



Sen. Toi W. Hutchinson

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1 AMENDMENT TO HOUSE BILL 1645

2 AMENDMENT NO. _____. Amend House Bill 1645, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

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

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

1 nude dancing performances that may be protected by the First
2 Amendment of the United States Constitution or by the Illinois
3 Constitution.

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

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

7 "Department" means the Department of Revenue.

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

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

18 (1) entirely unclothed; or

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

24 "Operator" means any person who owns or operates a live
25 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

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

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

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

25 (b) For each live adult entertainment facility paying the
26 surcharge as set forth in item (1) of subsection (a) of this

1 Section, the operator must file a return electronically as
2 provided by the Department and remit payment to the Department
3 on an annual basis no later than January 20 covering the
4 previous calendar year. Each return made to the Department must
5 state the following:

6 (1) the name of the operator;

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

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

12 (4) the total amount of surcharge collected in the
13 preceding calendar year.

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

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

- 1 (1) the name of the operator;
- 2 (2) the address of the live adult entertainment
3 facility and the address of the principal place of business
4 (if that is a different address) of the operator;
- 5 (3) the gross receipts received by the live adult
6 entertainment facility during the preceding calendar year,
7 upon the basis of which tax is imposed under Section 2 of
8 the Retailers' Occupation Tax Act; and
- 9 (4) the applicable surcharge from Section 10(a)(2) of
10 this Act to be paid by the operator.

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

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

25 Section 15. The Sexual Assault Services and Prevention

1 Fund.

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

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

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

23 Section 25. Application of Retailers' Occupation Tax
24 provisions; Uniform Penalty and Interest Act provisions. All

1 the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g,
2 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 13 of the Retailers'
3 Occupation Tax Act that are not inconsistent with this Act
4 apply, as far as practicable, to the surcharge imposed by this
5 Act to the same extent as if those provisions were included in
6 this Act. References in the incorporated Sections of the
7 Retailers' Occupation Tax Act to retailers, to sellers, or to
8 persons engaged in the business of selling tangible personal
9 property mean operators. All provisions of the Uniform Penalty
10 and Interest Act which are not inconsistent with this Act shall
11 apply.

12 Section 30. Rules. The Department may adopt and enforce any
13 reasonable rule to administer and enforce the surcharge imposed
14 by this Act.

15 Section 40. Review under the Administrative Review Law. The
16 circuit court of any county in which a hearing is held has the
17 power to review all final administrative decisions of the
18 Department in administering the surcharge imposed under this
19 Act. The term "administrative decision" is defined as in
20 Section 3-101 of the Code of Civil Procedure.

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

1 Section 90. The State Finance Act is amended by adding
2 Section 5.811 as follows:

3 (30 ILCS 105/5.811 new)

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

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

8 Section 99. Effective date. This Act takes effect January
9 1, 2013."