to any criminal liability. A
12 cease and desist order may be enforced through remedial sanctions under
13 chapter 7.21 RCW. Enforcement of the cease and desist order under
14 chapter 7.21 RCW may be used in addition to, or as an alternative to,
15 any provisions for enforcement of agency orders set out in chapter
16 34.05 RCW.

17 (2) The attorney general, a county prosecuting attorney, the
18 department, or any person may, in accordance with the law of this state
19 governing injunctions, maintain an action to enjoin any person owning
20 or operating a business, or performing, without a license required by
21 this chapter from continuing such ownership, operation, or performing
22 until the required license is secured. However, an injunction does not
23 relieve a person from criminal prosecution and the remedy by injunction
24 is in addition to any criminal liability."

25 "NEW SECTION. **Sec. 23.** A person or business that violates an
26 injunction issued under this chapter shall pay a civil penalty, as
27 determined by the court, of not more than twenty-five thousand dollars,
28 which shall be paid to the department. For the purpose of this
29 section, the superior court issuing any injunction shall retain

1 jurisdiction and the cause shall be continued, and in such cases the
2 attorney general acting in the name of the state may petition for the
3 recovery of civil penalties."

4 "NEW SECTION. Sec. 24. (1) The director or individuals acting
5 on the director's behalf are immune from suit in any civil or criminal
6 action based on any disciplinary proceedings or other official acts
7 performed in the course of their duties in the administration and
8 enforcement of this chapter.

9 (2) Legislative authorities or officials of cities, towns, and
10 counties are immune from suit in any civil or criminal action based on
11 any official acts performed in the course of their duties in the
12 administration or enforcement of this chapter.

13 In any challenge to location, distance, or conduct requirements
14 imposed by the legislative authority of a city, town, or county
15 pursuant to this chapter, the legislative authority may request that
16 the state assume some or all of the obligation to defend the
17 constitutionality of this chapter. The attorney general may grant or
18 deny the request. Nothing in this chapter creates any state liability
19 for actions of a city, town, or county."

20 "NEW SECTION. Sec. 25. Existing adult entertainment businesses
21 are exempt from any location restrictions imposed by this chapter until
22 January 1, 1995."

23 "NEW SECTION. Sec. 26. It is a gross misdemeanor for any person
24 to permit any person under the age of eighteen on the premises of any
25 adult entertainment business under his or her control."

1 "NEW SECTION. **Sec. 27.** It is a class C felony for any person to
2 employ or permit any person under the age of eighteen to appear nude or
3 seminude on the premises of any adult entertainment business under his
4 or her control."

5 "NEW SECTION. **Sec. 28.** Sections 1 through 27 of this act shall
6 constitute a new chapter in Title 18 RCW."

7 "NEW SECTION. **Sec. 29.** A new section is added to chapter 43.43
8 RCW to read as follows:

9 The department of licensing may request information from the
10 Washington state patrol criminal identification system regarding the
11 conviction of offenses listed under section 21(1) of this act for any
12 applicant or for a license holder who is the subject of an
13 investigation under section 17 of this act."

14 "**Sec. 30.** RCW 7.48A.040 and 1985 c 235 s 1 are each amended to
15 read as follows:

16 (1) No person shall with knowledge maintain a moral nuisance.

17 (2) Upon a determination that a defendant has with knowledge
18 maintained a moral nuisance, the court shall impose a civil fine and
19 judgment of an amount as the court shall determine to be appropriate.
20 In imposing the civil fine, the court shall consider the wilfulness of
21 the defendant's conduct and the profits made by the defendant
22 attributable to the lewd matter, lewdness, or prostitution, whichever
23 is applicable. In no event shall the civil fine exceed the greater of
24 (~~twenty-five~~) fifty thousand dollars or these profits."

25 "**Sec. 31.** RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, and
26 1991 c 23 s 10 are each reenacted and amended to read as follows:

1 (1) The following are exempt from public inspection and copying:

2 (a) Personal information in any files maintained for students in
3 public schools, patients or clients of public institutions or public
4 health agencies, or welfare recipients.

5 (b) Personal information in files maintained for employees,
6 appointees, or elected officials of any public agency to the extent
7 that disclosure would violate their right to privacy.

8 (c) Information required of any taxpayer in connection with the
9 assessment or collection of any tax if the disclosure of the
10 information to other persons would (i) be prohibited to such persons by
11 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
12 in unfair competitive disadvantage to the taxpayer.

13 (d) Specific intelligence information and specific investigative
14 records compiled by investigative, law enforcement, and penology
15 agencies, and state agencies vested with the responsibility to
16 discipline members of any profession, the nondisclosure of which is
17 essential to effective law enforcement or for the protection of any
18 person's right to privacy.

19 (e) Information revealing the identity of persons who file
20 complaints with investigative, law enforcement, or penology agencies,
21 other than the public disclosure commission, if disclosure would
22 endanger any person's life, physical safety, or property. If at the
23 time the complaint is filed the complainant indicates a desire for
24 disclosure or nondisclosure, such desire shall govern. However, all
25 complaints filed with the public disclosure commission about any
26 elected official or candidate for public office must be made in writing
27 and signed by the complainant under oath.

28 (f) Test questions, scoring keys, and other examination data used
29 to administer a license, employment, or academic examination.

1 (g) Except as provided by chapter 8.26 RCW, the contents of real
2 estate appraisals, made for or by any agency relative to the
3 acquisition or sale of property, until the project or prospective sale
4 is abandoned or until such time as all of the property has been
5 acquired or the property to which the sale appraisal relates is sold,
6 but in no event shall disclosure be denied for more than three years
7 after the appraisal.

8 (h) Valuable formulae, designs, drawings, and research data
9 obtained by any agency within five years of the request for disclosure
10 when disclosure would produce private gain and public loss.

11 (i) Preliminary drafts, notes, recommendations, and intra-agency
12 memorandums in which opinions are expressed or policies formulated or
13 recommended except that a specific record shall not be exempt when
14 publicly cited by an agency in connection with any agency action.

15 (j) Records which are relevant to a controversy to which an agency
16 is a party but which records would not be available to another party
17 under the rules of pretrial discovery for causes pending in the
18 superior courts.

19 (k) Records, maps, or other information identifying the location of
20 archaeological sites in order to avoid the looting or depredation of
21 such sites.

22 (l) Any library record, the primary purpose of which is to maintain
23 control of library materials, or to gain access to information, which
24 discloses or could be used to disclose the identity of a library user.

25 (m) Financial information supplied by or on behalf of a person,
26 firm, or corporation for the purpose of qualifying to submit a bid or
27 proposal for (a) a ferry system construction or repair contract as
28 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
29 or improvement as required by RCW 47.28.070.

1 (n) Railroad company contracts filed with the utilities and
2 transportation commission under RCW 81.34.070, except that the
3 summaries of the contracts are open to public inspection and copying as
4 otherwise provided by this chapter.

5 (o) Financial and commercial information and records supplied by
6 private persons pertaining to export services provided pursuant to
7 chapter 43.163 RCW and chapter 53.31 RCW.

8 (p) Financial disclosures filed by private vocational schools under
9 chapter 28C.10 RCW.

10 (q) Records filed with the utilities and transportation commission
11 or attorney general under RCW 80.04.095 that a court has determined are
12 confidential under RCW 80.04.095.

13 (r) Financial and commercial information and records supplied by
14 businesses during application for loans or program services provided by
15 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

16 (s) Membership lists or lists of members or owners of interests of
17 units in timeshare projects, subdivisions, camping resorts,
18 condominiums, land developments, or common-interest communities
19 affiliated with such projects, regulated by the department of
20 licensing, in the files or possession of the department.

21 (t) All applications for public employment, including the names of
22 applicants, resumes, and other related materials submitted with respect
23 to an applicant.

24 (u) The residential addresses and residential telephone numbers of
25 employees or volunteers of a public agency which are held by the agency
26 in personnel records, employment or volunteer rosters, or mailing lists
27 of employees or volunteers.

28 (v) The residential addresses and residential telephone numbers of
29 the customers of a public utility contained in the records or lists
30 held by the public utility of which they are customers.

1 (w) Information obtained by the board of pharmacy as provided in
2 RCW 69.45.090.

3 (x) Information obtained by the board of pharmacy or the department
4 of health and its representatives as provided in RCW 69.41.044,
5 69.41.280, and section 12, chapter 87, Laws of 1991.

6 (y) Financial information, business plans, examination reports, and
7 any information produced or obtained in evaluating or examining a
8 business and industrial development corporation organized or seeking
9 certification under chapter 31.24 RCW.

10 (z) Financial and commercial information supplied to the state
11 investment board by any person when the information relates to the
12 investment of public trust or retirement funds and when disclosure
13 would result in loss to such funds or in private loss to the providers
14 of this information.

15 (aa) Financial and valuable trade information under RCW 51.36.120.

16 (bb) Client records maintained by an agency that is a domestic
17 violence program as defined in RCW 70.123.020 or a rape crisis center
18 as defined in RCW 70.125.030.

19 (cc) Identifying information provided by an applicant under section
20 12(1) of this act except to the extent necessary to carry out the
21 responsibilities of the department of licensing under chapter 18.---RCW
22 (sections 1 through 27 of this act), or to comply with a request from
23 another governmental entity, or to comply with a court order.

24 (2) Except for information described in subsection (1)(c)(i) of
25 this section and confidential income data exempted from public
26 inspection pursuant to RCW 84.40.020, the exemptions of this section
27 are inapplicable to the extent that information, the disclosure of
28 which would violate personal privacy or vital governmental interests,
29 can be deleted from the specific records sought. No exemption may be

1 construed to permit the nondisclosure of statistical information not
2 descriptive of any readily identifiable person or persons.

3 (3) Inspection or copying of any specific records exempt under the
4 provisions of this section may be permitted if the superior court in
5 the county in which the record is maintained finds, after a hearing
6 with notice thereof to every person in interest and the agency, that
7 the exemption of such records is clearly unnecessary to protect any
8 individual's right of privacy or any vital governmental function.

9 (4) Agency responses refusing, in whole or in part, inspection of
10 any public record shall include a statement of the specific exemption
11 authorizing the withholding of the record (or part) and a brief
12 explanation of how the exemption applies to the record withheld."

13 "NEW SECTION. Sec. 32. If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected."

17 "NEW SECTION. Sec. 33. This act shall take effect January 1,
18 1993. The department of licensing may take such steps before then,
19 including the adoption of rules, as are necessary to ensure that this
20 act is implemented on January 1, 1993."

1 **ESSB 5644** - H COMM AMD
2 By Committee on Judiciary

3
4 On page 1, line 1 of the title, after "business;" strike the
5 remainder of the title and insert "amending RCW 7.48A.040; reenacting
6 and amending RCW 42.17.310; adding a new section to chapter 43.43 RCW;
7 adding a new chapter to Title 18 RCW; prescribing penalties; and
8 providing an effective date."