
SENATE BILL 5644

State of Washington 52nd Legislature 1991 Regular Session

By Senators Nelson, Rasmussen, Thorsness, A. Smith and Madsen.

Read first time February 12, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to adult entertainment businesses; amending RCW
2 7.48A.010 and 7.48A.040; adding a new chapter to Title 18 RCW; adding
3 a new section to chapter 43.43 RCW; prescribing penalties; and
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

11 NEW SECTION. **Sec. 2.** Unless the context clearly requires
12 otherwise, the definitions in this section apply throughout this
13 chapter.

1 (1) "Adult cabaret" means a nightclub, bar, restaurant, or similar
2 commercial establishment which regularly features persons who appear in
3 a state of nudity or semi-nude.

4 (2) "Adult entertainment business" means an adult cabaret or adult
5 theater.

6 (3) "Adult theater" means a theater, concert hall, auditorium, or
7 similar commercial establishment which regularly features live
8 performances where persons appear in a state of nudity or semi-nude.

9 (4) "Applicant" means a person or persons applying for a license
10 under this chapter, including each partner of a partnership and each
11 officer and director of a corporation.

12 (5) "Department" means the department of licensing.

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

15 (7) "Nudity" means the appearance of a human bare buttock, anus,
16 genital, or breast, or a state of dress which fails to opaquely cover
17 a human buttock, anus, genital, or areola of the breast.

18 (8) "Semi-nude" means a state of dress in which clothing covers no
19 more than the genitals, pubic region, and areolae of the breast, as
20 well as portions of the body covered by supporting straps or devices.

21 NEW SECTION. **Sec. 3.** (1) It is unlawful for a person,
22 partnership, or corporation, to own or operate an adult entertainment
23 business in the state of Washington unless such person, partnership, or
24 corporation, has obtained a license pursuant to this chapter.

25 (2) An application for a license must be made on a form provided by
26 the department. The applicant shall provide: (a) The name, address,
27 phone number, and date of birth of the applicant; (b) two passport-size
28 color photographs of the applicant; (c) the applicant's principal
29 occupation; (d) a description of the proposed establishment; (e) the

1 nature of the proposed business; (f) location of the proposed business;
2 (g) a record of all prior criminal convictions; and (h) such other
3 information as the department may require by rule.

4 (3) The department shall require the applicant to submit to
5 fingerprinting to assist the Washington state patrol in conducting a
6 background check under section 18 of this act.

7 NEW SECTION. **Sec. 4.** (1) For the purpose of considering an
8 application for a license, the department may cause an inspection of
9 the premises to be made, and may inquire into all matters in connection
10 with the construction and operation of the premises. For the purpose
11 of reviewing a application for a license and for considering the
12 denial, suspension, or revocation of a license, the department may
13 consider any prior criminal conduct or prior violations of the
14 provisions of this chapter by the applicant, and the provisions of RCW
15 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The
16 department may, in its discretion, grant or refuse the license applied
17 for.

18 (2) Every license shall be issued in the name of the applicant or
19 applicants, and the holder thereof shall not allow any other person to
20 use the license.

21 (3) No license may be issued to:

22 (a) An applicant who is not a resident of this state at the time of
23 making the application;

24 (b) A partnership or corporation, unless qualified to obtain a
25 license, as provided in this chapter;

26 (c) An applicant whose place of business is conducted by a manager
27 or agent, unless such manager or agent possesses the same
28 qualifications required of the licensee;

1 (d) A corporation, unless it was created under the laws of the
2 state of Washington or holds a certificate of authority to transact
3 business in the state of Washington;

4 (e) An applicant who is under eighteen years of age;

5 (f) An applicant who has failed to provide information reasonably
6 necessary for issuance of the license or who has falsely answered a
7 question or request for information on the application form;

8 (g) An applicant who has proposed the location of the business
9 within a zone where such use is prohibited by the local authority.

10 (4) Before the department issues a license to an applicant it shall
11 give notice of such application to the chief executive officer of the
12 incorporated city or town, if the application is for a license within
13 an incorporated city or town, or to the county legislative authority,
14 if the application is for a license outside the boundaries of
15 incorporated cities or towns; and such incorporated city or town,
16 through the official or employee selected by it, or the county
17 legislative authority or the official or employee selected by it, shall
18 have the right to file with the department within twenty days after
19 date of transmittal of such notice, written objections against the
20 applicant or against the premises for which the license is asked, and
21 shall include with such objections a statement of all facts upon which
22 such objections are based, and in case written objections are filed,
23 may request and the department may in its discretion hold a formal
24 hearing subject to the applicable provisions of Title 34 RCW. Upon the
25 granting of a license under this chapter the department shall send a
26 duplicate of the license or written notification to the chief executive
27 officer of the incorporated city or town in which the license is
28 granted, or to the county legislative authority if the license is
29 granted outside the boundaries of incorporated cities or towns.

1 (5) Before the department issues a license to an applicant, it
2 shall give (a) due consideration to the location of the business to be
3 conducted under such license with respect to the proximity of churches,
4 public and private schools, and public institutions, and (b) written
5 notice by certified mail of the application to churches, schools, and
6 public institutions within one thousand five hundred feet of the
7 premises to be licensed. The department shall issue no license
8 covering any premises, if such premises are within one thousand five
9 hundred feet of the premises of any elementary or secondary school
10 measured along the most direct route over or across established public
11 walks, streets, or other public passageway from the outer property line
12 of the school grounds to the nearest public entrance of the premises
13 proposed for license, and if, after receipt by the school or public
14 institution of the notice as provided in this subsection, the
15 department receives written notice, within twenty days after posting
16 such notice, from an official representative or representatives of the
17 school within one thousand five hundred feet of said proposed licensed
18 premises, indicating to the department that there is an objection to
19 the issuance of such license because of proximity to a school. For the
20 purpose of this section, church shall mean a building erected for and
21 used exclusively for religious worship and schooling or other activity
22 in connection therewith.

23 NEW SECTION. **Sec. 5.** (1) The department may, in its
24 discretion, subject to the provisions of section 15 of this act,
25 suspend or cancel a license; and all rights of the licensee hereunder
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 license, the licensee shall forthwith deliver the license to the
29 department. Where the license has been suspended only, the department

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

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

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

11 NEW SECTION. **Sec. 7.** The department shall not issue a license
12 to a transferee until the transferee has applied for and received a
13 license under this chapter.

14 NEW SECTION. **Sec. 8.** (1)(a) At the time of the original
15 issuance of a license, the department shall prorate the license fee
16 charged to the new licensee according to the number of calendar
17 quarters, or portion thereof, remaining until the first renewal of that
18 license is required.

19 (b) Unless sooner canceled, every license issued by the department
20 shall expire at midnight of the thirtieth day of June of the fiscal
21 year for which it was issued. However, if the department deems it
22 feasible and desirable to do so, it may establish, by rule pursuant to
23 chapter 34.05 RCW, a system for staggering the annual renewal dates for
24 the license authorized by this chapter. If such a system of staggered
25 annual renewal dates is established by the department, the 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 license fee shall be seven hundred
2 fifty dollars per annum and shall be paid at the time of application.
3 One-half of the fee shall be refunded if the application is withdrawn
4 prior to a denial of the license by the department.

5 NEW SECTION. **Sec. 9.** (1) The holder of one or more licenses
6 may not assign and transfer the license except for transfer to the
7 surviving spouse of a deceased licensee if the parties were maintaining
8 a marital community and the license was issued in the names of one or
9 both of the parties.

10 (2) A change in the officers or directors of a licensed corporation
11 or a change in the manager or agent must be reported to the department
12 within thirty days, and such persons must meet the department's
13 approval under section 4 of this act. A fee of seventy-five dollars
14 will be charged for the processing of such change.

15 NEW SECTION. **Sec. 10.** The department in suspending a license
16 may further provide in the order of suspension that such suspension
17 shall be vacated upon payment to the department by the licensee of a
18 monetary penalty in an amount then fixed by the department.

19 NEW SECTION. **Sec. 11.** (1) It is unlawful for a performer to
20 appear in an adult entertainment business in a state of nudity or semi-
21 nude, unless such performer has obtained a license pursuant to this
22 chapter.

23 (2) An application for a performer's license must be made on a form
24 provided by the department. The performer shall provide the following:
25 (a) The performer's name, including all aliases, address, phone number,
26 and date of birth; (b) Two passport-size color photographs of the
27 performer; (c) principal occupation; (d) the name and address of the

1 business at which the performer will perform; (e) a record of all prior
2 criminal convictions, if any; and (f) such other information as the
3 department may require by rule.

4 (3) The department shall require the applicant to submit to
5 fingerprinting to assist the Washington state patrol in conducting a
6 background check under section 18 of this act.

7 (4) No license may be issued to:

8 (a) A performer who is under eighteen years of age;

9 (b) A performer who has failed to provide information reasonably
10 necessary for issuance of the license or has falsely answered a
11 question or request for information on the application form.

12 (5) The department may use its discretion in issuing a license if
13 the performer has violated the provisions of this chapter or been
14 convicted of an offense in chapter 9.38, 9.40, 9.41, 9.44, 9.45, 9.46,
15 9.47, 9.54, 9.61, 9.68, 9.68A, 9.69, 9.72, 9A.32, 9A.36, 9A.40, 9A.44,
16 9A.48, 9A.52, 9A.56, 9A.60, 9A.88, 69.41, 69.50, 69.52, or 69.53 RCW;
17 and (i) less than two years have elapsed since the date of the
18 conviction or the date of release from confinement for the conviction,
19 whichever is the later date, if the conviction is of a misdemeanor or
20 gross misdemeanor offense; or (ii) less than five years have elapsed
21 since the date of the conviction or the date of release from
22 confinement for the conviction, whichever is the later date, if the
23 conviction is of a felony offense or of two misdemeanor or gross
24 misdemeanor offenses occurring within any twenty-four month period.

25 (6) The performer license fee shall be seventy-five dollars per
26 annum and shall be paid at the time of application. One-half of the
27 fee shall be refunded if the application is withdrawn prior to denial
28 of the license by the department.

29 (7) The department shall issue a temporary performer's license
30 valid for a period of five days, if the department is unable to

1 determine the performer's qualifications for an annual license within
2 twenty-four hours from the time of application.

3 (8) Every performer shall keep his or her license on the premises
4 while performing.

5 NEW SECTION. **Sec. 12.** There is hereby imposed an admissions
6 tax of one dollar upon all customers of adult entertainment businesses
7 within the state. The tax provided for in this section shall be
8 collected by the business and remitted to the state treasurer for
9 deposit in the public safety education account established under RCW
10 43.08.250.

11 NEW SECTION. **Sec. 13.** Every licensee under this chapter shall
12 make monthly reports to the department pursuant to rule. The reports
13 shall include the following: (1) The number of customers patronizing
14 the business during the month; (2) the name, address, and date of birth
15 of all employees appearing in a state of nudity or semi-nude during the
16 month; and (3) such further information as the department may require.

17 NEW SECTION. **Sec. 14.** The department, for the purpose of
18 maintaining public health, safety, and welfare, may limit the number of
19 licenses issued in each county.

20 NEW SECTION. **Sec. 15.** The action, order, or decision of the
21 department as to a denial of an application for the reissuance of a
22 license or as to a revocation, suspension, or modification of a license
23 is an adjudicative proceeding and subject to the applicable provisions
24 of chapter 34.05 RCW.

25 (1) An opportunity for a hearing may be provided an applicant for
26 the reissuance of a license prior to the disposition of the

1 application, and if no such opportunity for a prior hearing is provided
2 then an opportunity for a hearing to reconsider the application must be
3 provided the applicant.

4 (2) An opportunity for a hearing must be provided a licensee prior
5 to a revocation or modification of a license and, except as provided in
6 subsection (4) of this section, prior to the suspension of a license.

7 (3) No hearing shall be required until demanded by the applicant or
8 licensee.

9 (4) The department may summarily suspend a license or permit for a
10 period of up to thirty days without a prior hearing if it finds that
11 public health, safety, or welfare imperatively requires emergency
12 action, and incorporates a finding to that effect in its order; and
13 proceedings for revocation or other action must be promptly instituted
14 and determined.

15 NEW SECTION. **Sec. 16.** No provision in this chapter limits the
16 authority of local jurisdictions from further regulating adult
17 entertainment businesses as to hours of operation, location of
18 premises, or manner of operation.

19 The provisions of this chapter relating to the licensing of any
20 adult entertainment business shall not be exclusive and any political
21 subdivision of the state of Washington within whose jurisdiction the
22 adult entertainment business is located may require any registrations
23 or licenses, or charge any fee for the same or similar purpose; and
24 nothing herein shall limit or abridge the authority of any political
25 subdivision to levy and collect a general and nondiscriminatory license
26 fee levied upon all businesses, or to levy a tax based upon gross
27 business conducted by any firm within said political subdivision.

1 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act shall
2 constitute a new chapter in Title 18 RCW.

3 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.43 RCW
4 to read as follows:

5 The department of licensing may request of the Washington state
6 patrol criminal identification system information regarding the
7 conviction of offenses listed under section 11(5) of this act for any
8 applicant as defined in section 2 of this act.

9 **Sec. 19.** RCW 7.48A.010 and 1990 c 152 s 4 are each amended to read
10 as follows:

11 The definitions set forth in this section shall apply throughout
12 this chapter.

13 (1) "Community" means residents of the state of Washington or any
14 local voting jurisdictions within its borders, or both. "Community
15 standards" may be expressed and established by majority vote of duly
16 elected representatives of the people on the town, city, county, or
17 state level of government, or any combination thereof, or by direct
18 ballot initiative in any state or local election.

19 (2) "Knowledge" or "knowledge of such nuisance" means having
20 knowledge of the contents and character of the patently offensive
21 sexual or violent conduct which appears in the lewd matter, or
22 knowledge of the acts of lewdness or prostitution which occur on the
23 premises, or knowledge that controlled substances identified in Article
24 II of chapter 69.50 RCW and not authorized by that chapter, are
25 manufactured, delivered or possessed, or where any such substance not
26 obtained in a manner authorized by chapter 69.50 RCW is consumed by
27 ingestion, inhalation, or injection or any other means.

1 (~~(2)~~) (3) "Lewd matter" is synonymous with "obscene matter" and
2 means any matter:

3 (a) Which the average person, applying contemporary community
4 standards, would find, when considered as a whole, appeals to the
5 prurient interest; and

6 (b) Which explicitly depicts or describes patently offensive
7 representations or descriptions of:

8 (i) Ultimate sexual acts, normal or perverted, actual or simulated;
9 or

10 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory
11 functions, or lewd exhibition of the genitals (~~(or)~~), genital area, or
12 areola; or

13 (iii) Violent or destructive sexual acts, including but not limited
14 to human or animal mutilation, dismemberment, rape or torture; and

15 (c) Which, when considered as a whole, and in the context in which
16 it is used, lacks serious literary, artistic, political, or scientific
17 value.

18 (~~(3)~~) (4) "Lewdness" shall have and include all those meanings
19 which are assigned to it under the common law.

20 (~~(4)~~) (5) "Live performance" means any play, show, skit, dance,
21 or other exhibition performed or presented to or before an audience of
22 one or more, in person or by electronic transmission, with or without
23 consideration.

24 (~~(5)~~) (6) "Matter" shall mean a live performance, a motion
25 picture film, or a publication or any combination thereof.

26 (~~(6)~~) (7) "Motion picture film" shall include any:

27 (a) Film or plate negative;

28 (b) Film or plate positive;

29 (c) Film designed to be projected on a screen for exhibition;

1 (d) Film, glass slides, or transparencies, either in negative or
2 positive form, designed for exhibition by projection on a screen;

3 (e) Video tape or any other medium used to electronically reproduce
4 images on a screen.

5 ~~((7))~~ (8) "Person" means any individual, partnership, firm,
6 association, corporation, or other legal entity.

7 ~~((8))~~ (9) "Place" includes, but is not limited to, any building,
8 structure, or places, or any separate part or portion thereof, whether
9 permanent or not, or the ground itself.

10 ~~((9))~~ (10) "Prurient" means that which incites lasciviousness or
11 lust.

12 ~~((10))~~ (11) "Publication" shall include any book, magazine,
13 article, pamphlet, writing, printing, illustration, picture, sound
14 recording, or coin-operated machine.

15 ~~((11))~~ (12) "Sale" means a passing of title or right of
16 possession from a seller to a buyer for valuable consideration, and
17 shall include, but is not limited to, any lease or rental arrangement
18 or other transaction wherein or whereby any valuable consideration is
19 received for the use of, or transfer of possession of, lewd matter.

20 **Sec. 20.** RCW 7.48A.040 and 1985 c 235 s 1 are each amended to read
21 as follows:

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

23 (2) Upon a determination that a defendant has with knowledge
24 maintained a moral nuisance, the court shall impose a civil fine and
25 judgment of an amount as the court shall determine to be appropriate.
26 In imposing the civil fine, the court shall consider the wilfulness of
27 the defendant's conduct and the profits made by the defendant
28 attributable to the lewd matter, lewdness, or prostitution, whichever

1 is applicable. In no event shall the civil fine exceed the greater of
2 ((~~twenty-five~~)) fifty thousand dollars or these profits.

3 NEW SECTION. **Sec. 21.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 22.** This act shall take effect January 1,
8 1992.