

# HOUSE BILL REPORT

## SSB 5644

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*As Reported By House Committee on:  
Judiciary*

**Title:** An act relating to adult entertainment businesses.

**Brief Description:** Regulating adult entertainment.

**Sponsor(s):** Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Thorsness, A. Smith and Madsen).

**Brief History:**

Reported by House Committee on:  
Judiciary, April 5, 1991, DPA.

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**HOUSE COMMITTEE ON  
JUDICIARY**

**Majority Report:** *Do pass as amended.* Signed by 14 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Inslee; Mielke; H. Myers; Scott; D. Sommers; Tate; Vance; and Wineberry.

**Minority Report:** *Do not pass.* Signed by 3 members: Representatives Belcher; R. Meyers; and Riley.

**Staff:** Bill Perry (786-7123).

**Background:** So-called adult entertainment establishments have been the object of continued concern in many communities. These establishments feature live performances involving nudity or near nudity as an attraction for customers. Some people believe that such establishments attract and even encourage illegal activity including alcohol and drug abuse, prostitution, sexual exploitation of minors, and sexual assaults and other crimes of violence.

Generally, under court interpretations of the state and federal constitutions, the nude or seminude performances in these establishments are not necessarily "obscene." To the extent that they are not obscene, they are forms of protected expression that cannot simply be banned. The courts have, however, allowed some regulation of speech or other forms of protected expression. Such regulations may be permissible if they are reasonable as to time, place, and

manner. Specifically, for example, zoning restrictions on "adult" movies have been upheld.

Attempts by government to tax protected expression have been unsuccessful when the tax differentiates on the basis of expressive content. The courts have struck down taxes, for instance, that differentiate between magazines on the basis of content.

A Washington law allows government entities to bring a civil action to close down "moral nuisances." This law covers, among other things, obscene and therefore unprotected forms of expression. A moral nuisance includes any business that regularly exhibits obscene films or sells obscene publications, or allows obscenity or prostitution. A moral nuisance also includes any house, apartment, or building where drugs are illegally manufactured, sold, or consumed. The maximum civil fine imposable for knowingly maintaining a moral nuisance is the greater of the profits made from the nuisance or \$25,000.

**Summary of Amended Bill:** A new chapter is created for the regulation of adult entertainment businesses. Adult entertainment businesses are those that regularly feature nudity or seminudity. Operators and owners of such businesses, and performers in such businesses, must get a license from the Department of Licensing. Failure to get a license is a gross misdemeanor. Various civil penalties are also created for violations of the chapter. Zoning restrictions are imposed on adult entertainment businesses.

A legislative finding is made that adult entertainment businesses, when unregulated, promote illegal activities including, sexual offenses, obscenity, pornography, and prostitution.

Every owner and operator of an adult entertainment business is required to obtain a business license from the department. The cost of a license is \$750 per year, or such higher amount as the department sets.

A business license will be denied if the applicant: (1) is a partnership or corporation with partners, officers, or directors who do not meet the applicant qualifications; (2) has a manager or agent who does not meet the applicant qualifications; (3) is a corporation not authorized to conduct business in the state; (4) is under the age of 18; (5) fails to provide information requested or falsely answers questions; or (6) proposes the location of the business within a zone prohibited by state or local law or ordinance.

The business applicant is required to post notice at the site of the proposed business. Before issuing a license, the department must notify the local authorities of the application.

A 1,000-foot zoning limitation is established. An adult entertainment establishment may not be operated within 1,000 feet of any residential zone, single or multifamily dwelling, church, park, playground, day-care center, or elementary or secondary school. This buffer zone may be increased or decreased by local jurisdictions upon findings regarding the secondary impacts of the change and the local or regional availability of locations for adult entertainment businesses. A three-year grandfather clause, as to location, is provided for existing businesses.

Each business must file a monthly report with the department listing: the names, addresses, and dates of birth of each performer appearing during the month, and such further information as the department may require by rule.

Any change of the officers or directors of a corporation must be reported to the department within 30 days. A business license is only transferable to a surviving spouse.

Each performer at an adult entertainment business must obtain a performer's license from the department. The cost of a license is \$75 per year or such higher amount as the department sets. The performer must be at least 18 years of age and must truthfully answer all information requested on the application form. Information supplied by an applicant is not subject to public disclosure.

A business or performer's license may be suspended or revoked if the licensee commits certain offenses. Those offenses include obscenity, pornography, sexual exploitation, rape, sexual molestation, prostitution, or indecent liberties.

The department is granted authority covering rule-making, complaints, investigations, and disciplinary actions. The department may summarily suspend a license if it finds that public health, safety, or welfare imperatively requires emergency action. Any person may obtain an injunction prohibiting a person from operating a business or performing without a license. A violation of such an injunction is subject to a civil penalty of \$25,000. The penalty is to be paid to the department.

It is a gross misdemeanor to allow a person under age 18 onto the premises of an adult entertainment business. It is a class C felony to employ or allow a person under age 18 to

appear nude or seminude on the premises of an adult entertainment business.

The department is granted immunity for actions taken in compliance with the new chapter. Local legislative authorities are given immunity for official acts performed in the course of the administration or enforcement of this chapter.

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

The local authorities may request the state to join in the defense of challenges to the new chapter.

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

**Amended Bill Compared to Substitute Bill:** The substitute bill allows the use of criminal history to disqualify a business or performer applicant. The amendment eliminates these provisions.

The amendment broadens the definition of those connected with a business who must get a license. Under the amendment, an owner or operator includes a person who controls 10 percent or more of a business' stock or assets.

The amendment removes a tax of \$1 per customer that the substitute bill imposes.

The amendment eliminates a provision which gives the Department of Licensing the authority to limit the number of licenses issued.

The amendment makes numerous technical changes, including definitional clarifications.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect January 1, 1992.

**Testimony For:** Local jurisdictions are unable to cope adequately with the problems created by adult entertainment businesses. There are direct ties between these businesses and organized crime.

**Testimony Against:** The bill is an unconstitutional invasion of rights of expression. The bill is poorly drafted and

vague. It requires the state to bear the cost of unwise local decisions.

**Witnesses:** John Turner, City of Mount Lake Terrace (in favor of substitute bill); Dawn Larsen, Washington Coalition of Sexual Assault Coalitions (in favor of substitute bill); Dennis Finch, Citizens for Quality Environment (in favor of substitute bill); Lloyd Ostrom, Edmonds Council of Concerned Citizens (in favor of substitute bill); Age Stein, The Stein School (in favor of substitute bill); Diane Sukol, Stevens Memorial Hospital Nurses (in favor of substitute bill); Janet Scott (in favor of substitute bill); Larry Kalsbeek, City of Lynnwood (in favor of substitute bill); Patrick Curran, City of Lynnwood (in favor of substitute bill); Jerry Sheehan, American Civil Liberties Union (opposed to substitute bill); and Chris Quinn-Brintnall, Pierce County Prosecuting Attorney's Office (expressed concerns).