



Sen. Toi W. Hutchinson

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1 AMENDMENT TO HOUSE BILL 1645

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1645 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Live  
5 Adult Entertainment Facility Surcharge Act.

6 Section 3. Findings. It is the intent of the General  
7 Assembly to ameliorate the negative secondary effects  
8 associated with the consumption of alcoholic beverages on the  
9 premises of sexually oriented businesses, or the proximity of  
10 sexually oriented businesses to facilities serving alcohol, so  
11 as to promote the health, safety, and welfare of the citizens  
12 of Illinois.

13 This Act is not intended to directly or indirectly impose  
14 limitations or restrictions on live nude dancing, nor is it the  
15 intent of this Act to restrict or deny access by adults to live  
16 nude dancing performances that may be protected by the First

1 Amendment of the United States Constitution or by the Illinois  
2 Constitution.

3 Section 5. Definitions. As used in this Act:

4 "Admission" means entry by a person into a live adult  
5 entertainment facility.

6 "Department" means the Department of Revenue.

7 "Live adult entertainment facility" means a striptease  
8 club or other business that serves or permits the consumption  
9 of alcohol on its premises, and, during at least 30 consecutive  
10 or nonconsecutive days in a calendar year, offers or provides  
11 activities by employees, agents, or contractors of the business  
12 that involve nude or partially denuded individuals that, when  
13 considered as a whole, appeal primarily to an interest in  
14 nudity or sex.

15 "Nude or partially denuded individual" means an individual  
16 who is:

17 (1) entirely unclothed; or

18 (2) clothed in a manner that leaves uncovered or  
19 visible through less than fully opaque clothing any portion  
20 of the breasts below the top of the areola of the breasts,  
21 if the person is female, or any portion of the genitals or  
22 buttocks.

23 "Operator" means any person who owns or operates a live  
24 adult entertainment facility in this State.

1 Section 10. Surcharge imposed; returns.

2 (a) An annual surcharge is imposed upon each operator who  
3 operates a live adult entertainment facility in this State. By  
4 January 20, 2014, and by January 20 of each year thereafter,  
5 each operator shall elect to pay the surcharge according to  
6 either item (1) or item (2) of this subsection.

7 (1) An operator who elects to be subject to this item

8 (1) shall pay to the Department a surcharge imposed upon  
9 admissions to a live adult entertainment facility operated  
10 by the operator in this State in an amount equal to \$3 per  
11 person admitted to that live adult entertainment facility.  
12 This item (1) does not require a live entertainment  
13 facility to impose a fee on a customer of the facility. An  
14 operator has the discretion to determine the manner in  
15 which the facility derives the moneys required to pay the  
16 surcharge imposed under this section. In the event that an  
17 operator has not filed the applicable returns under the  
18 Retailers' Occupation Tax Act for a full calendar year  
19 prior to any January 20, then such operator shall pay the  
20 surcharge under this Act pursuant to this item (1) for  
21 moneys owed to the Department subject to this Act for the  
22 previous calendar year.

23 (2) An operator may, in the alternative, pay to the  
24 Department the surcharge as follows:

25 (A) If the gross receipts received by the live  
26 adult entertainment facility during the preceding

1 calendar year, upon the basis of which a tax is imposed  
2 under Section 2 of the Retailers' Occupation Tax Act,  
3 are equal or greater than \$2,000,000 during the  
4 preceding calendar year, and if the operator elects to  
5 be subject to this item (2), then the operator shall  
6 pay the Department a surcharge of \$25,000.

7 (B) If the gross receipts received by the live  
8 adult entertainment facility during the preceding  
9 calendar year, upon the basis of which a tax is imposed  
10 under Section 2 of the Retailers' Occupation Tax Act,  
11 are equal to or greater than \$500,000 but less than  
12 \$2,000,000 during the preceding calendar year, and if  
13 the operator elects to be subject to this item (2),  
14 then the operator shall pay to the Department a  
15 surcharge of \$15,000.

16 (C) If the gross receipts received by the live  
17 adult entertainment facility during the preceding  
18 calendar year, upon the basis of which a tax is imposed  
19 under Section 2 of the Retailers' Occupation Tax Act,  
20 are less than \$500,000 during the preceding calendar  
21 year, then the operator shall pay the Department a  
22 surcharge of \$5,000.

23 (b) For each live adult entertainment facility paying the  
24 surcharge as set forth in item (1) of subsection (a) of this  
25 Section, the operator must file a return electronically as  
26 provided by the Department and remit payment to the Department

1 on an annual basis no later than January 20 covering the  
2 previous calendar year. Each return made to the Department must  
3 state the following:

4 (1) the name of the operator;

5 (2) the address of the live adult entertainment  
6 facility and the address of the principal place of business  
7 (if that is a different address) of the operator;

8 (3) the total number of admissions to the facility in  
9 the preceding calendar year; and

10 (4) the total amount of surcharge collected in the  
11 preceding calendar year.

12 Notwithstanding any other provision of this subsection  
13 concerning the time within which an operator may file his or  
14 her return, if an operator ceases to operates a live adult  
15 entertainment facility, then he or she must file a final return  
16 under this Act with the Department not more than one calendar  
17 month after discontinuing that business.

18 (c) For each live adult entertainment facility paying the  
19 surcharge as set forth in item (2) of subsection (a) of this  
20 Section, the operator must file a return electronically as  
21 provided by the Department and remit payment to the Department  
22 on an annual basis no later than January 20 covering the  
23 previous calendar year. Each return made to the Department must  
24 state the following:

25 (1) the name of the operator;

26 (2) the address of the live adult entertainment

1 facility and the address of the principal place of business  
2 (if that is a different address) of the operator;

3 (3) the gross receipts received by the live adult  
4 entertainment facility during the preceding calendar year,  
5 upon the basis of which tax is imposed under Section 2 of  
6 the Retailers' Occupation Tax Act; and

7 (4) the applicable surcharge from Section 10(a)(2) of  
8 this Act to be paid by the operator.

9 Notwithstanding any other provision of this subsection  
10 concerning the time within which an operator may file his or  
11 her return, if an operator ceases to operate a live adult  
12 entertainment facility, then he or she must file a final return  
13 under this Act with the Department not more than one calendar  
14 month after discontinuing that business.

15 (d) Beginning January 1, 2014, the Department shall pay all  
16 proceeds collected from the surcharge imposed under this Act  
17 into the Sexual Assault Services and Prevention Fund, less 2%  
18 of those proceeds, which shall be paid into the Tax Compliance  
19 and Administration Fund in the State treasury from which it  
20 shall be appropriated to the Department to cover the costs of  
21 the Department in administering and enforcing the provisions of  
22 this Act.

23 Section 15. The Sexual Assault Services and Prevention  
24 Fund.

25 (a) The Sexual Assault Services and Prevention Fund is

1 created as a special fund in the State treasury. From  
2 appropriations from the Fund, the Department of Human Services  
3 shall make grants to sexual assault organizations with whom the  
4 Department has contracts for the purpose of providing  
5 community-based assistance to victims of sexual assault and for  
6 activities concerning the prevention of sexual assault. Moneys  
7 received for the purposes of this Act, including, without  
8 limitation, surcharge proceeds and gifts, grants, and awards  
9 from any public or private entity, must be deposited into the  
10 Fund. Any interest earnings that are attributable to moneys in  
11 the Fund must be deposited into the Fund.

12 (b) Notwithstanding any transfers authorized under  
13 subsection (e) of Section 10 of this Act, the Fund is not  
14 subject to sweeps, charge-backs, or any other fiscal or  
15 budgetary maneuver that would in any way transfer any moneys  
16 from the Fund into any other fund of the State.

17 Section 20. Books and records. Every operator electing to  
18 pay the surcharge pursuant to item (1) of subsection (a) of  
19 Section 10 of this Act shall record the admissions of customers  
20 subject to the surcharge under this Act.

21 Section 25. Application of Retailers' Occupation Tax  
22 provisions; Uniform Penalty and Interest Act provisions. All  
23 the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g,  
24 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 13 of the Retailers'

1 Occupation Tax Act that are not inconsistent with this Act  
2 apply, as far as practicable, to the surcharge imposed by this  
3 Act to the same extent as if those provisions were included in  
4 this Act. References in the incorporated Sections of the  
5 Retailers' Occupation Tax Act to retailers, to sellers, or to  
6 persons engaged in the business of selling tangible personal  
7 property mean operators. All provisions of the Uniform Penalty  
8 and Interest Act which are not inconsistent with this Act shall  
9 apply.

10 Section 30. Hearing; notice. The Department may adopt and  
11 enforce any reasonable rule to administer and enforce the  
12 surcharge imposed by this Act.

13 Section 40. Review under the Administrative Review Law.

14 (a) The circuit court of any county in which a hearing is  
15 held has the power to review all final administrative decisions  
16 of the Department in administering the surcharge imposed under  
17 this Act. The term "administrative decision" is defined as in  
18 Section 3-101 of the Code of Civil Procedure.

19 Section 45. Penalty. Any operator who fails to make a  
20 return or who makes a fraudulent return is guilty of a Class 4  
21 felony.

22 Section 90. The State Finance Act is amended by adding



1 Section 5.811 as follows:

2 (30 ILCS 105/5.811 new)

3 Sec. 5.811. The Sexual Assault Services and Prevention  
4 Fund.

5 Section 97. Severability. The provisions of this Act are  
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.".