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HOUSE BILL 2572

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State of Washington

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By Representatives Sherstad, Patterson, Koster, Van Luven, Stevens, McMahan, Pelesky, Hickel, Goldsmith and Thompson

Read first time 01/15/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to sexually oriented businesses; amending RCW  
2 7.48A.040; adding a new chapter to Title 18 RCW; creating a new  
3 section; prescribing penalties; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** It is the purpose of this chapter to  
6 regulate certain sexually oriented businesses to promote the health,  
7 safety, and welfare of the citizens of the state of Washington. The  
8 legislature finds that these businesses, when unregulated, promote  
9 illegal activities including obscenity, sexual offenses, tax evasion,  
10 and prostitution, as well as create a variety of negative secondary  
11 impacts on local communities including increase of crime, decline in  
12 property values, blighting of neighborhoods, diminution of the quality  
13 of life, and depression of business activity. This chapter has neither  
14 the purpose nor effect of imposing a limitation or restriction on the  
15 content of any communicative materials, including sexually oriented  
16 materials. Similarly, it is neither the intent nor effect of this  
17 chapter to restrict or deny access by adults to sexually oriented  
18 materials protected by the First Amendment to the United States  
19 Constitution or to deny access by the distributors and exhibitors of

1 sexually oriented entertainment to their intended market. It is also  
2 neither the intent nor effect of this chapter to condone or legitimize  
3 the distribution of obscene material or child pornography.

4 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
5 otherwise, the definitions in this section apply throughout this  
6 chapter.

7 (1) "Adult arcade" means a place that the public is permitted or  
8 invited in which coin-operated, slug-operated, or electronically,  
9 electrically, or mechanically controlled still or motion picture  
10 machines, projectors, video or laser disc players, or other image-  
11 producing devices are maintained to show images to five or fewer  
12 persons per machine at any one time, and where the images displayed are  
13 distinguished or characterized by the depicting or describing of  
14 specified sexual activities or specified anatomical areas.

15 (2)(a) "Adult bookstore," "adult novelty store," or "adult video  
16 store" means a commercial establishment that, as one of its principal  
17 purposes, offers for sale or rental for any form of consideration one  
18 or more of the following:

19 (i) Books, magazines, periodicals, or other printed matter, or  
20 photographs, films, motion pictures, video cassettes, or video  
21 reproductions, slides, or other visual representations that are  
22 characterized by the depiction or description of specified sexual  
23 activities or specified anatomical areas; or

24 (ii) Instruments, devices, or paraphernalia that are designed for  
25 use in connection with specified sexual activities.

26 (b) A commercial establishment may have other principal business  
27 purposes that do not involve the offering for sale or rental of  
28 material depicting or describing specified sexual activities or  
29 specified anatomical areas and still be categorized as an adult  
30 bookstore, adult novelty store, or adult video store. The other  
31 business purposes do not serve to exempt the commercial establishment  
32 from being categorized as an adult bookstore, adult novelty store, or  
33 adult video store so long as one of its principal business purposes is  
34 the offering for sale or rental for consideration the specified  
35 materials that are characterized by the depiction or description of  
36 specified sexual activities or specified anatomical areas or as long as  
37 this business purpose constitutes the primary or a major attraction to  
38 the premises.

1 (3) "Adult cabaret" means a nightclub, bar, restaurant, or similar  
2 commercial establishment that regularly features:  
3 (a) Persons who appear in a state of nudity or seminude; or  
4 (b) Live performances that are characterized by the exposure of  
5 specified anatomical areas or by including specified sexual activities;  
6 or  
7 (c) Films, motion pictures, video cassettes, slides, or other  
8 photographic reproductions that are characterized by the depiction or  
9 description of specified sexual activities or specified anatomical  
10 areas.  
11 (4) "Adult motel" means a hotel, motel, or similar commercial  
12 establishment that:  
13 (a) Offers accommodations to the public for any form of  
14 consideration and provides patrons with closed-circuit television  
15 transmissions, films, motion pictures, video cassettes, slides, or  
16 other photographic reproductions that are characterized by the  
17 depiction or description of specified sexual activities or specified  
18 anatomical areas, and has a sign visible from a public right of way  
19 that advertises the availability of these adult type of photographic  
20 reproductions;  
21 (b) Offers a sleeping room for rent for a period of time that is  
22 less than ten hours; or  
23 (c) Allows a tenant or occupant of a sleeping room to subrent the  
24 room for a period of time that is less than ten hours.  
25 (5) "Adult motion picture theater" means a commercial establishment  
26 where, for any form of consideration, films, motion pictures, video  
27 cassettes, slides, or similar photographic reproductions are regularly  
28 shown that are characterized by the depiction or description of  
29 specified sexual activities or specified anatomical areas.  
30 (6) "Adult theater" means a theater, concern, hall, auditorium, or  
31 similar commercial establishment that regularly features persons who  
32 appear in a state of nudity or seminudity or live performances that are  
33 characterized by the exposure of specified anatomical areas or by  
34 specified sexual activities.  
35 (7) "Applicant" means a person or persons applying for a license  
36 under this chapter.  
37 (8) "Business license" means a license issued by the department  
38 under this chapter to a sexually oriented business.  
39 (9) "Department" means the department of licensing.

1 (10) "Director" means the director of licensing.

2 (11) "Employee" means a person who performs a service on the  
3 premises of a sexually oriented business on a full-time, part-time, or  
4 contract basis, whether or not the person is denominated an employee,  
5 independent contractor, agent, or otherwise and whether or not the  
6 person is paid a salary, wage, or other compensation by the operator of  
7 the business. Employee does not include a person exclusively on the  
8 premises for repair or maintenance of the premises or equipment on the  
9 premises, for the delivery of goods to the premises, or as a companion,  
10 guide, or date for another person, or who agrees or offers to privately  
11 model lingerie or to privately perform a striptease for another person.

12 (12) "Escort agency" means a person or business association that  
13 furnishes, offers to furnish, or advertises to furnish escorts as one  
14 of its primary business purposes for a fee, tip, or other  
15 consideration.

16 (13) "Establishment" means any of the following:

17 (a) The opening or commencement of a sexually oriented business as  
18 a new business;

19 (b) The conversion of an existing business, whether or not a  
20 sexually oriented business, to a sexually oriented business;

21 (c) The addition of a sexually oriented business to another  
22 existing sexually oriented business; or

23 (d) The relocation of a sexually oriented business.

24 (14) "Interest" means the interest possessed by a person when the  
25 person, or the person's marital community, owns and operates, manages,  
26 or conducts, directly or indirectly, the sexually oriented business, or  
27 a part of it amounting to a substantial interest similar to that of an  
28 owner or leaseholder.

29 (15) "Licensee" means a person or persons in whose name a license  
30 to operate a sexually oriented business has been issued under this  
31 chapter, as well as the individual listed as an applicant on the  
32 application for a license, and in the case of an employee, a person in  
33 whose name a license has been issued authorizing employment in a  
34 sexually oriented business.

35 (16) "Manager" means a person who manages, directs, administers, or  
36 is in charge of the affairs or conduct of a portion of an activity  
37 within a sexually oriented business, and includes assistant managers  
38 working with or under the direction of a manager to carry out these  
39 purposes.

1 (17) "Manager's license" means a license issued by the department  
2 under this chapter to a manager of a sexually oriented business.

3 (18) "Nude model studio" means a place where a person appears  
4 seminude or nude, or who displays specified anatomical areas, and is  
5 provided to be observed, sketched, drawn, painted, sculptured,  
6 photographed, or similarly depicted by other persons who pay money or  
7 any form of consideration. "Nude model studio" does not include:

8 (a) A proprietary school licensed by the state of Washington;

9 (b) A college, junior college, or university supported entirely or  
10 in part by public taxation;

11 (c) A private college or university that maintains and operates  
12 educational programs in which credits are transferable to a college,  
13 junior college, or university supported entirely or partly by taxation;  
14 or

15 (d) A place housed in a structure:

16 (i) That has no sign visible from the exterior of the structure and  
17 no other advertising that indicates a nude or seminude person is  
18 available for viewing;

19 (ii) Where, in order to participate in a class, a student must  
20 enroll at least three days in advance of the class; and

21 (iii) Where no more than one nude or seminude model is on the  
22 premises at one time.

23 (19) "Nudity" or "a state of nudity" means the showing of the  
24 human male or female genitals, pubic area, vulva, anus, anal cleft, or  
25 anal cleavage with less than a fully opaque covering, the showing of  
26 the female breast with less than a fully opaque covering of any part of  
27 the nipple, or the showing of the covered male genitals in a  
28 discernibly turgid state.

29 (20) "Own or operate" means a person has a substantial ownership  
30 and operational interest in a sexually oriented business.

31 (21) "Performer" means a person who provides entertainment on the  
32 premises of a sexually oriented business during which the person  
33 exposes specified anatomical areas or performs specified sexual  
34 activities, whether or not a fee or other consideration is charged or  
35 accepted for the entertainment.

36 (22) "Performer's license" means a license issued by the department  
37 under this chapter to a performer or entertainer in a sexually oriented  
38 business.

1 (23) "Person" means an individual, proprietorship, partnership,  
2 corporation, association, or other legal entity.

3 (24) "Seminude" or "seminude condition" means the showing of the  
4 female breast below the top of the areola or the showing of the female  
5 or male buttocks.

6 (25) "Sexual encounter center" means a business or commercial  
7 enterprise that, as one of its principal business purposes, offers for  
8 any form of consideration:

9 (a) Physical contact in the form of wrestling or tumbling between  
10 persons of the opposite sex; or

11 (b) Activities between male and female persons or persons of the  
12 same sex when one or more of the persons is in a state of nudity or  
13 seminude.

14 (26) "Sexually oriented business" means an adult arcade, adult  
15 bookstore, adult novelty store, adult video store, adult cabaret, adult  
16 motel, adult motion picture theater, adult theater, escort agency, nude  
17 model studio, or sexual encounter center.

18 (27) "Specified anatomical areas" means:

19 (a) The human male genitals in a discernibly turgid state, even if  
20 completely and opaquely covered; or

21 (b) Less-than-completely and opaquely covered human genitals, pubic  
22 region, or buttocks or a female breast below a point immediately above  
23 the top of the areola.

24 (28) "Specified criminal activity" means an offense for  
25 prostitution or promotion of prostitution; dissemination of obscenity;  
26 sale, distribution, or display of harmful material to a minor; sexual  
27 performance by a child; possession or distribution of child  
28 pornography; public lewdness; indecent exposure; indecency with a  
29 child; sexual assault; molestation of a child; or any similar offenses  
30 to those described in this subsection under the criminal or penal code  
31 of other states or countries for which:

32 (a) Less than two years have elapsed since the date of conviction  
33 or the date of release from confinement imposed for the conviction,  
34 whichever is the later date, if the conviction is of a misdemeanor  
35 offense;

36 (b) Less than five years have elapsed since the date of conviction  
37 or the date of release from confinement for the conviction, whichever  
38 is the later date, if the conviction is of a felony offense; or

1 (c) Less than five years have elapsed since the date of the last  
2 conviction or the date of release from confinement for the last  
3 conviction, whichever is the later date, if the convictions are of two  
4 or more misdemeanor offenses or combination of misdemeanor offenses  
5 occurring within any twenty-four month period.

6 The fact that a conviction is being appealed has no effect on the  
7 disqualification of the applicant or a person residing with the  
8 applicant.

9 (29) "Specified sexual activities" means:

10 (a) The fondling or other touching of human genitals, pubic region,  
11 buttocks, anus, or female breasts;

12 (b) Sex acts, normal or perverted, actual or simulated, including  
13 intercourse, oral copulation, masturbation, or sodomy; or

14 (c) Excretory functions as part of or in connection with the  
15 activities set forth in (a) and (b) of this subsection.

16 (30) "Substantial enlargement of a sexually oriented business"  
17 means the increase in floor areas occupied by the business by more than  
18 twenty-five percent, as the floor areas exist on the effective date of  
19 this act.

20 (31) "Transfer of ownership or control" of a sexually oriented  
21 business means:

22 (a) The sale, lease, or sublease of the business;

23 (b) The transfer of securities that constitute a controlling  
24 interest in the business, whether by sale, exchange, or similar means;  
25 or

26 (c) The establishment of a trust, gift, or other similar legal  
27 device that transfers the ownership or control of the business, except  
28 for transfer by bequest or other operation of law upon the death of the  
29 person possessing the ownership or control.

30 NEW SECTION. **Sec. 3.** Sexually oriented businesses are classified  
31 as follows:

32 (1) Adult arcades;

33 (2) Adult bookstores, adult novelty stores, or adult video stores;

34 (3) Adult cabarets;

35 (4) Adult motels;

36 (5) Adult motion picture theaters;

37 (6) Adult theaters;

38 (7) Escort agencies;

- 1 (8) Nude model studios; and
- 2 (9) Sexual encounter centers.

3 NEW SECTION. **Sec. 4.** (1) It is a gross misdemeanor for a person  
4 to own, operate, or act as the agent for one who owns or operates a  
5 sexually oriented business in the state of Washington unless the person  
6 has obtained a business license under this chapter.

7 (2) It is a gross misdemeanor for a person to manage or act as the  
8 agent for one who manages a sexually oriented business in the state of  
9 Washington unless the person has obtained a manager's license under  
10 this chapter.

11 (3) It is a gross misdemeanor for a performer to appear nude or  
12 seminude, or to expose his or her specified anatomical areas, in a  
13 sexually oriented business or to engage in specified sexual activities  
14 in a sexually oriented business, unless the performer has obtained a  
15 performer's license under this chapter.

16 (4) It is a gross misdemeanor for a person who operates a sexually  
17 oriented business to employ a person to work as a manager for the  
18 sexually oriented business who is not licensed as a sexually oriented  
19 business manager under this chapter.

20 (5) It is a gross misdemeanor for a person who operates a sexually  
21 oriented business to employ a person to work as a performer for the  
22 sexually oriented business who is not licensed as a sexually oriented  
23 business performer under this chapter.

24 (6) It is a class C felony for a person issued a manager's or  
25 performer's license to allow another person to use the license to  
26 either manage a sexually oriented business or perform in a sexually  
27 oriented business.

28 (7) It is a defense to prosecution under this section that a person  
29 appearing in a state of nudity did so in a modeling class operated:

30 (a) By a proprietary school licensed by the state of Washington or  
31 a college, junior college, or university supported entirely or partly  
32 by taxation;

33 (b) By a private college or university that maintains and operates  
34 educational programs in which credits are transferable to a college,  
35 junior college, or university supported entirely or partly by taxation;  
36 or

37 (c) In a structure:

1 (i) That has no sign visible from the exterior of the structure and  
2 no other advertising that indicates a nude person is available for  
3 viewing; and

4 (ii) Where, in order to participate in a class, a student must  
5 enroll at least three days in advance of the class; and

6 (iii) Where no more than one nude model is on the premises at one  
7 time.

8 NEW SECTION. **Sec. 5.** (1) Each owner or operator of a sexually  
9 oriented business must obtain and maintain a separate business license.  
10 All applicants must be qualified according to this chapter. The  
11 application may request and the applicant must provide information,  
12 including fingerprints, that enables the department to determine  
13 whether the applicant meets the qualifications established in this  
14 chapter.

15 (2) If a person who wishes to operate a sexually oriented business  
16 is an individual, the person must sign the application for a license as  
17 the applicant. If a person who wishes to operate a sexually oriented  
18 business is other than an individual, each individual who has a  
19 substantial interest similar to that of an owner or leaseholder in the  
20 business must sign the application for a license as applicant. Each  
21 applicant must be qualified under section 8 of this act and each  
22 applicant is considered a licensee if a license is granted.

23 (3) An application for a sexually oriented business license must be  
24 made on a form provided and adopted by the department. The completed  
25 application for a sexually oriented business license must contain or be  
26 accompanied by all of the following information and documents:

27 (a) If the applicant is:

28 (i) An individual, the individual must state his or her legal name  
29 and any aliases and submit proof that he or she is eighteen years of  
30 age or older;

31 (ii) A partnership, the partnership must state its complete name,  
32 and the names of all partners, whether the partnership is general or  
33 limited, and a copy of the partnership agreement, if any; or

34 (iii) A corporation, the corporation must state its complete name,  
35 the date of its incorporation, evidence that the corporation is in good  
36 standing under the laws of Washington state, the names and capacity of  
37 all officers, directors, and principal stockholders, the name of the

1 registered corporate agent, and the address of the registered office  
2 for service of process;

3 (b) If the applicant intends to operate the sexually oriented  
4 business under a name other than that of the applicant, the applicant  
5 must state the sexually oriented business's fictitious name and submit  
6 the required registration documents;

7 (c) Whether the applicant has been convicted of specified criminal  
8 activity as defined in this chapter, and, if so, the specified criminal  
9 activity involved, the date, place, and jurisdiction of each offense;

10 (d) Whether the applicant has had a previous license issued under  
11 this chapter or under a similar sexually oriented business ordinance  
12 from a city or county in Washington state denied, suspended, or  
13 revoked, including the name and location of the sexually oriented  
14 business for which the permit was denied, suspended, or revoked, as  
15 well as the date of the denial, suspension, or revocation, and whether  
16 the applicant has been a partner in a partnership or an officer,  
17 director, or principal stockholder of a corporation that is licensed  
18 under this chapter whose license has previously been denied, suspended,  
19 or revoked, including the name and location of the sexually oriented  
20 business for which the permit was denied, suspended, or revoked, as  
21 well as the date of denial, suspension, or revocation;

22 (e) Whether the applicant holds other licenses under this chapter  
23 or under a similar sexually oriented business ordinance from a city or  
24 county in Washington state and, if so, the names and locations of the  
25 other licensed businesses;

26 (f) The single classification of license under section 3 of this  
27 act for which the applicant is filing;

28 (g) The location of the proposed sexually oriented business,  
29 including a legal description of the property, street address, and  
30 telephone number, if any;

31 (h) The applicant's mailing address and residential address;

32 (i) A recent photograph of the applicant showing the full face;

33 (j) The applicant's driver's permit number and the applicant's  
34 state or federally issued tax identification number;

35 (k) A sketch or diagram showing the configuration of the premises,  
36 including a statement of total floor space occupied by the business.  
37 The sketch or diagram need not be professionally prepared, but it must  
38 be drawn to a designated scale or drawn with marked dimensions of the  
39 interior of the premises to an accuracy of plus or minus six inches;

1 (1) A current certificate and straight-line drawing prepared within  
2 thirty days before application for an original business license by a  
3 registered land surveyor depicting the property lines and the  
4 structures containing, within one thousand feet of the property to be  
5 certified, any: Existing sexually oriented businesses; church,  
6 synagogue, mosque, temple, or building that is used primarily for  
7 religious worship and related religious activities; public or private  
8 educational facility including but not limited to child day-care  
9 facilities, nursery schools, preschools, kindergartens, elementary  
10 schools, private schools, intermediate schools, junior high schools,  
11 middle schools, high schools, vocational schools, secondary schools,  
12 continuation schools, special education schools, junior colleges, and  
13 universities; boundary of a residential district as defined in the city  
14 or county zoning code; public park or recreational area that has been  
15 designated for park or recreational activities including but not  
16 limited to a park, playground, nature trail, swimming pool, reservoir,  
17 athletic field, basketball or tennis court, pedestrian or bicycle path,  
18 wilderness area, or other similar public land within the city or county  
19 that is under the control, operation, or management of the city or  
20 county park and recreation authorities; property line of a lot devoted  
21 to a residential use as defined in the city or county zoning code;  
22 entertainment business that is oriented primarily towards children or  
23 family entertainment; and licensed premises, licensed under the  
24 alcoholic beverage control regulations of the state of Washington. For  
25 purposes of this section, a use is considered existing or established  
26 if it is in existence at the time an application is submitted. For the  
27 purposes of this section, "school" includes the school grounds but does  
28 not include the facilities used primarily for another purpose and only  
29 incidentally as a school.

30 NEW SECTION. **Sec. 6.** (1) Each manager of a sexually oriented  
31 business and each performer in a sexually oriented business must obtain  
32 and maintain a separate business license.

33 (2) An applicant must be qualified according to this chapter. The  
34 application form may request and the applicant must provide  
35 information, including fingerprints, that will enable the department to  
36 determine whether the applicant meets the qualifications established in  
37 this chapter.

1 (3) An application for a manager's license or performer's license  
2 must be made on a form provided and adopted by the department. The  
3 completed application for a sexually oriented business manager's or  
4 performer's license must contain or be accompanied by the following  
5 information and documents:

6 (a) The applicant's name or any other name, including stage names  
7 or aliases, used by the individual;

8 (b) Age, date, and place of birth;

9 (c) Height, weight, hair and eye color, and other identifying mark;

10 (d) Present residence address and telephone number;

11 (e) Present business address and telephone number;

12 (f) Date, issuing state, and number of driver's permit or other  
13 identification card information;

14 (g) Proof that the individual is at least eighteen years of age;

15 (h) Name and address of the sexually oriented business at which the  
16 individual will perform; and

17 (i) Other information as the department may require by rule adopted  
18 by the department.

19 (4) The following must be attached to the application form for a  
20 manager's or performer's license:

21 (a) A color photograph of the applicant clearly showing the  
22 applicant's full face, and the applicant's fingerprints on a form  
23 provided by the police department. The applicant must pay any fees for  
24 the photographs and fingerprints;

25 (b) A statement detailing the license history of the applicant for  
26 the five years immediately preceding the date of the filing of the  
27 application, including whether the applicant, in this or any other  
28 county, city, state, or country, has ever had a license, permit, or  
29 authorization to do business denied, revoked, or suspended, or had any  
30 professional or vocational license or permit denied, revoked, or  
31 suspended. In the event of such a denial, revocation, or suspension,  
32 the applicant must state his or her name, the name of the issuing or  
33 denying jurisdiction, and describe in full the reason for the denial,  
34 revocation, or suspension. A copy of an order of denial, revocation,  
35 or suspension must be attached to the application; and

36 (c) A statement whether the applicant has been convicted of  
37 specified criminal activity and, if so, the specified criminal activity  
38 involved and the date, place, and jurisdiction of each offense.

1        NEW SECTION.    **Sec. 7.**    (1) Upon the filing of an application for a  
2 manager's or performer's license, the department must issue a temporary  
3 license to the applicant and must give notice of the application within  
4 ten days to the chief executive officer of the incorporated city or  
5 town if the application is for a manager's or performer's license  
6 within an incorporated city or town, to the county legislative  
7 authority if the application is for a manager's or performer's license  
8 outside the boundaries of an incorporated city or town, or to all the  
9 appropriate executive officers in the case of a regional adult  
10 entertainment business plan.

11        (2) Upon the filing of the application for a business license, the  
12 department must give notice of the application within ten days to the  
13 health department, fire department, and building official of the city  
14 or town or, if the premises are located in an unincorporated area, the  
15 county requiring each to make an investigation as to whether the  
16 premises are in compliance or are not in compliance with this chapter  
17 and the applicable city or county ordinances.

18        NEW SECTION.    **Sec. 8.**    Denial of a license under this section is  
19 subject to appeal as set forth in section 20 of this act.

20        (1) Upon the filing of an application for a business license,  
21 manager's license, or performer's license, the application must be  
22 referred to the appropriate agencies for an investigation to be made on  
23 the information contained in the application. The application process  
24 must be completed within thirty days from the date the completed  
25 application is filed. The health department, fire department, and  
26 building official of the city or, if the premises are located in an  
27 unincorporated area, the county must complete their certification that  
28 the premises are in compliance or not in compliance with this chapter  
29 and the applicable city or county ordinances, within twenty days of  
30 receipt of notification from the department.

31        (2) After the investigation, the department must issue a business,  
32 manager's, or performer's license, unless it is determined by a  
33 preponderance of the evidence that one or more of the following  
34 findings is true:

35        (a) The applicant has failed to provide information reasonably  
36 necessary for issuance of the license or has falsely answered a  
37 question or request for information on the application form;

38        (b) The applicant is under the age of eighteen years;

1 (c) The applicant has been convicted: Within the past two years of  
2 a misdemeanor offense involving a specified criminal activity; within  
3 the past five years of a felony offense involving a specified criminal  
4 activity; or within the past five years of two or more misdemeanor  
5 offenses or combination of misdemeanor offenses occurring within any  
6 twenty-four month period involving specified criminal activities;

7 (d) The manager's or performer's license is to be used for  
8 employment in a business prohibited by local or state law, statute, or  
9 rule, or prohibited by this chapter;

10 (e) The applicant for a manager's or performer's license has had a  
11 sexually oriented business, manager's, or performer's license revoked  
12 by the department or by a city or county in Washington state within two  
13 years of the date of the current application. If the business,  
14 manager's, or performer's license is denied, the temporary license  
15 previously issued is immediately null and void;

16 (f) An applicant has been denied a license by the department or by  
17 a city or county in Washington state to operate a sexually oriented  
18 business within the preceding twelve months or whose license to operate  
19 a sexually oriented business has been revoked by the department or a  
20 city or county within Washington state within the preceding twelve  
21 months;

22 (g) The license fee required by this chapter has not been paid; or

23 (h) The premises to be used for the sexually oriented business have  
24 not been approved by the health department, fire department, and  
25 building official in the city where the premises are located or, if  
26 located in an unincorporated area, the county, as being in compliance  
27 with applicable laws and ordinances.

28 (3) Every business, manager's, and performer's license must be  
29 issued in the name of the applicant or applicants, and the holder of a  
30 license may not allow another person to use it.

31 (4) The license must state on its face the name of the person or  
32 persons to whom it is granted, the expiration date, the address of the  
33 sexually oriented business, and the classification for which the  
34 license is issued under section 3 of this act. A license issued under  
35 this chapter is subject to all conditions and restrictions imposed by  
36 this chapter. The trade name and address of the business and  
37 expiration date of the license must be listed on the face of the  
38 license. All business licenses and manager's licenses must be posted  
39 in a conspicuous place at or near the entrance to the sexually oriented

1 business so that they may be easily read at any time. A performer  
2 shall keep his or her business performer's license on the premises  
3 while performing.

4 (5) A business license issued by the department is valid only for  
5 the business classification, as defined in section 3 of this act, for  
6 which it is issued. A person who wishes to own or operate more than  
7 one classification of sexually oriented business must obtain separate  
8 business licenses for each classification of business.

9 (6) If the health department, fire department, or building official  
10 of the city, or, if the sexually oriented business premises are located  
11 in an unincorporated area, the county fails to complete its  
12 certification that the premises are in compliance with this chapter and  
13 with the applicable city or county ordinances, the department must  
14 issue the business license, as long as the failure to complete  
15 certification did not occur because the owner or operator, or other  
16 employee, of the sexually oriented business denied valid  
17 representatives of these agencies access to the premises for purposes  
18 of inspection and investigation.

19 (7) A business license may not be issued to:

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

22 (b) A corporation, unless it was created under the laws of the  
23 state of Washington or holds a certificate of authority to transact  
24 business in the state of Washington;

25 (c) An applicant who is under eighteen years of age;

26 (d) An applicant who has failed to provide information reasonably  
27 necessary for issuance of the business license or who has falsely  
28 answered a question or request for information on the application form;  
29 or

30 (e) An applicant who has proposed the location of the business  
31 within a zone where the use is prohibited by the department or local  
32 authority.

33 (8) Upon the granting of a business license under this chapter, the  
34 department must send a duplicate of the license or written notification  
35 to the chief executive officer of the incorporated city or town in  
36 which the license is granted, to the county legislative authority if  
37 the license is granted outside the boundaries of incorporated cities or  
38 towns, or to all chief executive officers of impacted cities, towns, or  
39 counties participating in a regional adult entertainment business plan.

1 (9) A business license, manager's license, or performer's license  
2 issued by the department does not preempt and is not a substitute for  
3 a similar business, manager's, or performer's license that may be  
4 required by the applicable city or county.

5 NEW SECTION. **Sec. 9.** (1) Except as set forth in subsection (7) of  
6 this section, the department may not issue an initial business license  
7 covering a premises, if at the time the initial license is to be issued  
8 the premises are within a buffer zone of one thousand feet surrounding  
9 a:

10 (a) Church, synagogue, mosque, temple, or building that is used  
11 primarily for religious worship and related religious activities;

12 (b) Public or private educational facility including but not  
13 limited to child day-care facilities, nursery schools, preschools,  
14 kindergartens, elementary schools, private schools, intermediate  
15 schools, junior high schools, middle schools, high schools, vocational  
16 schools, secondary schools, continuation schools, special education  
17 schools, junior colleges, and universities;

18 (c) Boundary of a residential district as defined in the applicable  
19 city or county zoning code;

20 (d) Public park or recreational area that has been designated for  
21 park or recreational activities including but not limited to a park,  
22 playground, nature trail, swimming pool, reservoir, athletic field,  
23 basketball or tennis court, pedestrian or bicycle path, wilderness  
24 area, or other similar public land within the city or county that is  
25 under the control, operation, or management of the city or county park  
26 and recreation authorities;

27 (e) Property line of a lot devoted to a residential use as defined  
28 in the applicable city or county zoning code;

29 (f) Entertainment business that is oriented primarily towards  
30 children or family entertainment;

31 (g) Premises licensed under the alcoholic beverage control  
32 regulations of the state of Washington; or

33 (h) Sexually oriented business.

34 For the purposes of this subsection, "school" includes the school  
35 grounds, but does not include the facilities used primarily for another  
36 purpose and only incidentally as a school.

37 (2) A person commits a misdemeanor if the person causes or permits  
38 the operation, establishment, or maintenance of more than one sexually

1 oriented business in the same building, structure, or portion thereof,  
2 or the increase of floor area of a sexually oriented business in a  
3 building, structure, or portion thereof containing another sexually  
4 oriented business.

5 (3) For the purposes of subsection (1) of this section, measurement  
6 must be made in a straight line, without regard to the intervening  
7 structures or objects, from the nearest portion of the building or  
8 structure used as the part of the premises where a sexually oriented  
9 business is conducted, to the nearest property line of the premises of  
10 a use listed in this section. Presence of a city, county, or other  
11 political subdivision boundary is irrelevant for purposes of  
12 calculating and applying the distance requirements of this section.

13 (4) A sexually oriented business lawfully operating on the  
14 effective date of this act that is in violation of subsections (1) and  
15 (2) of this section is deemed a nonconforming use. The nonconforming  
16 use is permitted to continue for a period not to exceed three years,  
17 unless the use is terminated earlier for any reason or voluntarily  
18 discontinued for a period of thirty days or more. The nonconforming  
19 uses may not be increased, enlarged, extended, or altered except that  
20 the use may be changed to a conforming use. If two or more sexually  
21 oriented businesses are within one thousand feet of one another and  
22 otherwise in a permissible location, the sexually oriented business  
23 that was first established and continually operating at a particular  
24 location is the conforming use and the later established business is  
25 nonconforming.

26 (5) A sexually oriented business lawfully operating as a conforming  
27 use is not rendered a nonconforming use by the location, after the  
28 grant or renewal of the business license, of a use listed in subsection  
29 (1) of this section within one thousand feet of the sexually oriented  
30 business. This subsection applies only to the renewal of a valid  
31 license and does not apply when an application for a license is  
32 submitted after a license has expired or been revoked.

33 (6) The department may rely on the measurements of the relevant  
34 local jurisdictions in determining the boundaries of a buffer zone.

35 (7)(a) The legislative authority of a city, town, or county:  
36 (i) Must establish a buffer zone less than that established in  
37 subsection (1) of this section if the legislative authority finds that:  
38 (A) The adverse secondary effects of adult entertainment businesses on  
39 public health, safety, or welfare would not be greater as a result of

1 the smaller buffer zone; or (B) failure to establish a smaller buffer  
2 zone will effectively prohibit any adult entertainment business in the  
3 city, town, or county and there is no regional agreement with  
4 neighboring cities, towns, or counties that provides adequate  
5 opportunities for these businesses;

6 (ii) May establish a buffer zone greater than that established in  
7 subsection (1) of this section if the legislative authority finds: (A)  
8 The negative secondary impacts of sexually oriented businesses on  
9 public health, safety, or welfare would not be reasonably and  
10 effectively mitigated without the larger buffer zone; and (B)  
11 establishing a larger buffer zone will not effectively prohibit any  
12 adult entertainment business in the city, town, or county, or that  
13 there is a regional agreement with neighboring cities, towns, or  
14 counties that provides adequate opportunities for these businesses.

15 (b) If the location requirements established under this chapter  
16 effectively preclude location of sexually oriented businesses within a  
17 city, town, or county, the city, town, or county must join with  
18 neighboring cities, towns, or counties in a regional adult  
19 entertainment business location plan in order to provide reasonable  
20 opportunity for location of sexually oriented businesses in the  
21 regional area.

22 NEW SECTION. **Sec. 10.** A license granted under this chapter is  
23 subject to annual renewal upon the written application of the applicant  
24 and a finding by the department that the applicant has not been  
25 convicted of a specified criminal activity or committed an act during  
26 the existence of the previous license that would be grounds to deny the  
27 initial license application. The renewal of the license is subject to  
28 the payment of the fee as set forth in section 11 of this act.

29 NEW SECTION. **Sec. 11.** (1) The department must establish the  
30 original business license fee under RCW 43.24.086, but the fee must be  
31 at least seven hundred fifty dollars per year for application and  
32 investigation. The applicant must pay the fee at the time of  
33 application. The department must pay fifty percent of the initial  
34 license fee to a county, city, or town required to conduct an  
35 investigation of the business premises under section 7 of this act.

36 (2) An application for an original manager's or performer's license  
37 must be accompanied by an annual nonrefundable application,

1 investigation, and license fee. The department must establish the  
2 manager's and performer's license fees under RCW 43.24.086, but the  
3 fees must be at least three hundred fifty dollars per year. An  
4 applicant for a manager's or performer's license must pay the fee at  
5 the time of application.

6 (3) An annual, nonrefundable fee of two hundred fifty dollars is  
7 required for every renewal of a business, manager's, or performer's  
8 license.

9 (4) All license applications and fees must be filed or submitted to  
10 the department.

11 NEW SECTION. **Sec. 12.** (1) At the time of the original issuance of  
12 a business license, the department shall prorate the license fee  
13 charged to the new licensee according to the number of calendar  
14 quarters, or portion of calendar quarters, remaining until the first  
15 renewal of that license is required.

16 (2) Unless canceled sooner, every business license issued by the  
17 department expires July 1st of the fiscal year for which it was issued.  
18 However, if the department deems it feasible and desirable to do so, it  
19 may establish, by rule adopted under chapter 34.05 RCW, a system for  
20 staggering the annual renewal dates for business licenses. If a system  
21 of staggered annual renewal dates is established by the department, the  
22 business license fees provided by this chapter must be appropriately  
23 prorated during the first year that the system is in effect.

24 NEW SECTION. **Sec. 13.** (1) An applicant or licensee must permit  
25 representatives of the police department, health department, fire  
26 department, zoning or land-use department, or other city or county  
27 departments or agencies to inspect the premises of a sexually oriented  
28 business for the purpose of insuring compliance with the law at any  
29 time it is occupied or open for business.

30 (2) A person who operates a sexually oriented business or the  
31 person's agent or employee commits a misdemeanor if the person refuses  
32 to permit a lawful inspection under subsection (1) of this section at  
33 any time the premises is occupied or open for business.

34 NEW SECTION. **Sec. 14.** (1) A license obtained under this chapter  
35 expires one year from the date of issuance and may be renewed only by  
36 making application as provided in section 10 of this act. Application

1 for renewal must be made at least thirty days before the license's  
2 expiration date, and when made less than thirty days before the  
3 expiration date the expiration of the license is not affected.

4 (2) When the department denies renewal of a license, the applicant  
5 may not be issued a license for one year from the date of denial. If,  
6 after denial, the department finds that the basis for denial of the  
7 renewal license has been corrected or abated, the applicant may be  
8 granted a license if at least ninety days have elapsed since the date  
9 denial became final.

10 NEW SECTION. **Sec. 15.** (1) A person commits a misdemeanor if, as  
11 the person in control of a sleeping room in a hotel, motel, or similar  
12 commercial establishment that does not have a business license, the  
13 person rents or subrents a sleeping room to a person and, within ten  
14 hours from the time the room is rented, the person rents or subrents  
15 the same sleeping room again.

16 (2) For the purposes of this section, "rent" or "subrent" means the  
17 act of permitting a room to be occupied for any form of consideration.

18 NEW SECTION. **Sec. 16.** The department may not issue a business  
19 license to a transferee until the transferee has applied for and  
20 received a license under this chapter.

21 NEW SECTION. **Sec. 17.** (1) The holder of a business license may  
22 not assign or transfer the license to another, except that a transfer  
23 may be made to the surviving spouse of a deceased licensee if the  
24 transferor and transferee were maintaining a marital community and the  
25 license was issued in the name of one or both of them.

26 (2) The holder of a manager's license or performer's license may  
27 not assign or transfer the license to another.

28 (3) The holder of a business license may not operate a sexually  
29 oriented business under the authority of a license at a place other  
30 than the address designated in the application.

31 (4) A change in an owner or operator of a licensed sexually  
32 oriented business or a change in the manager or agent of a sexually  
33 oriented business must be reported to the department within thirty  
34 days, and a new owner, operator, manager, or agent must meet the  
35 requirements of section 5 of this act.

1 (5) The department must charge a fee established by the department  
2 under RCW 43.24.086 that is at least seventy-five dollars for the  
3 processing of a change in an owner, operator, manager, or agent.

4 NEW SECTION. **Sec. 18.** (1) The department may, subject to this  
5 chapter and as provided by rule adopted by the department, suspend or  
6 revoke a business license or manager's or performer's license, and all  
7 rights of the licensee under this chapter are then suspended or  
8 terminated, as the case may be.

9 (2) Upon receipt of notice of the suspension or revocation of a  
10 business license or manager's or performer's license, the licensee must  
11 without delay deliver the license to the department. Where the  
12 business, manager's, or performer's license has been suspended only,  
13 the department must return the license to the licensee at the  
14 expiration or termination of the period of suspension.

15 NEW SECTION. **Sec. 19.** The department must suspend a license for  
16 a period not to exceed thirty days if it determines that a licensee or  
17 an employee of a licensee has:

18 (1) Failed to provide information reasonably necessary for issuance  
19 of a license issued under this chapter;

20 (2) Refused to allow an inspection of the sexually oriented  
21 business premises as authorized by this chapter;

22 (3) Had a sexually oriented business license, sexually oriented  
23 business manager's license, or sexually oriented business performer's  
24 license issued by a city or county suspended; or

25 (4) Been found to violate license requirements in a manner that  
26 would be grounds for denial of a license.

27 NEW SECTION. **Sec. 20.** (1) Violations, suspensions, and  
28 revocations of licenses issued to sexually oriented businesses,  
29 managers, or performers by city or county authorities must be reported  
30 by the city or county authorities to the department within thirty days.  
31 The department must make this information readily available in a timely  
32 manner, along with background and identification information obtained  
33 from license applications and other sources if available, to law  
34 enforcement officers throughout the state of Washington.

35 (2) The department must revoke a business license, manager's  
36 license, or performer's license if it determines that:

1 (a) A licensee gave false or misleading information in the material  
2 submitted during the application process;

3 (b) A licensee knowingly operated the sexually oriented business  
4 during a period of time when the licensee's license was suspended;

5 (c) A licensee knowingly acted as a sexually oriented business  
6 manager or sexually oriented business performer during a period of time  
7 when the licensee's license was suspended;

8 (d) A cause of suspension in section 19 of this act occurs and the  
9 license has been suspended within the preceding twelve months; or

10 (e) The corresponding sexually oriented business license, sexually  
11 oriented business manager's license, or sexually oriented business  
12 performer's license issued by the local city or county government is  
13 revoked.

14 (3) When the department revokes a license, the revocation must  
15 continue for one year, and the licensee may not be issued a business  
16 license, manager's license, or performer's license for one year from  
17 the date the revocation became effective. If, after revocation, the  
18 department finds that the basis for the revocation has been corrected  
19 or abated, the applicant may be granted a license if at least ninety  
20 days have elapsed since the date the revocation became effective.

21 NEW SECTION. **Sec. 21.** An action, order, or decision of the  
22 department as to a denial of an application for the issuance or renewal  
23 of a business license or a manager's or performer's license or as to a  
24 revocation, suspension, or modification of such a license is subject to  
25 the applicable provisions of chapter 34.05 RCW. An opportunity for a  
26 hearing must be provided a licensee before a revocation, modification,  
27 or suspension of a business, manager's, or performer's license. A  
28 hearing is not required until demanded by the applicant or licensee.

29 NEW SECTION. **Sec. 22.** Except in the case of a license suspension  
30 or revocation, whenever timely request for appeal of a denial to renew  
31 a license is filed with the department, the hearing examiner, or a  
32 court, a licensee may engage in the activity for which the license was  
33 required pending the decision from the department, the hearing  
34 examiner, or the court. An applicant not licensed when the current  
35 application was made may not engage in the activity for which the  
36 license is required pending decision by the department, the hearing  
37 examiner, or the court.

1        NEW SECTION.    **Sec. 23.**    (1) A person commits a misdemeanor if the  
2 person knowingly allows a person under the age of eighteen years on the  
3 premises of a sexually oriented business.

4        (2) It is a class C felony for a person to employ or permit a  
5 person under the age of eighteen years to appear nude or seminude, to  
6 expose specified anatomical areas, or to engage in specified sexual  
7 activities on the premises of a sexually oriented business under the  
8 person's control.

9        NEW SECTION.    **Sec. 24.**    A sexually oriented business licensed under  
10 this chapter must file a monthly report with the department under rules  
11 adopted by the department.    The report must include:    (1) The name,  
12 address, and date of birth of all performers appearing nude or  
13 seminude, exposing specified anatomical areas, or engaging in specified  
14 sexual activities during the month on the business premises; and (2)  
15 further information as the department may require.

16        NEW SECTION.    **Sec. 25.**    (1) This chapter does not limit the  
17 authority of cities, towns, and counties from further regulating adult  
18 entertainment businesses as to hours of operation, location of  
19 premises, or manner of operation.

20        (2) The provisions of this chapter relating to the licensing of a  
21 sexually oriented business are not exclusive and a city, town, or  
22 county within whose jurisdiction the sexually oriented business is  
23 located may require registrations or licenses or charge a fee for the  
24 same or similar purpose.    This chapter does not limit or abridge the  
25 authority of a city, town, or county to levy and collect a general and  
26 nondiscriminatory license fee levied upon all businesses, or to levy a  
27 tax based upon gross business conducted by a firm within the city,  
28 town, or county.

29        NEW SECTION.    **Sec. 26.**    The director may:

30        (1) Adopt, amend, or repeal those rules as are deemed necessary to  
31 carry out this chapter;

32        (2) Investigate all complaints or reports of conduct in violation  
33 of this chapter and to hold hearings as provided in this chapter;

34        (3) Issue subpoenas and administer oaths in connection with an  
35 investigation, hearing, or proceeding held under this chapter;

1 (4) Take or cause depositions to be taken and use other discovery  
2 procedures as needed in any investigation, hearing, or proceeding held  
3 under this chapter;

4 (5) Compel attendance of witnesses at hearings;

5 (6) Use the office of administrative hearings as authorized in  
6 chapter 34.12 RCW to conduct hearings. However, the director or the  
7 director's designee must make the final decision in the hearing;

8 (7) Enter into contracts for professional services determined to be  
9 necessary for adequate enforcement of this chapter;

10 (8) Grant or deny business license applications and manager's or  
11 performer's license applications, and impose sanctions against a  
12 license applicant or license holder provided by this chapter;

13 (9) Establish or increase in accordance with RCW 43.24.086 sexually  
14 oriented business', manager's, and performer's license fees above the  
15 minimum set by this chapter;

16 (10) Designate individuals authorized to sign subpoenas and  
17 statements of charges; and

18 (11) Employ investigative, administrative, and clerical staff as  
19 are necessary for the enforcement of this chapter.

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

32 NEW SECTION. **Sec. 28.** (1) If the department determines, upon  
33 investigation under section 27 of this act, that there is reason to  
34 believe a violation of this chapter has occurred, a statement of charge  
35 or charges may be prepared and served upon the sexually oriented  
36 business', manager's, or performer's license holder or applicant. The  
37 statement of charge or charges must be accompanied by a notice that the

1 license holder or applicant may request a hearing to contest the charge  
2 or charges. The license holder or applicant must file a request for  
3 hearing with the department within twenty days after being served the  
4 statement of charges. The failure to request a hearing constitutes a  
5 default, upon which the director or the director's designee may enter  
6 an order under RCW 34.05.440(1).

7 (2) If a hearing is requested, the time of the hearing must be  
8 scheduled. However, the hearing may not be held earlier than thirty  
9 days after service of the charges upon the license holder or applicant.  
10 A notice of hearing must be issued at least twenty days before the  
11 hearing, specifying the time, date, and place of the hearing.

12 NEW SECTION. **Sec. 29.** The procedures governing adjudicative  
13 proceedings before agencies under chapter 34.05 RCW, the administrative  
14 procedure act, govern all hearings requested under section 28 of this  
15 act.

16 NEW SECTION. **Sec. 30.** (1) Upon a finding that a business license  
17 holder or applicant or manager's or performer's license holder or  
18 applicant has engaged in conduct or violated conditions that are  
19 grounds for denial of a license or for disciplinary action under  
20 section 31 of this act, the director must issue an order providing for  
21 one or any combination of the following:

- 22 (a) Revocation of the license;
  - 23 (b) Suspension of the license for a fixed or indefinite term;
  - 24 (c) Payment of a fine for each violation of this chapter, not to  
25 exceed one thousand dollars per violation, that must be paid to the  
26 department; or
  - 27 (d) Denial of the license request.
- 28 (2) Costs associated with compliance with orders issued under this  
29 section are the obligation of the license holder or applicant.

30 NEW SECTION. **Sec. 31.** The following conduct, acts, or conditions  
31 constitute grounds for denial of a license or for disciplinary action  
32 against a business license holder or applicant or a manager's or  
33 performer's license holder or applicant under the jurisdiction of this  
34 chapter:

- 35 (1) With respect to a license holder, commission of an act that  
36 constitutes an obscenity or pornography offense under chapter 9.68 RCW,

1 or a sexual exploitation of children offense under chapter 9.68A RCW.  
2 Conviction in a criminal proceeding is not a condition precedent to  
3 disciplinary action under this section. Upon a conviction, however,  
4 the judgment and sentence are conclusive evidence at an ensuing  
5 disciplinary hearing of the guilt of the license holder or applicant of  
6 the crime described in the indictment or information, and of the  
7 person's violation of the statute on which it is based. For the  
8 purposes of this section, conviction includes a plea of guilty or nolo  
9 contendere and also includes all sentence deferrals or suspensions;

10 (2) Misrepresentation or concealment of a material fact in  
11 obtaining a license or in license reinstatement;

12 (3) Advertising that is false, fraudulent, or misleading;

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

15 (a) Not furnishing requested papers or documents;

16 (b) Not furnishing in writing a full and complete explanation  
17 regarding the matter under investigation; or

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

20 (5) Failure to comply with an order issued by the director;

21 (6) Aiding and abetting an unlicensed person to own or operate a  
22 sexually oriented business or to act as a manager or performer when a  
23 license is required;

24 (7) Interfering with an investigation or disciplinary proceeding by  
25 willful misrepresentation of facts before the director or the  
26 director's authorized representative, or by the use of threats or  
27 harassment against any witness to prevent the witness from providing  
28 evidence in a disciplinary proceeding or other legal action; and

29 (8) Violating this chapter or a rule adopted under this chapter.

30 NEW SECTION. Sec. 32. (1) The director may investigate complaints  
31 under this chapter concerning ownership or operation of a business  
32 without a license or performing without a license. In the  
33 investigation of the complaints, the director has the same authority as  
34 provided the director under section 26 of this act.

35 (2) The attorney general, a county prosecuting attorney, the  
36 department, or a person may, in accordance with the law of this state  
37 governing injunctions, maintain an action to enjoin a person owning or  
38 operating a sexually oriented business, or managing or performing in a

1 sexually oriented business, without a license required under this  
2 chapter from continuing the ownership, operation, management, or  
3 performing until the required license is secured. However, an  
4 injunction does not relieve a person from criminal prosecution and the  
5 remedy by injunction is in addition to criminal liability.

6 NEW SECTION. **Sec. 33.** A person or business that violates an  
7 injunction issued under this chapter must pay a civil penalty, as  
8 determined by the court, of not more than twenty-five thousand dollars,  
9 which must be paid to the department. For the purpose of this section,  
10 the superior court issuing an injunction retains jurisdiction and the  
11 cause must be continued, and in these cases the attorney general acting  
12 in the name of the state may petition for the recovery of civil  
13 penalties.

14 NEW SECTION. **Sec. 34.** (1) The director or individuals acting on  
15 the director's behalf are immune from suit in a civil or criminal  
16 action based on disciplinary proceedings or other official acts  
17 performed in good faith in the course of their duties in the  
18 administration and enforcement of this chapter.

19 (2) Legislative authorities of cities, towns, and counties are  
20 immune from suit in a civil or criminal action based on official acts  
21 performed in good faith in the course of their duties in the  
22 administration or enforcement of this chapter.

23 (3) In a challenge to location, distance, or conduct requirements  
24 imposed by the legislative authority of a city, town, or county under  
25 this chapter, the legislative authority may request that the state  
26 assume some or all of the obligation to defend the constitutionality of  
27 this chapter. The attorney general may grant or deny the request.  
28 This chapter does not create state liability for actions of a city,  
29 town, or county.

30 **Sec. 35.** RCW 7.48A.040 and 1985 c 235 s 1 are each amended to read  
31 as follows:

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

33 (2) Upon a determination that a defendant has with knowledge  
34 maintained a moral nuisance, the court shall impose a civil fine and  
35 judgment of an amount as the court shall determine to be appropriate.  
36 In imposing the civil fine, the court shall consider the willfulness of

1 the defendant's conduct and the profits made by the defendant  
2 attributable to the lewd matter, lewdness, or prostitution, whichever  
3 is applicable. In no event shall the civil fine exceed the greater of  
4 (~~twenty-five~~) fifty thousand dollars or these profits.

5 NEW SECTION. **Sec. 36.** Sections 1 through 34 of this act shall  
6 constitute a new chapter in Title 18 RCW.

7 NEW SECTION. **Sec. 37.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 38.** This act shall take effect January 1, 1997.

12 NEW SECTION. **Sec. 39.** The department of licensing may take such  
13 steps before the effective date of this act, including the adoption of  
14 rules, as are necessary to ensure that this act is implemented on  
15 January 1, 1997.

--- END ---