

SB3348



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3348

Introduced 2/7/2012, by Sen. Toi W. Hutchinson

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.811 new

Creates the Live Adult Entertainment Facility Tax Act. Imposes a tax on each operator who operates a live adult entertainment facility in this State. Provides that the amount of the tax is an amount equal to \$5 for each entry by each customer admitted into the live adult entertainment facility. Creates the Sexual Assault Prevention Fund as a special fund in the State treasury. Requires that the proceeds of the tax be deposited into the Sexual Assault Prevention Fund. Provides that, from appropriation from the Fund, the Department of Human Services shall make grants to sexual assault organizations with whom the Department has contracts for the purpose of providing community-based assistance to victims of sexual assault and for activities concerning the prevention of sexual assault. Sets forth provisions for the administration of the tax.

LRB097 17953 HLH 63176 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Tax Act.

6 Section 3. Findings. The General Assembly finds that:

7 (1) crime statistics show that all types of crimes,
8 especially sex-related crimes, occur with more frequency
9 in neighborhoods where sexually oriented businesses are
10 located;

11 (2) sexually oriented businesses contribute to a
12 culture that tolerates the sexual objectification and
13 exploitation of women, and contribute to the need for
14 community-based services to respond to victims of all forms
15 of sexual exploitation, including sexual harassment,
16 trafficking, and sexual assault;

17 (3) the consumption of alcoholic beverages on the
18 premises of sexually oriented businesses exacerbates the
19 negative secondary effects of those businesses on the
20 community; and

21 (4) the presence of sexually oriented businesses may
22 result in an increase in prohibited secondary sexual
23 activities, such as prostitution, in the surrounding

1 community.

2 It is the intent of the General Assembly to ameliorate the
3 negative secondary effects associated with the combination of
4 sexually oriented businesses and alcohol so as to promote the
5 health, safety, and welfare of the citizens of Illinois.

6 This Act is not intended to directly or indirectly impose
7 limitations or restrictions on live nude dancing, nor is it the
8 intent of this Act to restrict or deny access by adults to live
9 nude dancing performances that may be protected by the First
10 Amendment of the United States Constitution or by the Illinois
11 Constitution.

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

13 "Department" means the Department of Revenue.

14 "Live adult entertainment facility" means a striptease
15 club or other business that, during at least 30 consecutive or
16 nonconsecutive days in a calendar year, offers or provides
17 activities by employees, agents, or contractors of the business
18 that involve nude or partially denuded individuals that, when
19 considered as a whole, appeal primarily to an interest in
20 nudity or sex.

21 "Nude or partially denuded individual" means an individual
22 who is:

23 (1) entirely unclothed; or

24 (2) clothed in a manner that leaves uncovered or
25 visible through less than fully opaque clothing any portion

1 of the breasts below the top of the areola of the breasts,
2 if the person is female, or any portion of the genitals or
3 buttocks.

4 "Operator" means any person who owns or operates a live
5 adult entertainment facility.

6 Section 10. Tax imposed; returns.

7 (a) A tax is imposed upon each operator who operates a live
8 adult entertainment facility in this State that serves or
9 permits the consumption of alcohol on its premises. The amount
10 of the tax under this Act is an amount equal to \$5 for each
11 entry by each customer admitted into the live adult
12 entertainment facility.

13 (b) For each live adult entertainment facility, the
14 operator must make a return to the Department on a
15 quarter-annual basis, with the return for January, February,
16 and March of a given year being due by April 30 of that year;
17 with the return for April, May, and June of a given year being
18 due by July 31 of that year; with the return for July, August,
19 and September of a given year being due by October 31 of that
20 year; and with the return for October, November, and December
21 of a given year being due by January 31 of the following year.
22 Each return made to the Department must state the following:

23 (1) the name of the operator;

24 (2) the address of the live adult entertainment
25 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 customers admitted to the
- 3 facility in the preceding calendar quarter;
- 4 (4) the total amount of tax collected in the preceding
- 5 calendar quarter; and
- 6 (5) any other information that the Department of
- 7 Revenue reasonably requires.

8 Notwithstanding any other provision of this subsection

9 concerning the time within which an operator may file his or

10 her return, if an operator ceases to operate a live adult

11 entertainment facility, then he or she must file a final return

12 under this Act with the Department not more than one calendar

13 month after discontinuing that business.

14 (c) Persons subject to the tax imposed by this Act may

15 reimburse themselves for their tax liability under this Act by

16 separately stating such tax as an additional charge. If any

17 operator collects an amount (however designated) that purports

18 to reimburse the operator for the tax liability measured by

19 receipts that are not subject to the tax under this Act, or if

20 any operator, in collecting an amount (however designated) that

21 purports to reimburse the operator for the tax liability under

22 this Act, collects more from the customer than the operator's

23 tax liability in the transaction, then the customer has a legal

24 right to claim a refund of that amount from the operator. If,

25 however, that amount is not refunded to the customer for any

26 reason, then the operator is liable to pay that amount to the

1 Department.

2 (d) The Department shall pay all proceeds collected from
3 the tax imposed under this Act into the Sexual Assault
4 Prevention Fund.

5 Section 15. The Sexual Assault Prevention Fund. The Sexual
6 Assault Prevention Fund is created as a special fund in the
7 State treasury. From appropriations from the Fund, the
8 Department of Human Services shall make grants to sexual
9 assault organizations with whom the Department has contracts
10 for the purpose of providing community-based assistance to
11 victims of sexual assault and for activities concerning the
12 prevention of sexual assault. Moneys received for the purposes
13 of this Act, including, without limitation, tax proceeds and
14 gifts, grants, and awards from any public or private entity,
15 must be deposited into the Fund. Any interest earnings that are
16 attributable to moneys in the Fund must be deposited into the
17 Fund.

18 The Fund is not subject to sweeps, administrative charges,
19 or charge-backs, or any other fiscal or budgetary maneuver that
20 would in any way transfer any moneys from the Fund into any
21 other fund of the State.

22 Section 20. Books and records. Every operator shall keep
23 separate books or records of his or her business as an operator
24 to record the taxable admissions of customers under this Act.

1 The Department may adopt rules that establish requirements,
2 including record forms and formats, for records required to be
3 kept and maintained by taxpayers. For purposes of this Section,
4 "records" means all data maintained by the taxpayer, including
5 data on paper, microfilm, microfiche, or any type of
6 machine-sensible data compilation.

7 Section 25. Application of Retailers' Occupation Tax
8 provisions. All the provisions of Sections 4, 5, 5a, 5b, 5c,
9 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 13
10 of the Retailers' Occupation Tax Act that are not inconsistent
11 with this Act apply, as far as practicable, to the tax imposed
12 by this Act to the same extent as if those provisions were
13 included in this Act. References in the incorporated Sections
14 of the Retailers' Occupation Tax Act to retailers, to sellers,
15 or to persons engaged in the business of selling tangible
16 personal property mean operators.

17 Section 30. Hearing; notice.

18 (a) The Department may adopt and enforce any reasonable
19 rule to administer and enforce the tax imposed by this Act.

20 (b) Whenever the Department is required to provide notice
21 to an operator under this Act, the notice may be personally
22 served or given by United States certified or registered mail,
23 addressed to the operator concerned at his or her last known
24 address, and proof of this mailing is sufficient for the

1 purposes of this Act. In the case of a notice of hearing, the
2 Department must mail the notice at least 7 days prior to the
3 date fixed for the hearing.

4 (c) All hearings provided by the Department under this Act
5 with respect to or concerning a operator having his or her
6 principal place of business in this State other than in Cook
7 County must be held at the Department's office nearest to the
8 location of the operator's principal place of business. If the
9 operator has his or her principal place of business in Cook
10 County, then the hearing must be held in Cook County. If the
11 operator does not have his or her principal place of business
12 in this State, then the hearing must be held in Sangamon
13 County.

14 (d) If any proceeding under this Act has been begun by the
15 Department or by a person subject thereto and that person
16 subsequently dies or becomes a person under legal disability
17 before the proceeding has been concluded, then the legal
18 representative of the deceased person or person under legal
19 disability shall notify the Department of the death or legal
20 disability. The Department must substitute the legal
21 representative, as such, in place of and for the person. Within
22 20 days after notice to the legal representative of the time
23 fixed for that purpose, the proceeding may proceed in all
24 respects and with like effect as though the person had not died
25 or become a person under legal disability.

1 Section 35. Administrative procedures. The Illinois
2 Administrative Procedure Act is expressly adopted and applies
3 to all administrative rules and procedures of the Department
4 under this Act, except that: (1) paragraph (b) of Section 4 of
5 the Illinois Administrative Procedure Act does not apply to
6 final orders, decisions, and opinions of the Department; (2)
7 subparagraph (a)(2) of Section 4 of the Illinois Administrative
8 Procedure Act does not apply to forms established by the
9 Department for use under this Act; and (3) the provisions of
10 Section 13 of the Illinois Administrative Procedure Act
11 regarding proposals for decision are excluded and not
12 applicable to the Department under 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 tax imposed under this
17 Act. If, however, the administrative proceeding that is to be
18 reviewed judicially is a claim for refund proceeding commenced
19 under this Act and Section 2a of the State Officers and
20 Employees Money Disposition Act, the circuit court having
21 jurisdiction over the action for judicial review under this
22 Section and under the Administrative Review Law is the same
23 court that entered the temporary restraining order or
24 preliminary injunction that is provided for in that Section 2a,
25 and that enables the claim proceeding to be processed and

1 disposed of as a claim for refund proceeding other than as a
2 claim for credit proceeding.

3 (b) The provisions of the Administrative Review Law apply
4 to and govern all proceedings for the judicial review of final
5 administrative decisions of the Department under this Title.
6 The term "administrative decision" is defined as in Section
7 3-101 of the Code of Civil Procedure.

8 (c) Service of summons issued in any action to review a
9 final administrative decision upon the Director or Assistant
10 Director of Revenue shall be service upon the Department. The
11 Department shall certify the record of its proceedings if the
12 taxpayer pays to it the sum of \$0.75 per page of testimony
13 taken before the Department and \$0.25 per page of all other
14 matters contained in the record, except that these charges may
15 be waived if the Department is satisfied that the aggrieved
16 party cannot afford to pay these charges.

17 Section 45. Penalty. Any operator who fails to make a
18 return or who makes a fraudulent return, or who willfully
19 violates any rule or regulation of the Department for the
20 administration and enforcement of the tax imposed under this
21 Act, is guilty of a Class 4 felony.

22 Section 90. The State Finance Act is amended by adding
23 Section 5.811 as follows:

1 (30 ILCS 105/5.811 new)

2 Sec. 5.811. The Sexual Assault Prevention Fund.

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