

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 19

BY: LONG (Lewis)

AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS; CREATING LICENSING PROVISIONS FOR SEXUALLY ORIENTED BUSINESSES; STATING INTENT OF ACT; DEFINING TERMS; PROHIBITING OPERATION OF CERTAIN BUSINESS WITHOUT LICENSE; PROHIBITING MINORS FROM ENTERING CERTAIN BUSINESS AND GRANTING EXCEPTION; PROVIDING PENALTIES; STATING CLASSIFICATION OF BUSINESSES; PROVIDING FOR LICENSE APPLICATION AND ISSUANCE; PROHIBITING TRANSFER OF LICENSE; STATING LICENSE TERM, FEE AND RESTRICTIONS; REQUIRING POSTING OF LICENSE; PROVIDING RENEWAL, REVOCATION AND APPEAL PROCEDURES; PROHIBITING OPERATING SEXUALLY ORIENTED BUSINESS WITHIN SPECIFIED DISTANCE OF CERTAIN PROPERTIES; PROHIBITING MORE THAN ONE SEXUALLY ORIENTED BUSINESS FROM OPERATING IN SAME STRUCTURE OR WITHIN SPECIFIED DISTANCE OF SIMILAR BUSINESS; STATING MEANS OF MEASUREMENT OF SPECIFIED DISTANCES; AUTHORIZING LIMITED NONCOMFORMING USE AND STATING EXCEPTION; PROHIBITING ESCORT AGENCY FROM EMPLOYING OR OFFERING SERVICES TO MINORS; PROHIBITING NUDE MODELING STUDIO FROM EMPLOYING

MINOR; REQUIRING CERTAIN RECORDS OR PRESCRIPTION;
STATING CONSTRUCTION OF CERTAIN SECTION; PROVIDING
FOR CODIFICATION; PROVIDING FOR NONCODIFICATION;
AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. It is the purpose of this act to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of this state, and to establish reasonable and uniform regulations to deter violations of obscenity laws, sex-related crimes and pandering. The provisions of this act have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this act to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or deny access by the distributor and exhibitors of sexually oriented entertainment to their intended market.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.55 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas";

2. "Adult bookstore" or "Adult video store" means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

- a. books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas", or
- b. instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities";

3. "Adult Cabaret" means a nightclub, bar, restaurant or other commercial establishment which regularly features:

- a. persons who appear in a state of nudity,
- b. live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas", or
- c. films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";

4. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";

5. "Adult novelty store" means a commercial establishment which has twenty-five percent (25%) or more of its gross income derived from the sale or rental of any one or more of the following:

- a. books, magazines, periodicals, games, cards, other printed matter, or photographs, films, motion pictures, video cassettes, games, or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas", or
- b. instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities";

6. "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities";

7. "Chief of Police" means the chief of police of a municipality or his designated agent;

8. "Escort" means a person who, for consideration, agrees or offers to act as a companion, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person;

9. "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration;

10. "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license;

11. "Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical

areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration;

12. "Nudity" or a "State of nudity" means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast;

13. "Semi-nudity" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices;

14. "Sexual encounter center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- a. physical contact in the form of wrestling or tumbling between persons of the opposite sex, or
- b. activities between male and female persons or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity;

15. "Sexually oriented business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motion picture theater, adult novelty store, adult theater, escort agency, nude modeling studio or sexual encounter center;

16. "Specified anatomical areas" means human genitals in a state of sexual arousal;

17. "Specified sexual activities" means and includes any of the following:

- a. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts,
- b. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy,
- c. masturbation, actual or simulated, or

- d. excretory functions as part of or in connection with any of the activities set forth in subparagraphs a through c of this paragraph; and

18. "Transfer of ownership" of a sexually oriented business means and includes any of the following:

- a. the sale, lease or sublease of the business,
- b. the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means, or
- c. the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.56 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No person shall operate a sexually oriented business within the state unless said business has been issued a license for the particular type of business.

B. No person under the age of twenty-one (21) years shall be permitted to enter a sexually oriented business as defined in Section 2 of this act, except for "Adult Novelty Store" when the adult novelties listed in paragraph 5 of Section 2 of this act are located in a separate area of the business with restricted access to persons under twenty-one (21) years of age.

C. Any violation of subsections A and B of this section shall be punished as provided in Section 4 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.57 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any violation of this act shall, upon conviction, be a misdemeanor for the first offense, punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each day in violation of the provisions of this act. Each violation shall constitute a separate offense.

B. Any second or subsequent conviction within two (2) years shall be a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00) for each day in violation of the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.58 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Sexually oriented business shall be classified as follows:

1. Adult arcades;
2. Adult bookstores or adult video stores;
3. Adult cabarets;
4. Adult motion picture theaters;
5. Adult novelty stores;
6. Adult theaters;
7. Escort agencies;
8. Nude modeling studios; and
9. Sexual encounter centers.

B. An application for a license shall be made on a form provided by the Oklahoma State Bureau of Investigation to the chief of police of the municipality or the county sheriff wherein the business is located. The licensing authority for a sexually oriented business located in a municipality shall be the chief of police. The licensing authority for a sexually oriented business not located in a municipality shall be the county sheriff. The premises of the sexually oriented business shall be in compliance with all applicable laws of the state and the political subdivision

thereof. The application shall be accompanied by a sworn statement of such compliance.

C. Every person having a twenty-percent or greater interest in the operation of a sexually oriented business shall sign the application for license as applicant. Each applicant shall be a resident of the state for a minimum of two (2) years preceding making application for a sexually oriented business license. Each applicant shall be qualified under subsection E of this section and each applicant shall be considered a licensee if a license is granted.

D. No other city, county or state license required for a business shall exempt a sexually oriented business defined under this act from the requirement of obtaining a sexually oriented business license. The sexually oriented business shall comply with the provisions of this act and the requirements of any other licensing authority of the state or political subdivision thereof.

E. The licensing authority shall issue a license or renewal of license to an applicant thirty (30) days after the receipt of the application unless:

1. An applicant is under twenty-one (21) years of age;
2. An applicant has taxes, fees, fines or penalties assessed against or imposed upon him in relation to a sexually oriented business;
3. An applicant has failed to provide information reasonably necessary for issuance of the license or has given false information;
4. An applicant has been denied a license to operate a sexually oriented business within the preceding twelve (12) months, or has had a license revoked within the preceding twelve (12) months;
5. The license fee required by this act has not been paid;
6. An applicant or the proposed establishment is in violation of or not in compliance with Section 8 of this act; and

7. An applicant has been convicted of any of the following offenses:

- a. prostitution,
- b. promotion of prostitution,
- c. sale, distribution or display of harmful materials to minors,
- d. sexual performance with a child,
- e. possession of child pornography,
- f. public lewdness,
- g. indecent exposure,
- h. indecency with a child,
- i. sale, distribution, publication or participating in preparation of any obscene material,
- j. sexual battery,
- k. incest or solicitation of a child,
- l. rape, sodomy or forcible sodomy, or
- m. any other law of the state prohibiting any act of indecent exposure, obscenity, disorderly houses, rape, abduction, carnal abuse of children or seduction.

Provided, less than three (3) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever date is later. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

F. The license, when granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the name and address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

G. A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the

authority of a license at any place other than the address designated in the application. A violation of this provision shall be punished as provided in Section 4 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.59 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The annual fee for a sexually oriented license shall be Five Hundred Dollars (\$500.00). The license fee shall be divided as follows:

1. Two Hundred Fifty Dollars (\$250.00) shall be deposited in the General Fund of the licensing authority wherein the sexually oriented business is located; and

2. Two Hundred Fifty Dollars (\$250.00) shall be deposited in the General Fund of the state.

B. Each license shall expire one (1) year from the date of issuance and may be renewed by making application as provided in Section 5 of this act. Application for renewal of license shall be made thirty (30) days before the expiration date. Renewal of license shall issue thirty (30) days after receipt of the application, provided the applicant has complied with the provisions of Section 5 of this act. Operating a sexually oriented business during any period after a license has expired shall be a violation of this act punishable as provided in Section 4 of this act.

C. If a license is denied the applicant shall not be issued a license for one (1) year from the date of the denial, unless the basis for denial can be corrected within ninety (90) days from the date of denial. If the basis for denial has been corrected within ninety (90) days from the date of denial, the applicant may reapply for a license.

D. If the licensing authority denies the issuance of a license or revokes a license, as provided in Section 7 of this act, he shall mail to the applicant or licensee, by certified mail, return receipt

requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the licensing authority to the district court within thirty (30) days of the date the denial or revocation became final. Upon filing a petition, a copy of the petition and notice of appeal shall be mailed by certified mail to the licensing authority who denied or revoked the license and the Oklahoma State Bureau of Investigation. The state and the licensing authority may file a response to the petition within ten (10) days of the issuance of the notice. The court shall hold a hearing within ten (10) days after the final date for filing a response. Following the hearing, if the court finds a license must issue, the licensing authority shall be allowed thirty (30) days to comply. The filing of an appeal stays the action of the licensing authority in revoking a license until the court makes a final decision.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.60 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The licensing authority shall revoke a license for the following reasons:

1. A licensee gave false or misleading information in the material submitted to the chief of police during the application process;

2. A licensee or an employee has knowingly allowed prostitution on the premises;

3. A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was revoked or expired;

4. A licensee has been convicted of an offense listed in paragraph 7 of subsection E of Section 5 of this act for which the time period required in subsection E of Section 5 of this act has not elapsed;

5. On two or more occasions within a twelve-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in paragraph 7 of subsection E of Section 5 of this act, for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

6. A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual battery to occur in or on the license premises; and

7. A license is delinquent in payment to the state or any political subdivision thereof for ad valorem taxes, or sales taxes related to the sexually oriented business.

B. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

C. When the licensing authority revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. If, subsequent to revocation, the chief of police finds that the basis for revocation has been corrected the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If a license was revoked under paragraph 7 of subsection E of Section 5 of this act, an applicant may not be granted another license until the appropriate number of years required under subsection E of Section 5 of this act has elapsed since termination of any sentence, parole or probation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.61 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No person shall operate or cause to be operated a sexually oriented business within one thousand (1,000) feet of any of the following:

1. A church;
2. A public or private elementary or secondary school;
3. A public park; or
4. The property line of a lot devoted to residential use.

B. No person shall cause or permit the operation or establishment of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business as defined by this act.

C. No person shall cause or permit the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof.

D. A violation of subsections A, B or C of this section shall be punished as provided in Section 4 of this act.

E. For purposes of subsection A of this section measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private elementary or secondary school, or the nearest boundary of an affected public park or residential lot.

F. For purposes of subsection B of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

G. Any sexually oriented business lawfully operating on the effective date of this act, that is in violation of subsections A, B or C of this section shall be deemed to be in nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended

or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within one thousand (1,000) feet of each other and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business is nonconforming.

H. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location of a church, public or private elementary or secondary school, public park or residential lot within one thousand (1,000) feet of the sexually oriented business, subsequent to the grant or renewal of the sexually oriented business license. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.62 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. If the licensing authority denies the issuance of a license to an applicant because the location of the sexually oriented business is in violation of Section 8 of this act, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file an appeal with the district court and give written notice to the licensing authority. The court shall hold a hearing within ten (10) days after notice issues.

B. If the court finds that the sexually oriented business is an "Adult Novelty Store" as defined by this act, that does less than thirty percent (30%) of its gross income from the sale of items defined in subsection E of Section 2 of this act, the court may order an exception for a period of one (1) year and a license may issue. Provided, any subsequent renewal may be denied for a violation of Section 8 of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.63 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. An escort agency shall not employ any person under the age of twenty-one (21) years.

B. No person shall act as an escort or agree to act as an escort for any person under the age of twenty-one (21) years.

C. A violation of subsections A or B of this section shall be punished as provided in Section 4 of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.64 of Title 21, unless there is created a duplication in numbering, reads as follows:

A nude modeling studio shall not employ any person under the age of twenty-one (21) years of age. A violation of this section shall be punished as provided in Section 4 of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.65 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. A sexually oriented business shall maintain permanent records for one (1) year containing the name, address and description of purchases or rentals for each patron. Records may be inspected by the licensing authority during regular business hours after the sexually oriented business has been given a ten-day written notice or by lawful issue of a search warrant. A licensee may appeal a request for inspection of records by filing with the district court a petition within ten (10) days after receiving a notice requesting inspection of records. The licensing authority shall be notified by certified mail at the time of filing a petition. The court shall hold a hearing within ten (10) days after notice issues. An appeal shall stay the inspection of records until the court makes a final decision.

B. Any patron displaying a written prescription, signed by a licensed medical physician or psychiatrist, stating a medical purpose for purchases or rentals from a sexually oriented business, shall be exempt from the record requirement of subsection A of this section. This subsection shall not be construed to authorize anything otherwise prohibited under the laws of the state.

C. A violation of subsection A of this section shall be punished as provided in Section 4 of this act.

SECTION 13. The provisions of Section 1 shall not be codified in the Oklahoma Statutes.

SECTION 14. This act shall become effective September 1, 1991.

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