

HOUSE BILL REPORT

ESHB 1575

As Passed House

March 12, 1997

Title: An act relating to a model ordinance for cities, towns, and counties for the regulation of live adult entertainment establishments.

Brief Description: Regulating live adult entertainment establishments.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Sherstad, Koster, Mulliken, Thompson, Ballasiotes, Lambert, Hickel, Sheahan, Reams and Dunn).

Brief History:

Committee Activity:

Law & Justice: 2/25/97, 2/27/97 [DPS].

Floor Activity:

Passed House: 3/12/97, 96-1.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Vice Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 1 member: Representative Constantine, Assistant Ranking Minority Member.

Staff: Edie Adams (786-7180).

Background: Adult entertainment establishments feature entertainment involving nudity or semi-nudity. Currently, the state is not involved in the regulation of adult entertainment establishments. However, local jurisdictions are able to regulate these businesses, and many local jurisdictions currently have ordinances and laws relating to the regulation of adult entertainment establishments in their communities.

FREEDOM OF SPEECH: Entertainment involving nudity or semi-nudity or the depiction of sexual acts is a form of expression protected by the First Amendment to the United States Constitution and Article I, Section 5 of the Washington Constitution. Although entertainment of this type may not be banned, some regulation of this form

of protected expression is permissible. Live entertainment can include both "expression," which is constitutionally protected, and pure "conduct," which is not protected.

The permissibility of a regulation on protected speech or expression relating to adult entertainment establishments will vary depending on the type of regulation imposed. In general, regulations that affect the content of the speech or expression are subject to stricter scrutiny and require a showing that the regulation is narrowly tailored to further a compelling governmental interest. Regulations that relate to the time, place, or manner of the speech and do not affect the content of the speech are subject to less scrutiny, and require a showing that the regulation relates to a substantial governmental interest and doesn't unreasonably limit alternative channels of communication. Prior restraints on speech are generally impermissible. The Washington Constitution requires a stricter showing with respect to time, place, and manner regulations. They must be narrowly tailored to serve a compelling governmental interest and must leave open alternative channels of communication. The Washington Constitution generally bars the imposition of prior restraints on speech.

Regulations that treat businesses that feature adult entertainment differently from those that do not feature adult entertainment may be considered "content neutral" if the purpose of the regulation is aimed at curbing the adverse, secondary effects of the business, rather than the expressive content of the entertainment provided.

TWENTY-FIRST AMENDMENT: The 21st Amendment to the U.S. Constitution gives states broad authority to control intoxicating liquors. The U.S. Supreme Court has held that, notwithstanding the First Amendment, extensive regulation or prohibition of adult entertainment where alcohol is served does not violate the constitution.

The Washington Liquor Control Board establishes regulations applicable to adult entertainment on premises where alcohol is served. The regulations prohibit total nudity or acts simulating sexual conduct at any place serving alcohol. In addition, the regulations provide that all dance performances must be removed at least six feet from the nearest patron and at least 18 inches above the immediate floor level.

MORAL NUISANCE: A government entity may bring a civil action to close down a moral nuisance. A moral nuisance includes any business that regularly exhibits obscene films, sells obscene publications, or allows obscenity or prostitution.

Summary of Bill: A model licensing act for the regulation of live adult entertainment establishments is created. Licensing requirements are established for an operator of a live adult entertainment establishment, and managers and entertainers in a live adult entertainment establishment. Standards of operation are established for

live adult entertainment establishments. Standards of conduct are established for employees and entertainers of live adult entertainment establishments.

GENERAL PROVISIONS: The following legislative findings are made: (1) live adult entertainment establishments require special supervision to protect and preserve the health, safety, and welfare of patrons and the citizens of the state; (2) live adult entertainment establishments are frequently used for unlawful activities and have secondary adverse impacts on the health, safety, and welfare of the citizenry through increases in crime and the spread of sexually transmitted diseases; (3) local licensing is a legitimate and reasonable means to ensure that establishments aren't used for illegal purposes; and (4) many local jurisdictions do not have the financial resources to conduct studies necessary to enact local legislation and address legal challenges to the legislation.

A city, town, or county may adopt the act, in whole or in part, by reference. Any amendment to the act by the Legislature is deemed to amend an ordinance that has adopted the act by reference.

"Live adult entertainment establishment" is defined as a commercial premises to which a member of the public is invited or admitted and where live adult entertainment is provided on a regular basis or as a substantial part of the premises activity. "Adult entertainment" is defined as an exhibition, performance, or dance that: (1) involves a person who is nude or seminude; (2) is distinguished or characterized by a predominant emphasis on the depiction, description, simulation, or relation to of specified sexual activity; or (3) is intended to sexually stimulate a member of the public.

LICENSING REQUIREMENTS: A person may not operate, manage, or entertain in a live adult entertainment establishment unless the person has a live adult entertainment establishment, manager's, or entertainer's license.

A license will be denied if the applicant: (1) is under the age of 18, or under the age of 21 if the establishment serves alcohol; (2) has a manager or agent who does not have a manager's license; (3) is a partnership or corporation with partners, officers, or directors who do not meet the applicant qualifications; (4) fails to meet a requirement of the act; (5) fails to provide required information; or (6) makes a false, fraudulent, or misleading statement of material fact on the application.

Establishment License: An application for a license must include specified information and be accompanied by a license fee. Copies of the application must be forwarded to the police, fire, and building departments to determine compliance with local ordinances. Each department must inspect the application and premises and make a report to the local jurisdiction within 30 days as to whether the application

and premises comply with the provisions of this act or the laws administered by each department.

The local jurisdiction must issue the license within 30 days of receiving a complete application from the applicant unless the jurisdiction finds that there are grounds for denying the license. If the jurisdiction fails to issue or deny the license within 30 days, the applicant may operate the establishment until notified that the license has been denied.

An establishment license must state on its face the name of the person to whom it is issued, the expiration date, the doing-business-as name, and the address of the establishment. A person granted an establishment license may not operate the establishment under a name or at a location not specified on the license.

Manager's and Entertainer's Licenses: A person may not work as a manager or an entertainer at a live adult entertainment establishment without a manager's or entertainer's license. An application for a manager's or entertainer's license must include specified information and be accompanied by a nonrefundable fee. Information submitted by an applicant for an entertainer's license is confidential and not subject to public disclosure, but may be shared with government agencies for law enforcement or licensing purposes. The jurisdiction must submit the application to local law enforcement for its review, investigation, and recommendation.

The jurisdiction must issue the manager's or entertainer's license within 14 days of receiving a completed application unless there are grounds to deny the license. A decision to deny a license must be in writing and include the reasons for the denial. An applicant for an entertainer's license must be issued a temporary license upon receipt of a completed application. The temporary license is valid for 14 days or until the clerk approves or denies the application.

The entertainer's license must be provided to the manager on duty at the establishment before the entertainer's performance. The manager must keep the licenses of all entertainers readily available for inspection.

License Suspension or Revocation: A license may be suspended or revoked: (1) if the license was procured by fraud or false representation of fact; (2) for a violation of the act by the licensee or the licensee's agent or employee if the licensee knew or should have known of the violation; or (3) if the licensee or the licensee's agent or employee is convicted of a crime or offense involving prostitution, promoting prostitution, a liquor law violation, a violation of the controlled substances act, or a violation of the sexual exploitation of children act, if the conviction occurred within the previous two years.

A license must be revoked for fraud or misrepresentation. A license must be suspended for 30 days for the first violation of any other provision of the act, suspended for 90 days for a second violation within 24 months, and revoked for a third violation within 24 months.

Appeals: An applicant may appeal a decision to deny or not renew an establishment, manager's, or entertainer's license by filing a notice of appeal within 10 days. A hearing body designated by the jurisdiction must hear the appeal within 30 days. The decision of the hearing body must be rendered within 15 days of the close of the hearing. An applicant may appeal a decision of the hearing body to the superior court by filing an appeal within 10 days of the decision of the hearing body.

A licensee may appeal a decision to suspend or revoke the license by filing a notice of appeal within 10 days of the notice to suspend or revoke the license. The hearing body must hear the appeal within 45 days and render a decision within 15 days following the close of the hearing. The licensee may appeal the hearing body's decision to the superior court by filing an appeal within 10 days of the decision of the hearing body. The suspension or revocation of a license must be staid during the pendency of an appeal unless the license was suspended because a condition on the premises threatened immediate serious injury or damage to person or property.

STANDARDS OF OPERATION: A number of standards concerning the operation of a live adult entertainment establishment are provided, including the following:

- Admission must be restricted to persons 18 year of age or older;
- A member of the public may not be permitted to enter into a nonpublic portion of the establishment;
- A licensed manager shall be on duty at all times adult entertainment is provided or members of the public are present, and the manager on duty may not be an entertainer;
- The manager shall maintain visual observation of each member of the public when an entertainer is present in the public or performance areas of the premises;
- The performance area must be a stage or platform at least 18 inches high and separated by a distance of at least 8 feet from all areas where a member of the public may be;
- A railing at least 3 feet high must separate the performance area and the seating area;
- The establishment must maintain sufficient lighting in all public areas of the premises;
- The establishment must conspicuously display a sign stating that the establishment is regulated by the county, entertainers are not allowed to engage in a any type of sexual conduct, entertainers are not allowed to appear nude or seminude except on stage, and entertainers are not allowed to receive a gratuity prior to a performance, or directly from a patron while performing on stage; and

- The establishment may not be open to the public between the hours of 2 a.m. and 10 a.m.

STANDARDS OF CONDUCT: An employee or entertainer at a live adult entertainment establishment may not:

- Appear nude or semi-nude in an area where a member of the public is allowed except on a stage at least 18 inches above the floor and 8 feet from the nearest member of the public;
- Mingle with a member of the public while nude or semi-nude, or while wearing a device that simulates nudity;
- Caress, fondle, or erotically touch a member of the public or another employee, or encourage a member of the public to caress, fondle, or erotically touch an employee;
- Perform actual or simulated sexual conduct or an act that constitutes a violation of the moral nuisance statute;
- Conduct a dance, performance, or exhibition in a non-stage area, while mingling with a member of the public, that is less than 4 feet from the member of the public; or
- Accept a tip or gratuity before a performance, dance, or exhibition, or directly accept a gratuity while performing on stage.

MISCELLANEOUS PROVISIONS: Any violation of the act is a misdemeanor offense.

Licenses for a live adult entertainment establishment, or a manager or entertainer, are subject to the rules of the Liquor Control Board relating to the sale of intoxicating liquor. The rules of the Liquor Control Board control if there is a conflict between those rules and the provisions of the act.

A live adult entertainment establishment operated or maintained in violation of the act or a law of the local jurisdiction or the state, including the moral nuisance law, is unlawful and a public nuisance, and the attorney general for the jurisdiction may commence an action to enjoin, remove, or abate the nuisance.

The act does not prohibit plays, operas, musicals, dramatic works, exhibitions, performances, or dances that are not obscene, or classes, seminars, and lectures held for serious scientific or educational purposes that are not obscene.

A local jurisdiction may enact a regulatory scheme for live adult entertainment establishments that is either more or less restrictive than the act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Although it isn't permissible to completely get rid of adult entertainment establishments, it is permissible to regulate these businesses by setting standards of conduct and operation, and requiring licensing of operators and employees. This creates a model ordinance that local jurisdictions may adopt if they choose to do so. The state can make a great contribution to local jurisdictions by making specific findings so that each jurisdiction doesn't have to do extensive background work and litigate that issue. Adult entertainment companies are well-financed and extremely litigious, and many jurisdictions cannot afford to defend legal challenges. Studies indicate that illegal activity takes place at these establishments. The approach contained in this bill has been extremely effective in Bellevue and Federal Way in eliminating this illegal conduct. The language in this bill has survived two court challenges and is currently before the Washington Supreme Court. The bill should continue to move through the process, but it should not be enacted before the supreme court issues its opinion.

Testimony Against: This legislation should not be passed until the Supreme Court rules on the case currently before the court, because there may be significant findings of unconstitutionality. The language of the bill is not carefully drafted. The bill makes certain legislative findings without any evidence to support those findings. The problems cited simply do not exist, and it is improper for the Legislature to make those findings without first conducting some empirical research.

Testified: Representative Sherstad, prime sponsor; Karen Reed, Steve Smith, and Officer Jerry Litzau, city of Bellevue (pro, with suggestions); Georgia Zumdieck, Bellevue City Council (pro); Andrea Vangor, Washington Together Against Pornography (pro); Steve Urum, Everett Police Department (pro); and Jack Burns, attorney (con).