

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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
17 Amendment of the United States Constitution or by the Illinois
18 Constitution.

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

20 "Admission" means entry by a person into a live adult
21 entertainment facility.

22 "Department" means the Department of Revenue.

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

9 "Nude or partially denuded individual" means an individual
10 who is:

11 (1) entirely unclothed; or

12 (2) clothed in a manner that leaves uncovered or
13 visible through less than fully opaque clothing any portion
14 of the breasts below the top of the areola of the breasts,
15 if the person is female, or any portion of the genitals or
16 buttocks.

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

19 Section 10. Surcharge imposed; returns.

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

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

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

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

18 (A) If the gross receipts received by the live
19 adult entertainment facility during the preceding
20 calendar year, upon the basis of which a tax is imposed
21 under Section 2 of the Retailers' Occupation Tax Act,
22 are equal or greater than \$2,000,000 during the
23 preceding calendar year, and if the operator elects to
24 be subject to this item (2), then the operator shall
25 pay the Department a surcharge of \$25,000.

26 (B) 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 to or greater than \$500,000 but less than
5 \$2,000,000 during the preceding calendar year, and if
6 the operator elects to be subject to this item (2),
7 then the operator shall pay to the Department a
8 surcharge of \$15,000.

9 (C) If the gross receipts received by the live
10 adult entertainment facility during the preceding
11 calendar year, upon the basis of which a tax is imposed
12 under Section 2 of the Retailers' Occupation Tax Act,
13 are less than \$500,000 during the preceding calendar
14 year, and if the operator elects to be subject to this
15 item (2), then the operator shall pay the Department a
16 surcharge of \$5,000.

17 (b) For each live adult entertainment facility paying the
18 surcharge as set forth in item (1) of subsection (a) of this
19 Section, the operator must file a return electronically as
20 provided by the Department and remit payment to the Department
21 on an annual basis no later than January 20 covering the
22 previous calendar year. Each return made to the Department must
23 state the following:

24 (1) the name of the operator;

25 (2) the address of the live adult entertainment
26 facility and the address of the principal place of business

1 (if that is a different address) of the operator;

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

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

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

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

19 (1) the name of the operator;

20 (2) the address of the live adult entertainment
21 facility and the address of the principal place of business
22 (if that is a different address) of the operator;

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

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

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

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

17 Section 15. The Sexual Assault Services and Prevention
18 Fund.

19 (a) The Sexual Assault Services and Prevention Fund is
20 created as a special fund in the State treasury. From
21 appropriations from the Fund, the Department of Human Services
22 shall make grants to sexual assault organizations with whom the
23 Department has contracts for the purpose of providing
24 community-based assistance to victims of sexual assault and for
25 activities concerning the prevention of sexual assault. Moneys

1 received for the purposes of this Act, including, without
2 limitation, surcharge proceeds and gifts, grants, and awards
3 from any public or private entity, must be deposited into the
4 Fund. Any interest earnings that are attributable to moneys in
5 the Fund must be deposited into the Fund.

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

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

15 Section 25. Application of Retailers' Occupation Tax
16 provisions; Uniform Penalty and Interest Act provisions. All
17 the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g,
18 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 13 of the Retailers'
19 Occupation Tax Act that are not inconsistent with this Act
20 apply, as far as practicable, to the surcharge imposed by this
21 Act to the same extent as if those provisions were included in
22 this Act. References in the incorporated Sections of the
23 Retailers' Occupation Tax Act to retailers, to sellers, or to
24 persons engaged in the business of selling tangible personal

1 property mean operators. All provisions of the Uniform Penalty
2 and Interest Act which are not inconsistent with this Act shall
3 apply.

4 Section 30. Rules. The Department may adopt and enforce any
5 reasonable rule to administer and enforce the surcharge imposed
6 by this Act.

7 Section 40. Review under the Administrative Review Law. The
8 circuit court of any county in which a hearing is held has the
9 power to review all final administrative decisions of the
10 Department in administering the surcharge imposed under this
11 Act. The term "administrative decision" is defined as in
12 Section 3-101 of the Code of Civil Procedure.

13 Section 45. Penalty. Any operator who fails to make a
14 return or who makes a fraudulent return is guilty of a Class 4
15 felony.

16 Section 90. The State Finance Act is amended by adding
17 Section 5.811 as follows:

18 (30 ILCS 105/5.811 new)

19 Sec. 5.811. The Sexual Assault Services and Prevention
20 Fund.

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

3 Section 99. Effective date. This Act takes effect January
4 1, 2013.