

HOUSE BILL REPORT

HB 1486

As Reported By House Committee On:
Law & Justice

Title: An act relating to adult entertainment businesses.

Brief Description: Regulating adult entertainment.

Sponsors: Representatives Sherstad, Padden, Van Luven, Mielke, Koster, Morris, Hickel, Hargrove, Casada and Patterson.

Brief History:

Committee Activity:

Law & Justice: 2/7/95, 2/28/95 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Lambert; McMahan; Robertson; Sheahan and Smith.

Minority Report: Do not pass. Signed by 7 members: Representatives Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Chappell; Cody; Morris; Thibaudeau and Veloria.

Staff: Edie Adams (786-7180).

Background: Sexually oriented businesses feature entertainment involving nudity or seminudity, or the depiction or description of sexual acts or conduct. This type of entertainment is a form of expression protected by the First Amendment's guaranty of freedom of speech. Although such entertainment may not simply be banned, some regulation of these forms of protected expression are permissible.

Regulations of speech or other forms of protected expression are permissible if the regulations are reasonable as to time, place, and manner, are designed to serve a substantial government interest, and leave open alternative channels of communication. Under this standard, licensing and zoning regulations affecting sexually oriented businesses have been upheld. In addition, the Washington Supreme

Court has upheld restrictions on the manner of nude or seminude performances that affected only "conduct" and not expression.

Currently state law does not regulate sexually oriented businesses. Local communities may establish regulations, licensing requirements, and zoning restrictions for sexually oriented businesses in their communities.

A Washington law allows government entities to bring a civil action to close down "moral nuisances." A moral nuisance includes any business that regularly exhibits obscene films, sells obscene publications, or allows obscenity or prostitution. The maximum civil fine that may be imposed for knowingly maintaining a moral nuisance is the greater of the profits made from the nuisance or \$25,000.

Summary of Substitute Bill:

A new chapter for the regulation of sexually oriented businesses is created. Owners and operators, managers, and performers in the following categories of "sexually oriented businesses" must be licensed by the Department of Licensing: (1) adult arcades; (2) adult bookstores, novelty stores, and video stores; (3) adult cabarets; (4) adult motels; (5) adult motion picture theaters; (6) adult theaters; (7) escort agencies; (8) nude model studios; and (9) sexual encounter centers. Various civil and criminal penalties are created for violations of the chapter. Zoning restrictions are imposed on sexually oriented businesses.

GENERAL PROVISIONS: A legislative finding is made that sexually oriented businesses, when unregulated, promote illegal activities, including obscenity, sexual offenses, tax evasion, and prostitution, and create negative secondary effects on local neighborhoods, including an increase in crime, a decline in property values, and depression of business activity.

Various terms are defined, including "sexually oriented business," "specified criminal activity," "specified sexual activities," "specified anatomical areas," "nudity," and "seminude."

LICENSE REQUIREMENTS: Every owner or operator of a sexually oriented business must obtain a business license from the Department of Licensing. The original business license fee is \$750 and the business license annual renewal fee is \$250.

A person applying for a business license must provide any information the department needs to determine the applicant's qualifications, including: (1) name and address; (2) whether the applicant has been convicted of specified criminal activity or had a previous license for a sexually oriented business revoked; (3) whether the applicant holds any other sexually oriented business licenses; (4) the location of the proposed

business; (5) driver's license number and tax identification number; (6) a sketch or diagram showing the configuration of the premises and a drawing depicting the property lines and structures within 1,000 feet of the premises; and (7) fingerprints.

Every manager of and performer at a sexually oriented business must obtain a manager's or performer's license from the department. The original manager's or performer's license fee is \$350 and the annual renewal fee is \$250.

A person applying for a manager's or performer's license must provide the following information: (1) name, including stage names and aliases, and residence; (2) driver's license or other identification card; (3) proof that the individual is 18 years of age; (4) name and address of the sexually oriented business at which the applicant will manage or perform; (5) fingerprints; (6) statement of the applicant's license history for the preceding five years; and (7) statement of whether the applicant has been convicted of specified criminal offenses.

The application process for a business, manager's, or performer's license must be completed within 30 days after the application is filed. The department shall notify local health departments, fire departments, and building officials of the application for a business license within 10 days after the application is filed. Local health departments, fire departments, and building officials must conduct an investigation of the proposed premises. Temporary licenses are issued for manager's and performer's licenses pending final approval of the application.

An application may be denied for a number of reasons, including: (1) failure to provide required information or falsely answering a request for information; (2) the applicant has been convicted, within a specified number of years, of any specified criminal offenses, including prostitution, dissemination of obscenity, possession or distribution of child pornography, public lewdness, indecent exposure, sexual assault, or child molestation; (3) the applicant has previously been denied a license to operate a sexually oriented business; and (4) the applicant has had a sexually oriented business manager's or performer's license revoked within the past two years.

LICENSE SUSPENSION AND REVOCATION: A license shall be suspended if the licensee: (1) has failed to provide necessary information; (2) refused to allow an inspection of the sexually oriented business; (3) had a sexually oriented business, manager's, or performer's license issued by a county, city or town revoked; and (4) violated license requirements in a manner that would be grounds for denial of a license.

A license shall be revoked if: (1) a cause for suspension occurs and the licensee had a suspension in the previous 12 months; (2) the licensee's county, city, or town license has been revoked; (3) the licensee gave false or misleading information; (4) the licensee operated the business with a suspended license; and (5) the licensee

knowingly acted as a manager or performer during a period of time when the licensee's license was suspended.

DISCIPLINARY ACTION: The following are grounds for denial of a license or disciplinary action against a license holder: (1) for a license holder, conviction of an act constituting an obscenity or pornography offense, or a sexual exploitation of children offense; (2) misrepresentation or concealment of a material fact in obtaining a license; (3) false, fraudulent and misleading advertising; (4) failure to cooperate with the department in an investigation; (5) failure to comply with an order issued by the director; and (6) aiding and abetting an unlicensed person to own or operate or act as a manager or performer in a sexually oriented business without a license.

The hearing and appeals procedures of the Administrative Procedure Act are applicable to the denial, suspension or revocation of a license under the chapter. A hearing must be provided prior to the revocation, modification, or suspension of a license if requested by the licensee.

ZONING RESTRICTIONS: A business license shall not be issued if the premises are within 1,000 feet of: (1) any religious facility or building; (2) any public or private educational facility, including day care, elementary schools, secondary schools, high schools, colleges, and universities; (3) residential districts lots; (4) public parks or recreational areas; (5) entertainment businesses oriented towards children or family; (6) premises licensed pursuant to the alcoholic beverage control regulations; and (7) any other sexually oriented business.

A sexually oriented business lawfully operating on the effective date of the act that is in violation of the zoning restrictions of the act shall be deemed a nonconforming use which will be permitted to continue for a period not to exceed three years.

Local jurisdictions must establish a buffer zone of less than 1,000 feet if failure to establish a smaller zone will effectively prohibit any sexually oriented business in the area and the adverse secondary effects will not be increased by the smaller buffer zone. Local authorities may establish a larger buffer zone upon finding that the larger zone is needed to mitigate adverse secondary effects and will not effectively prohibit sexually oriented businesses in the area.

If the zoning restrictions of the chapter effectively preclude location of a business within a county, city, or town, a regional plan must be entered into with neighboring counties, cities or towns to provide reasonable opportunity for location of sexually oriented businesses.

The chapter does not preempt local regulation of sexually oriented businesses. Local jurisdictions are given express authority to regulate, tax, or zone such businesses.

CRIMINAL PENALTIES: It is a class C felony: (1) for any person to employ or permit any person under age 18 to appear nude or seminude, to expose specified anatomical areas, or to engage in specified sexual activities on the premises of any sexually oriented business under his or her control; and (2) for a person issued a manager's or performer's license to allow another person to use the license to manage or perform in a sexually oriented business.

It is a gross misdemeanor: (1) to own or operate a sexually oriented business without a license; (2) to manage a sexually oriented business without a license; (3) to perform nude or seminude, or to expose specified anatomical areas or engage in specified sexual activities in a sexually oriented business without a license; and (4) for a person who operates a business to hire a manager or performer who is not licensed.

It is a misdemeanor: (1) to cause or permit the operation, establishment, substantial enlargement or transfer of ownership of a sexually oriented business within 1,000 feet of another sexually oriented business; (2) to cause or permit the operation, establishment, or maintenance of more than one sexually oriented business in the same building or structure; (3) to knowingly allow a person under age 18 on the premises of a sexually oriented business; and (4) for a person in control of a sleeping room in a hotel or motel that does not have a business license, to rent or subrent the sleeping room to a person and within 10 hours rent or subrent the room again.

MISCELLANEOUS PROVISIONS: The director of the Department of Licensing is authorized to adopt or amend rules as necessary to implement the chapter. The department is granted authority covering complaints, investigations, and disciplinary actions.

The holder of a business license may not assign or transfer the license to another, except to a surviving spouse, and a manager's or performer's license may not be transferred or assigned.

A person may submit a written complaint to the department charging a sexually oriented business with a violation of the chapter and the department may investigate the complaint. If the department determines that there is reason to believe a violation has occurred, the department must notify the licensee and provide a hearing if requested.

The attorney general, a prosecuting attorney, or any person may institute an action to enjoin a person from owning or operating a sexually oriented business, or managing or performing in a sexually oriented business, without a license. A person who violates an injunction shall pay a civil penalty not to exceed \$25,000.

The director is immune from suit for any administrative or disciplinary actions performed in good faith in the implementation of the chapter. Legislative authorities

of counties, cities, and towns are immune from suit based on any official acts performed in good faith in administering the chapter. Local authorities may request the state to join in the defense of challenges to the chapter, however, the state is not obligated to join.

The civil penalty for maintaining a moral nuisance is increased to a maximum of \$50,000.

Substitute Bill Compared to Original Bill: The original bill applied only to "adult entertainment businesses," defined as businesses which regularly feature live performances by nude or seminude persons.

The substitute bill requires license applicants to submit additional information with the application not required in the original bill and provides additional grounds upon which the department may deny, suspend, or revoke a license.

The substitute increases zoning restrictions applicable to sexually oriented businesses by expanding the types of premises which a sexually oriented business may not be located within 1,000 feet of.

The substitute provides additional criminal penalties related to sexually oriented businesses.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect January 1, 1996.

Testimony For: Neighborhoods are adversely affected by adult entertainment businesses. These businesses promote illegal activities and make a substantial amount of money from illegal conduct. This bill will empower local jurisdiction to regulate and deal with these businesses.

Testimony Against: The best place for regulation of adult entertainment businesses is at the local level. If you have a state law regulating these businesses and the local jurisdiction adopts a more restrictive ordinance, the local ordinance is more likely to be challenged. The Department of Licensing does not have the competency to investigate license applications and the conduct of these businesses.

Testified: Representative Sherstad, prime sponsor (pro); Andrea Vangor, Washington Together Against Pornography (pro); and Dan Szasz, citizen (con).